U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STANLEY T. CHAVEZ and U.S. POSTAL SERVICE,
POST OFFICE, Albuquerque, N.M.

Docket No. 97-1684; Submitted on the Record;
Issued March 23, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant had any permanent partial impairment which was causally related to his January 25, 1984 work-related injury.

On January 25, 1984 appellant, then a 33-year-old mail handler, filed a claim for compensation alleging that on that day he sustained an injury to his lower back while he was binding first class flats at the employing establishment. The Office of Workers' Compensation Programs accepted the claim for a lumbar strain and authorized appropriate monetary and medical benefits.

On May 29, 1996 appellant filed a claim for a schedule award.

On July 3, 1996 the Office asked Dr. Keith Harvie, an orthopedist and appellant's treating physician, to determine appellant's entitlement to a schedule award based on whether the physician found that appellant's work-related condition affected a function of a lower extremity.

In a September 4, 1996 medical report, Dr. Harvie stated that appellant reached maximum medical improvement as of July 1, 1996. Rating appellant in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 1993), Dr. Harvie found that appellant has degenerative disc disease in his back and, in accordance to DRE Lumbosacral Category II: Minor Impairment found at 3/102, stated that appellant has a 5 percent impairment to his body as a whole. Concerning appellant's shoulder, Dr. Harvie stated that the biceps brachei is a Grade IV, producing an approximate 20 percent deficit in the biceps brachia. Utilizing tables 10 and 15 on pages 47 and 54, Dr. Harvie found that the upper extremity impairment for loss of one motor grade equated to 6 percent or a 4 percent impairment to the body as a whole. Dr. Harvie opined that appellant has a 9 percent impairment to his body as a whole.

By decision dated September 24, 1996, the Office denied appellant's claim for a schedule award on the grounds that the evidence of record failed to establish that appellant had a permanent partial impairment causally related to his employment-related injury. The Office

noted that section 8107 of the Federal Employees' Compensation Act[1] did not have provisions for a schedule award for the claimed condition, a lumbar strain.

By letter dated October 10, 1996, appellant requested reconsideration and submitted copies of previously submitted medical reports dated February 6 and 16, 1984 and November 28, 1986. In his cover letter, appellant alleged entitlement to a schedule award on the grounds that he has pain and presumed deformity in his right elbow and right bicep.

By decision dated October 23, 1996, the Office, following review of the merits of appellant's case, denied modification of its prior order rejecting the schedule award. The Office found that the evidence submitted in support of appellant's reconsideration request was repetitive in nature and, thus, not sufficient to alter the prior decision. The Office further found that a review of appellant's original claim failed to indicate an injury to the right upper extremity on or around January 25, 1984.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained any permanent impairment to a body member which entitles him to a schedule award.

An employee seeking compensation under the Act has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,[2] including that he sustained an injury in the performance of duty as alleged and that his alleged condition or disability, if any, were causally related to the employment injury.[3]

Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[4] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as a standard for evaluating schedule losses and the Board has concurred in such adoption.[5]

In this case, appellant alleged that he sustained a permanent impairment which entitled him to receive a schedule award. He has alleged that he has pain and a deformity in his right elbow and right bicep. Although the medical reports of record report findings regarding a right shoulder condition, there is no record of an injury to the right upper extremity on or around January 25, 1984, the date of appellant's work injury. Although the February 16, 1984 medical report from Dr. Myron G. Rosenbaum, a Board-certified orthopedic surgeon, notes a tenderness in the trapezii, the left foot, the right elbow and the right bicep tendon, there is no attempt by the physician to relate this tenderness to appellant's January 25, 1984 work injury. As appellant bears the burden of proof that his alleged condition or disability is causally related to the

[1] 5 U.S.C. § 8107.

[2] *Donna Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

[3] *See generally Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] 5 U.S.C. § 8107.

[5] *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

employment injury, a physician's description of appellant's condition without a supporting, rationalized medical opinion that the condition or disability is causally related to the employment injury is not enough to sustain appellant's burden.[6] Accordingly, the evidence of record is insufficient to establish that appellant sustained a permanent impairment to his right upper extremity causally related to his accepted lumbar strain which entitles him to a schedule award.

The Office accepted the condition of lumbar strain. A schedule award is not payable for the loss, or loss of use, of a part of the body that is not specifically enumerated under the Act. Neither the Act nor its implementing regulations provides for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of organ under the Act.[7] Appellant has therefore not established that his accepted lumbar strain caused any permanent impairment which would be compensable pursuant to the schedule award provisions of the Act.

The decisions of the Office of Workers' Compensation Programs dated October 23 and September 24, 1996 are affirmed.

Dated, Washington, D.C.
March 23, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[6] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[7] *James E. Mills*, 43 ECAB 215, 219 (1991); *James E. Jenkins*, 39 ECAB 860, 866 (1990).