U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MASON E. PERRY and DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, Quantico, VA

Docket No. 01-909; Submitted on the Record;
Issued November 13, 2001

DECISION and ORDER

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

The issue is whether appellant has established that he sustained a ratable permanent impairment to a scheduled member or function of the body causally related to his employment injury.

On November 5, 1998 appellant, then a 42-year-old carpenter, filed a claim alleging that he sustained a neck injury in the performance of duty while installing a cabinet. The Office of Workers' Compensation Programs accepted the claim for a cervical strain, and a herniated C4-5 disc. In a decision dated January 10, 2001, the Office determined that appellant was not entitled to a schedule award.

The Board finds that appellant has not established entitlement to a schedule award in this case.

Section 8107 of the Federal Employees' Compensation 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.[1] 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.[2]

In this case, the accepted conditions were a cervical strain and a herniated cervical disc at C4-5. Neither the Act nor its regulations provide for a schedule award for impairment to the

[1] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

[2] *A. George Lampo*, 45 ECAB 441 (1994).

back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of "organ" under the Act.[3]

The medical evidence of record does not provide a description of a permanent impairment to a scheduled member of the body. An attending physician, Dr. Hallett H. Mathews, an orthopedic surgeon, indicated in a June 2, 1999 treatment note that appellant had left shoulder symptoms, without providing further relevant information. The record contains a February 4, 2000 functional capacity evaluation performed for Dr. Michael Kyles, an orthopedic surgeon, which notes that appellant reported left shoulder pain without further description of an impairment.

An Office medical adviser, in notes dated August 17 and November 27, 2000, opined that the medical evidence did not establish a ratable permanent impairment. The Board further notes that the rehabilitation nurse assigned to the case had requested, by letter dated March 24, 2000, that Dr. Mathews provide an opinion as to permanent impairment, but the record does not contain any medical evidence from the attending physician with respect to permanent impairment under the A.M.A., *Guides*. It is well established that, in order to support a schedule award, the attending physician must include a detailed description of the impairment.[4] In the absence of probative medical evidence, the Board finds that appellant has not established that he is entitled to a schedule award under 5 U.S.C. § 8107.

The decision of the Office of Workers' Compensation Programs dated January 10, 2001 is affirmed.[5]

Dated, Washington, DC
November 13, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

[3] *See James E. Jenkins*, 39 ECAB 860 (1988); 5 U.S.C. § 8101(20).

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995).

[5] After appellant filed his appeal, a decision was issued with respect to appellant's wage-earning capacity. That decision is not before the Board on the current appeal.