

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHELLE A. BRADLEY and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Cleveland, OH

*Docket No. 02-425; Submitted on the Record;
Issued December 24, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant is entitled to a schedule award pursuant to 5 U.S.C. § 8107.

The Office of Workers' Compensation Programs accepted that appellant sustained a right shoulder strain in the pod on October 6, 1997 and a cervical strain on August 12, 1998. In a decision dated November 17, 1999, the Office determined that appellant was not entitled to a schedule award for a permanent impairment to a scheduled member of the body. By decision dated July 5, 2000, an Office hearing representative affirmed the prior decision. In a decision dated September 10, 2001, the Office denied modification.

The Board finds that appellant has not established a ratable permanent impairment entitling her to a schedule award under 5 U.S.C. § 8107.

The schedule award provisions of the Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, the Office referred appellant for examination by Dr. Sheldon Kaffen, an orthopedic surgeon. In a report dated November 17, 1999, Dr. Kaffen provided a history and

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

results on examination. Dr. Kaffen indicated that appellant had sustained soft tissue injuries involving the left trapezius muscle and the muscles of the cervical spine. He reported full range of motion for the right shoulder. With regard to permanent impairment of the right shoulder, Dr. Kaffen referred to Figures 38, 41 and 44 of the A.M.A., *Guides* (4th ed. rev.) for range of motion, and opined that appellant had a 0 (zero) percent permanent impairment.³ As to the cervical sprain, Dr. Kaffen noted Tables 11 and 12 for motor or sensory deficits, and found a 0 (zero) percent impairment.⁴

The Board finds that Dr. Kaffen's report represented the weight of the evidence with respect to a permanent impairment. He provided an opinion, with reference to the A.M.A., *Guides*, that appellant did not have a ratable permanent impairment.

Following the July 5, 2000 Office decision, appellant submitted additional evidence. In a report dated January 26, 2001, Dr. Carl Otten diagnosed neck strain and aggravation of preexisting cervical degenerative disc disease. He opined that these conditions were "probably" causally related to an October 6, 1997 injury, and he reported decreased range of motion to the neck and both shoulders, right hand grip strength weakness and neck and shoulder pain. Dr. Otten did not provide specific range of motion results, or otherwise clearly describe the impairment. His report is therefore of diminished probative value to the issue presented.

In a report dated June 19, 2001, an Office medical adviser indicated that the case file had been reviewed. The Board notes that, as of February 1, 2001, evaluations of permanent impairment are based on the 5th edition of the A.M.A., *Guides*.⁵ The medical adviser indicated that appellant had cervical spondylosis, but nerve tests were normal. According to the medical adviser, work had caused a temporary aggravation of a preexisting condition, and there was no new evidence to demonstrate any permanent impairment.

Appellant submitted a report dated August 23, 2001 from Dr. Thomas Craig, III, an internist, providing a history and range of motion results on examination. Dr. Craig did not refer to the A.M.A., *Guides*, and he stated that appellant had not reached maximum medical improvement. A schedule award commences on the date of maximum medical improvement, or the point at which the injury has stabilized and will not improve further.⁶ Dr. Craig's report is therefore not a basis for a schedule award determination.

The Board finds that the record does not contain probative medical evidence supporting an employment-related permanent impairment in this case. Accordingly, the Office properly determined that appellant was not entitled to a schedule award.

³ A.M.A., *Guides*, 43-45.

⁴ *Id.* at 48-49.

⁵ FECA Bulletin No. 01-05 (issued January 27, 2001).

⁶ See *Marie J. Born*, 27 ECAB 623 (1976).

The decision of the Office of Workers' Compensation Programs dated September 10, 2001 is affirmed.

Dated, Washington, DC
December 24, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member