

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD L. MIMS and U.S. POSTAL SERVICE,
RIDGLEA STATION, Fort Worth, TX

*Docket No. 98-1868; Submitted on the Record;
Issued April 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has more than a six percent permanent impairment of his left lower extremity for which he received a schedule award.

The Board has duly reviewed the case on appeal and finds that appellant has no more than a six percent permanent impairment of his left lower extremity for which he received a schedule award.

Appellant, a mail carrier, filed a claim alleging on June 17, 1975 he injured his back in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for back strain and herniated disc L5-S1. Appellant's attending physician, Dr. James J. Box, a Board-certified orthopedic surgeon, referred appellant for schedule award evaluation on December 5, 1997. In a report dated February 26, 1998, Dr. William E. Blair, Jr., a Board-certified orthopedic surgeon, opined that appellant had 10 percent permanent impairment of his spine. On March 12, 1998 Dr. Box reviewed this report and concurred with the impairment rating. Appellant requested a schedule award on March 27, 1998. The Office medical adviser reviewed the medical evidence and concluded that appellant had a six percent permanent impairment of this left lower extremity in accordance with the Federal Employees' Compensation Act, section 8107.¹ By decision dated April 17, 1998, the Office granted appellant a schedule award for a six percent permanent impairment of his left lower extremity.

Under section 8107 of the Act² and section 10.304 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members,

¹ 5 U.S.C. § 8107.

² *Id.*

³ 20 C.F.R. § 10.304.

functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants the Office adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁵

In this case, appellant sustained an injury to his back. A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back, no claimant is entitled to such an award.⁶ However, as appellant's back injury resulted in permanent impairment to his left lower extremity, he is entitled to a schedule award for this condition.

Dr. Blair noted that sensory examination of the left lower extremity revealed a mild decrease at L5 and S1. The Office medical adviser applied the A.M.A., *Guides* to this finding and concluded that decreased sensibility which interfered with activity was a 60 percent impairment of the L5 nerve root, which had a maximum percentage of loss of function due to sensory deficit or pain of 5 percent resulting in a 3 percent impairment of the L5 nerve root.⁷ The Office medical adviser made a similar finding for the S1 nerve root.⁸ The Office medical adviser properly concluded that appellant had a six percent impairment of his left lower extremity due to sensory deficit.

⁴ A.M.A., *Guides* (4th ed. 1993).

⁵ *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ *George E. Williams*, 44 ECAB 530, 533 (1993).

⁷ A.M.A., *Guides* at 130, Table 83, 48, Table 11.

⁸ *Id.*

The April 17, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
April 7, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member