

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE DUBOSE and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 02-2347; Submitted on the Record;
Issued February 24, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant is entitled to a schedule award.

On January 6, 1999 appellant, then a 39-year-old flat sorter clerk, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that she was injured when a BMC door fell on her head. The claim was accepted for scalp contusion, postconcussion headaches, cervical spine strain and aggravation of her cervical disc at C3-4. Appellant returned to work with restrictions on October 1, 1999.

On August 6, 2001 appellant filed for a schedule award.

In an August 15, 2001 letter to Dr. Scott Frank, an orthopedist, the Office of Workers' Compensation Programs requested information regarding any partial impairment. Dr. Frank did not respond.

In an October 8, 2001 letter, the Office referred appellant for a second opinion to Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon. In an October 30, 2001 report, he noted that appellant complained of persistent posterior neck pain that had not improved since the date of injury. The pain radiated into the interscapular area and was a burning and tingling sensation. Appellant also complained of numbness and tingling sensation in the entire upper left extremity to the fingers. Her headaches were less frequent, though they sometimes last for days. Appellant exhibited pain in her left shoulder, localized to the superior aspect of the left trapezius muscle and is in conjunction with pain in the left side of her neck. Physical examination revealed no muscle atrophy in the left shoulder or tenderness anteriorly or at the glenohumeral joint. Appellant had a full range of motion of the left shoulder, with pain referred to the superior aspect of the left trapezius muscle and the left side of the neck. Dr. Kaffen found appellant's cervical spine tender posteriorly and on the left side with minimal degree of muscle guarding. There was a full range of motion of the cervical spine with pain on extreme motion. There was no motor or sensory deficit. Dr. Kaffen's diagnosis included remote contusion of the scalp, postconcussion headache, cervical strain and aggravation of osteophyte disc complex at the C3-4

on the right. He noted that none of these conditions affected the upper left extremity. Dr. Kaffen noted that a magnetic resonance imaging scan indicated the osteophyte/disc complex was at the C3-4 on the right, while her symptoms of numbness and tingling were in the left upper extremity and the burning sensation was in the left scapular area. He concluded, based on the history and physical examination and referencing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* fifth edition, that appellant had zero percent impairment of the upper extremities due to the accepted conditions based on the absence of motor or sensory deficits.

In a December 4, 2001 decision, the Office denied appellant's schedule award claim.

In a December 18, 2001 letter, appellant requested a hearing, which was held on June 25, 2002. At the hearing appellant contended that she tore her rotator cuff in the employment injury and requested additional time to submit a report from Dr. Frank with an impairment rating. No additional evidence was received.

In an August 20, 2002 decision, the hearing representative affirmed the denial of the schedule award claim.

The Board finds that appellant has not met her burden of proof to establish entitlement to a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,² including that she sustained an injury in the performance of duty as alleged and that her disability, if any, was causally related to the employment injury.³

The schedule award provision of the Act⁴ and its implementing regulation⁵ 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.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

The Office accepted appellant's claim for injury to her scalp and cervical spine. She filed a claim for a schedule award for upper extremity impairment. However, Dr. Kaffen provided a report based on examination of appellant which reported no sensory or motor deficit and full range of motion of the upper extremities. As Dr. Kaffen's provided the only medical evaluation, his report constitutes the weight of the medical evidence. He found zero percent permanent impairment of the upper extremity based on the accepted cervical injury. Absent medical evidence establishing any permanent impairment, appellant has not met her burden to establish entitlement to a schedule award.

The decisions by the Office of Workers' Compensation Programs dated August 20, 2002 and December 4, 2001 are hereby affirmed.

Dated, Washington, DC
February 24, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member