

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REYNALDO C. YBARRA and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Edinburg, TX

*Docket No. 02-409; Submitted on the Record;
Issued July 16, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained any permanent impairment causally related to his February 18, 2000 employment injury which entitles him to receive a schedule award.

On February 18, 2000 appellant, then a 45-year-old letter carrier, sustained a cervical sprain and a herniated disc at C4-6 in the performance of duty.

In a report dated July 9, 2001, Dr. Jose F. Lopez, a family practitioner, provided findings on examination and stated that appellant had a 25 percent permanent impairment of the whole person based on impairment of his cervical and lumbar spine according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He did not indicate that appellant had any permanent impairment of his upper extremities. Dr. Lopez stated:

“The cervical spine shows some tenderness.... Range of motion of the cervical spine is very limited ... per the worksheet enclosed.... The lumbar spine shows that [appellant] has some slight straightening. He has ... tenderness on palpation of the mid lumbar spine.... Range of motion is as per the worksheet enclosed.... The upper extremities show the shoulders, elbows and wrist to have range of motion grossly intact. He has good strength of the biceps, triceps, on pronation and supination at the elbows and forearms, and has contact handgrips. Neurovascular status is intact to the upper extremities.”

In a report dated October 12, 2001, the Office of Workers' Compensation Programs' district medical adviser stated that appellant had no permanent impairment to his upper extremities based on the July 9, 2001 report of Dr. Lopez and the A.M.A., *Guides*.

By decision dated October 23, 2001, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that he had any permanent impairment to a scheduled member or function of the body under the Federal Employees' Compensation Act.¹

The Board finds that appellant did not sustain any permanent impairment causally related to his February 18, 2000 employment injury which entitles him to a schedule award.

The schedule award provisions of the Act² and its implementing regulation³ 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, the Office properly determined that appellant had no permanent impairment under the Act causally related to his February 18, 2000 employment-related back injury. In a report dated July 9, 2001, Dr. Lopez, a family practitioner, provided findings on examination and stated that appellant had a 25 percent permanent impairment of the whole person based on impairment of his cervical and lumbar spine according to the A.M.A., *Guides*. However, a schedule award is not payable for the loss, or loss of use, of a part of the body that is not specifically enumerated under the Act. A schedule award is not payable under section 8107 of the Act for an impairment of the whole person.⁴ Furthermore, the back is specifically excluded from the definition of organ under the Act.⁵

The upper extremities are scheduled members of the body under the Act. However, Dr. Lopez did not find any permanent impairment of appellant's upper extremities caused by his February 18, 2000 employment-related cervical condition. In a report dated October 12, 2001, the Office's district medical adviser stated that appellant had no permanent impairment to his upper extremities based on the July 9, 2001 report of Dr. Lopez and the A.M.A., *Guides*.

¹ This record contains additional evidence which was not before the Office at the time it issued its October 23, 2001 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; see 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

⁵ *George E. Williams*, 44 ECAB 530 (1993); *James E. Mills*, 43 ECAB 215 (1991).

The decision of the Office of Workers' Compensation Programs dated October 23, 2001 is affirmed.

Dated, Washington, DC
July 16, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member