

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROGER I. DICINTIO and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Warren, OH

*Docket No. 00-393; Submitted on the Record;  
Issued September 4, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has any permanent impairment due to his accepted employment injury entitling him to a schedule award.

Appellant, a 41-year-old window clerk, filed a notice of traumatic injury on August 26, 1992 alleging that on August 25, 1992 he pulled a muscle in his neck in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for cervical strain. By decision dated March 29, 1994, the Office terminated appellant's medical and compensation benefits effective October 22, 1993, finding that he had no disability nor residuals resulting from his accepted employment injury. Following the Office's March 29, 1994 decision, appellant through his attorney requested a schedule award. The Office did not address this request in a final decision. Appellant filed an appeal with the Board. By order dismissing appeal dated February 27, 1998, the Board dismissed the appeal finding that there was no final decision of the Office issued within one year from the date of the appeal to the Board.<sup>1</sup> The Board noted that the Office had not issued a final decision on the issue of appellant's entitlement to a schedule award.

Following the dismissal of the appeal by the Board, the Office reopened appellant's claim on its own motion. In a decision dated September 14, 1998, the Office found that appellant had not established that he sustained any permanent impairment due to his August 25, 1992 employment injury. Appellant, through his attorney, requested an oral hearing. By decision dated August 25, 1999, the hearing representative affirmed the September 14, 1998 decision finding that appellant had no residuals and no permanent impairment entitling him to a schedule award.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a permanent impairment as a result of his accepted employment injury.

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<sup>1</sup> Docket No. 97-2896.

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> 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.

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewed the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>4</sup>

Following the March 29, 1994 decision, appellant, through his attorney, began requesting a schedule award beginning July 14, 1994. In support of his request, appellant initially submitted a report dated May 23, 1994 from Dr. Edward G. Myers, an osteopath. Dr. Myers noted appellant's history of injury and reported that appellant was neurologically intact as well as having full range of motion of the cervical spine and shoulders. He stated that appellant was minimally affected by spasm from the C2-6 paravertebral musculature and the left trapezius muscle. Dr. Myers stated that appellant's probable disability was 15 percent. This report is not sufficient to meet appellant's burden of proof as the physician does not provide a clear picture of appellant's permanent impairment of a schedule member. A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back, no claimant is entitled to such an award.<sup>5</sup> Therefore, appellant is not entitled to a schedule award for impairment to his cervical spine.

Appellant also submitted a report dated January 17, 1995, from Dr. Joseph A. Carano, an osteopath, who diagnosed thoracic sprain/strain and opined that appellant was 15 percent permanently disabled. This short note also fails to provide detailed medical findings such that appellant's permanent impairment can be clearly visualized with its resulting restrictions and limitations.<sup>6</sup>

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

<sup>4</sup> *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

<sup>5</sup> *George E. Williams*, 44 ECAB 530, 533 (1993).

<sup>6</sup> *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

Appellant submitted a report dated August 1, 1996 from Dr. John J. Vargo, an osteopath, who provided a detailed history of injury and findings on physical examination. He provided his impairment ratings for appellant's spine and left shoulder. Dr. Vargo concluded that appellant had a one percent impairment of the whole person due to loss of range of motion of the cervical spine and a two percent impairment of the whole person due to loss of range of motion of the dorsal spine. As noted previously, a schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the regulations provide for the payment of a schedule award for the whole person or for the permanent loss of use of the back, no claimant is entitled to such an award.<sup>7</sup>

While Dr. Vargo provided detailed findings regarding appellant's permanent impairment of his left upper extremity,<sup>8</sup> he did not provide the necessary medical evidence to establish that appellant's left shoulder condition was due to the accepted employment injury of cervical strain. The Office has not accepted any left shoulder condition resulting from the cervical strain. An employee seeking benefits under the Act<sup>9</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>10</sup> Therefore, it remains appellant's burden of proof to establish a left shoulder condition as a result of his accepted employment injury. Dr. Vargo's report notes that appellant felt a snap in his neck and pain down the left upper extremity with resultant numbness the next day. He further notes that appellant's diagnostic studies provide no evidence of a herniated cervical disc. Dr. Vargo fails to provide any medical reasoning explaining how appellant's cervical strain which the Office has established resolved without residuals, resulted in permanent impairment to appellant's left shoulder entitling him to a schedule award. Without the necessary rationalized medical opinion evidence establishing a causal relationship between appellant's diagnosed condition and resulting impairment and his accepted employment injury, appellant has failed to establish his entitlement to a schedule award.

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<sup>7</sup> *George E. Williams*, 44 ECAB 530, 533 (1993).

<sup>8</sup> Dr. Vargo indicated that in appellant's left shoulder his range of motion was: adduction 15 degrees; abduction 165 degrees; internal rotation 65 degrees; external rotation 90 degrees; flexion 165 degrees and extension 50 degrees. He found that appellant had a one percent impairment of the left upper extremity due to deficit in adduction, two percent impairment of the left upper extremity due to impairment of internal rotation and a one percent impairment due to deficit in flexion. Dr. Vargo concluded that appellant had a four percent impairment of the left upper extremity due to loss of range of motion.

<sup>9</sup> 5 U.S.C. §§ 8101-8193.

<sup>10</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

The August 25, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
September 4, 2002

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member