

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARMAINE HARRIS JORDAN and U.S. POSTAL SERVICE,
POST OFFICE, Richmond, VA

*Docket No. 01-279; Submitted on the Record;
Issued September 11, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has greater than a seven percent impairment of her right lower extremity.

This case has previously been before the Board. In a November 17, 1999 decision, the Board found that appellant had no more than a seven percent impairment of the left lower extremity, for which the Office of Workers' Compensation Programs had granted a schedule award.¹ The Board also found that appellant had a seven percent impairment of the right lower extremity, and modified that portion of the Office's December 2, 1997 decision which overlooked the Office medical adviser's opinion on this matter. The facts and history of the case, as set forth in the Board's November 17, 1999 decision, are incorporated by reference.

Upon return of the case record, the Office issued appellant a schedule award on August 23, 2000 for a seven percent impairment of the right lower extremity in conformance with the Board's determination. In this appeal, appellant contends that she should be awarded a permanent monthly payment of compensation for her bilateral lower extremity conditions.

The Board finds that appellant has no greater than a seven percent impairment of her right lower extremity.

In the prior appeal, the Board found that the medical evidence of record included review by an Office medical adviser who, applying the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to the report of Dr. Sharad N. Saraiya, determined appellant had a seven percent impairment of both lower extremities. As the Office only granted a schedule award for impairment to appellant's left lower extremity, the Board modified the December 2, 1998 schedule award to find entitlement to a schedule award for impairment to her right lower extremity. The Office complied with the Board's November 17, 1999 decision when it issued the August 23, 2000 schedule award. No new or additional medical evidence was

¹ Docket No. 98-712 (issued November 17, 1999).

submitted to the case record establishing greater residual impairment, prior to issuance of the August 23, 2000 schedule award.²

On appeal, appellant contends that she is entitled to a monthly award of compensation given the permanent impairment to her lower extremities. Her argument is that the schedule award does not represent her loss of wages or reduction in earning power caused by the injury. The Board notes, however, that a schedule award is not intended to be compensation for wage loss or potential wage loss.³ A schedule award is payable under the Federal Employees' Compensation Act specifically for an employment-related loss of function of those members of the body listed under section 8107 of the Act.⁴ Loss of wages, past and future, are covered by compensation for temporary total disability and loss of wage-earning capacity. The schedule provisions of the Act set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of the members of the body listed in the schedule. There is no authority for paying a schedule award in a manner that does not conform with the Act.⁵

The August 23, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
September 11, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

² The record contains a December 4, 2000 Office decision regarding appellant's schedule award. As appellant filed her appeal with the Board on October 17, 2000, the Office's decision is null and void as both the Board and the Office may not have jurisdiction over the same issue in the same case. See 20 C.F.R. § 501.2(c); *Douglas E. Billings*, 41 ECAB 880 (1990).

³ See *Catherine R. Birdsell*, 32 ECAB 907 (1981).

⁴ 5 U.S.C. § 8107(c)(2) provides for a maximum of 288 weeks of compensation for total (100 percent) impairment of a leg. Where the loss of use is less than 100 percent, the amount of compensation payable under the schedule award is in proportion to the percentage loss of use. *John M. Gonzales, Jr.*, 48 ECAB 357 (1997).

⁵ Neither the Board nor the Office has the authority to enlarge the terms of the Act or authorize payment which does not conform with the terms as specified in the statute. See *Beverly G. Atkins*, 47 ECAB 647 (1996).