

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES J. SKROCH and U.S. POSTAL SERVICE,  
POST OFFICE, La Mesa, CA

*Docket No. 01-1086; Submitted on the Record;  
Issued May 9, 2002*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant was not entitled to a schedule award.

On December 8, 1998 appellant, then a 61-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that while lifting mail on December 7, 1998, he sustained an injury to his lower back. By letter dated June 3, 1999, the Office accepted appellant's claim for disc degeneration and number 4 disc excision.

On June 16, 1999 Dr. David Barba, a Board-certified neurosurgeon, operated on appellant. Specifically, appellant underwent an L3 through S1 lumbar laminectomy for decompression with lateral facetectomy and an L3-4 discectomy for herniated nucleus pulposus.

In a medical report dated January 6, 2000, Dr. Patrick M. O'Meara, a Board-certified orthopedic surgeon, diagnosed appellant as having lumbar spondylosis, industrial related, herniated nucleus pulposus, industrial related, and status post lumbar laminectomy and discectomy as treatment.

By letter dated February 22, 2000, the employing establishment offered appellant a position as a modified letter carrier. On February 26, 2000 appellant returned to modified work.

On February 24, 2000 appellant's neurosurgeon, Dr. Barba, issued his "[p]ermanent and [s]tationary [r]eport." Therein, Dr. Barba noted that appellant's "[s]trength in the lower extremities is 5/5 to resistive motor testing." He also noted that appellant had 3+ reflexes at the knees and 2+ at the ankles. He noted that appellant's objective factors of disability were

“complaint of back pain which the patient describes as occasional and slight with walking and standing and difficulty with balance.” Subjectively, he noted:

“MRI [magnetic resonance imaging] scan of the lumbar spine demonstrating a large extruded L3-4 dis[c] fragment causing severe lumbar stenosis with high grade spinal stenosis. (2) Significant spinal cord stenosis with marked cord flattening from C3 thru C7 suggestive of ossification of the posterior longitudinal ligament or degenerative dis[c] disease.”

On June 6, 2000 appellant filed a claim for a schedule award.

On August 7, 2000 the Office medical adviser reviewed appellant’s file in order to calculate an award for permanent functional loss of one or both lower extremities, and the date maximum medical improvement was obtained. He concluded:

“These records would support a 0 percent impairment of the right lower extremity and a 0 percent impairment of the left lower extremity as a result of the work-accepted condition. Date of maximum medical improvement would have occurred by February 24, 2000; approximately eight months following the surgical procedure.

“This reviewer does note that this individual has ongoing lower extremity findings and complaints, but these would be related to the cervical myelopathy and not to the work-accepted lower back condition.”

By decision dated September 18, 2000, appellant’s claim for schedule award compensation was denied.

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

The schedule award provisions of the Federal Employees’ Compensation Act<sup>1</sup> and its implementing federal regulation,<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>3</sup> 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*

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> 5 U.S.C. § 8107(c)(19).

*Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>4</sup>

In the instant case, Dr. Barba, appellant's neurosurgeon, gave objective results of tests he performed on appellant's lower extremities. These results were interpreted by the Office medical adviser who clearly stated that appellant had zero percent impairment of the left and right lower extremity causally related to the accepted work-related back condition. He noted that, although appellant did have ongoing complaints regarding his lower extremity, "these would be related to the cervical myelopathy and not the work-accepted lower back condition." As there was no disability resulting from appellant's work injury, there was no condition to which the A.M.A., *Guides*, could be applied. Accordingly, the Office properly denied appellant's claim for an award under the schedule.

The decision of the Office of Workers' Compensation Programs dated September 18, 2000 is hereby affirmed.

Dated, Washington, DC  
May 9, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> See 20 C.F.R. § 10.404 (1999).