

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MOZELLE GALVAN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Houston, TX

*Docket No. 98-164; Submitted on the Record;
Issued October 12, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a schedule award.

On May 5, 1995 appellant, then a 59-year-old housekeeping aid, filed a notice of traumatic injury alleging that on April 27, 1995 she injured the lower part of her back on the left side when she lifted a bag of trash out of a housekeeping closet in the performance of her federal employment.

On June 22, 1995 the Office accepted the claim for a lumbosacral sprain and awarded appellant appropriate medical and compensation benefits.

On July 9, 1996 the Office referred appellant to Dr. Moroslav Zalud, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Zalud noted that appellant complained of pain in the cervical and lumbar spine and in both legs, more on the right side. He reviewed the history of the injury and the treatment received. Dr. Zalud performed a physical examination and diagnosed a sprain of the lumbosacral spine with circumferential bulging of the disc contour with osteophyte formation at L4-5. He indicated that there was no recurrent disc herniation, but that there was mild radiculopathy on the right. Dr. Zalud indicated that it was impossible to say whether appellant had reached maximum medical improvement. He stated that any permanent impairment related only to the lumbosacral spine.

On September 30, 1996 appellant filed a claim for a schedule award.

By decision dated January 24, 1997, the Office denied appellant's request for a schedule award because Dr. Zalud indicated that appellant had not reached maximum medical improvement.

On April 8, 1997 appellant filed another request for a schedule award. In support, appellant submitted a March 4, 1997 report, from Dr. Michael H. Heggeness, her treating

physician and a Board-certified orthopedic surgeon. Dr. Heggeness measured appellant's flexion extension views. He stated that the L4-5 excursion was from 4 degrees to 12 degrees and that L3-4 was from 6 degrees to 8 degrees. Based on this findings, he assigned appellant a lumbosacral spine impairment of five percent.

Appellant also submitted a March 10, 1997 report, from Dr. Janet A. Strickland, a Board-certified internist. Dr. Strickland indicated that appellant complained of low back pain and bilateral leg pain. She assigned appellant a five percent whole person impairment rating and indicated that the date of maximum medical improvement was February 28, 1997. Dr. Strickland indicated that appellant injured her lower back and that a magnetic resonance imaging (MRI) scan revealed some disc bulging at L4-5. She stated that appellant's impairment rating was based on DRE Lumbo Sacral Category II: Minor Impairment. Dr. Strickland based this classification on appellant's nonuniform loss of range of motion along with some nonverifiable radicular complaints. She further noted that lateral flexion and extension and plain films of the spine revealed no evidence of any segmental instability.

Finally, appellant submitted a February 28, 1997 MRI scan interpreted by Dr. Stephen B. Edson, a Board-certified radiologist. Dr. Edson diagnosed no segmental instability, mild spondylosis at L4-5, mild disc narrowing and anterior spondylitic osteophytes. He also found bilateral facet osteoarthritis at L3-4, L4-5 and L5-S1.

By decision dated May 16, 1997, the Office denied appellant's claim for a schedule award inasmuch as section 8107 of the Federal Employees' Compensation Act¹ does not provide a schedule award for the accepted condition of a lumbosacral strain.

On June 11, 1997 appellant requested reconsideration. In support, she submitted a May 30, 1997 report from Dr. Strickland. Appellant indicated that appellant suffered from radicular symptoms related to her low back injury. Consequently she stated that "the [five] percent impairment rating previously assigned is allocated for the low back and lower extremity sensory/motor/pain disturbances."

By decision dated July 25, 1997, the Office reviewed the merits of the claim and found that the evidence submitted in support of the application was not sufficient to warrant modification of its prior decision. In an accompanying memorandum, the Office noted that Dr. Strickland failed to identify which extremity was impaired or establish that the work condition caused a nerve injury or dysfunction resulting in impairment. It further noted that Dr. Strickland previously indicated that there was a five percent impairment without mentioning the lower extremity and that she failed to explain how she arrived at her present determination.

On August 28, 1997 appellant requested reconsideration. In support, she submitted an August 20, 1997 report from Dr. Strickland. Dr. Strickland indicated that appellant also experienced cervical pain at the time of her injury. She opined that appellant had a 15 percent impairment of the upper extremity, but that appellant had no impairment of the lower extremities pursuant to the American Medical Association, *Guides to the Evaluation of Permanent*

¹ 5 U.S.C. § 8107.

Impairment. Dr. Strickland indicated that she based the upper extremity rating on sensory and motor changes in the distribution of C5 through C8. She indicated that pursuant to Table 14, Page 52, of the A.M.A., *Guides* (4th ed.), that appellant had a 5 percent sensory impairment and a 10 percent motor impairment. Dr. Strickland combined these impairments to find that appellant had a 15 percent impairment of the upper extremity.

By decision dated September 26, 1997, the Office reviewed the merits of the case and found that the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office indicated that Dr. Strickland's report, was not sufficient to warrant modification because appellant's history on her original claim indicated that she only had a low back injury.

The Board finds that the Office properly denied appellant's request for a schedule award.

In the instant case, the Office accepted appellant's claim for a lumbosacral sprain. Schedule awards, however, are not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.² As neither the Act nor the regulations provide for the payment of a schedule award for injuries to the back, the claimant is not entitled to such an award.³

In 1960, amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Consequently, claimant may be entitled to a schedule award for a member of the body covered by the schedule even though the cause of the impairment originated in the back.⁴

In this case, Dr. Strickland provided the only medical opinion evidence indicating that appellant suffered an impairment covered by the schedule as a result of her April 27, 1995 injury. On August 20, 1997 she noted that appellant experienced cervical pain at the time of her original injury and opined that based on sensory and motor changes in the distribution of C5 through C8 that appellant had a 15 percent impairment of the upper extremity pursuant to Table 14, Page 52 of the A.M.A., *Guides*. Dr. Strickland's history that appellant experienced cervical pain at the time of the original injury, however, is not consistent with the claim filed by appellant indicating only that she injured her lower back. Moreover, she did not explain how appellant's cervical condition related to her original injury. Accordingly, because Dr. Strickland's opinion is based on an incorrect history of injury and she failed to explain how appellant's cervical condition related to the accepted condition, her opinion is entitled to little weight.⁵ In addition, the record contains no credible evidence establishing that appellant suffered any impairment of

² *George E. Williams*, 44 ECAB 530 (1993).

³ *Id.*

⁴ *Id.*

⁵ *Jean Culliton*, 47 ECAB 728 (1996); *Roger Dingess*, 47 ECAB 123 (1995).

the lower extremity due to her April 27, 1995 injury because Dr. Strickland retracted her June 11, 1997 report finding a lower extremity impairment in her August 20, 1997 report.

The decisions of the Office of Workers' Compensation Programs dated September 26, July 25, May 16 and January 24, 1997 are affirmed.

Dated, Washington, D.C.
October 12, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member