

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROGER W. BANKS and U.S. POSTAL SERVICE,
POST OFFICE, Edgewater, FL

*Docket No. 01-36; Submitted on the Record;
Issued August 9, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to a schedule award under section 8107 of the Federal Employees' Compensation Act¹ based on his accepted lumbar strain and aggravation of spondylolisthesis.

On October 31, 1997 appellant, then a 48-year-old city carrier, filed a traumatic injury claim alleging that he felt pain in his right leg when he slipped while stepping into a mail truck. The Office of Workers' Compensation Programs accepted the claim for lumbar strain and aggravation of spondylolisthesis and authorized a lumbar laminectomy L5-S1 and interbody fusion. By letter dated November 10, 1998, the Office paid appellant compensation for temporary total disability.

In a June 15, 1999 report, Dr. William B. Kuhn, an attending Board-certified neurological surgeon, concluded that appellant had a nine percent permanent impairment of the whole person pursuant to Table 53 in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (3^d ed.).

Dr. Kuhn indicated that the rating was based on appellant's spinal abnormalities and lumbar fusion. He stated that he did believe that he could assign an impairment rating for appellant's lower extremity symptoms as "they do not appear to be in a specific radicular distribution" and there were no objective findings to support a nerve impairment of the lower extremities.

By decision dated December 13, 1999, the Office denied appellant's claim for a schedule award on the basis that the Act does not provide a schedule award for an impairment of the spine.

¹ 5 U.S.C. §§ 8101, 8107.

In a letter dated January 11, 2000, appellant requested an oral hearing, which was held on June 13, 2000.

By decision dated September 6, 2000, the hearing representative affirmed the Office decision, which found that appellant was not entitled to a schedule award.

The Board finds that appellant is not entitled to a schedule award.

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, 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 under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

No schedule award is payable for permanent loss of or loss of use of, anatomical members or functions or organ of the body not specified in the Act or in the implementing regulations.⁵ As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole,⁶ no claimant is entitled to such an award.⁷ However, a schedule award is payable for a permanent impairment of any of the extremities that is due to an employment-related back condition.⁸

The evidence of record is insufficient to establish that appellant is entitled to a schedule award. The only medical evidence submitted by appellant were two reports by Dr. Kuhn. Neither report contains an impairment rating for appellant's lower extremities. Dr. Kuhn specifically stated that the nine percent impairment rating was due solely to his spinal injuries and no impairment rating was assigned to the lower extremities. Appellant has submitted no medical reports from a physician explaining how, pursuant to the A.M.A., *Guides*, his accepted lumbar strain and aggravation of spondylolisthesis caused any permanent impairment to a

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

⁴ See *Renee M. Straubinger*, 51 ECAB ____ (Docket No. 99-2149, issued September 18, 2000); *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ *William Edwin Muir*, 27 ECAB 579 (1976) (this principle applies only to body members that are not enumerated in the schedule provision as it read before the 1974 amendment, and to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendment); see also *Ted W. Dieterich*, 40 ECAB 963 (1989); *Thomas E. Stubbs*, 40 ECAB 647 (1989); *Thomas E. Montgomery*, 28 ECAB 294 (1977).

⁶ The Act itself specifically excludes the back from the definition of "organ." 5 USC § 8101(19); see also *Jay K. Tomokiyo*, 51 ECAB ____ (Docket No. 98-447, issued March 10, 2000); *Rozella L. Skinner*, 37 ECAB 398 (1986).

⁷ *George E. Williams*, 44 ECAB 530 (1993).

⁸ *Denise D. Cason*, 48 ECAB 530, 531 (1997); *S. Gordon McNeil*, 42 ECAB 140 (1990).

schedule member of the body. Consequently, appellant has not established entitlement to a schedule award.

The September 6, 2000 and December 13, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.⁹

Dated, Washington, DC
August 9, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁹ On appeal, appellant submitted additional medical evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from having the Office consider this evidence as part of a reconsideration request.