

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NORMAN BARRON and U.S. POSTAL SERVICE,
POST OFFICE, Youngstown, OH

*Docket No. 03-1316; Submitted on the Record;
Issued September 23, 2003*

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 September 23, 1991 appellant, then a 55-year-old custodian, filed a claim for traumatic injury alleging that on September 21, 1991 he injured his lower back while removing a trash bag from a custodian's cart to place into a trash compactor.¹ On October 31, 1991 the Office accepted appellant's claim for low back strain. Appellant did not lose time from work.

On May 11, 2001 appellant filed a claim for a schedule award and submitted a July 2, 2001 report from Dr. James W. Smith, Jr., a Board-certified family practitioner, who noted that appellant related a fall at work over 30 years previously. He diagnosed a herniated nucleus pulposus of the lumbar spine and noted by checking a box "yes" that this condition was causally related to appellant's work-related fall. Dr. Smith also noted that appellant had been totally disabled for the last 10 to 12 years.

By decision dated October 16, 2001, the Office denied appellant's claim for a schedule award. The Office specifically noted that, under the Federal Employees' Compensation Act, the back is not a scheduled member for schedule award purposes.

In a letter received by the Office on December 3, 2001, appellant, through counsel, requested an oral hearing. In support of his request, appellant submitted unsigned treatment notes dated September 26, October 9 to November 11, 1991 and January 24, 1995, which generally related to his complaints of back pain. Appellant also submitted reports from Dr. Smith from February 16 to July 1, 1996, which related to complaints of pain in his neck and right shoulder and notes his cervical spine degenerative joint disease, herniated nucleus pulposus,

¹ Appellant retired in 1993.

myositis and a serratus anterior muscle condition. The record also includes physical therapy notes from June 17 to July 28, 1991.

A hearing was held on October 23, 2002. In a decision dated and finalized on November 22, 2002, an Office hearing representative affirmed the Office's October 16, 2001 decision.

The Board finds that the Office properly denied appellant's claim for a schedule award.

The schedule award provisions of the Act² and its implementing regulation provide for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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 Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.³

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. Neither the Act nor its implementing regulations provides for a schedule award for impairment to the back or the body as a whole.⁴ However, as the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.⁵ The A.M.A., *Guides* has standards for evaluating the impairment of extremities which are based primarily on loss of range of motion.⁶ All factors that prevent a limb from functioning normally should be considered, such as pain and weakness, together with loss of motion, in evaluating the degree of permanent impairment.⁷

The evidence in this case is insufficient to support a schedule award because it provides no basis for finding an impairment to a scheduled member. Dr. Smith's reports noted pain in the shoulder and neck, appellant's degenerative joint disease, a herniated nucleus pulposus and muscle conditions. However, the reports failed to establish any impairment to a covered extremity for schedule award purposes and thus they are insufficient to establish that appellant

² 5 U.S.C. §§ 8101-8193.

³ *Janet L. Adamson*, 52 ECAB 431 (2001).

⁴ The Act specifically excludes the back as an organ and, therefore, the back does not come under the provisions for payment of a schedule award. *Francesco C. Veneziani*, 48 ECAB 572 (1997).

⁵ *George E. Williams*, 44 ECAB 530 (1993).

⁶ *Richard J. Maher*, 42 ECAB 902 (1991).

⁷ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

had any permanent impairment due to his employment injury which entitled him to receive a schedule award.⁸

Appellant also submitted physical therapist's reports from June 17 to July 28, 1991 generally noting appellant's low back pain. These reports have no probative medical value inasmuch as a physical therapist is not a physician under the Act and therefore is not competent to give a medical opinion.⁹

The evidence of record is insufficient to establish that appellant is entitled to a schedule award in accordance with the fifth edition of the A.M.A., *Guides*. Appellant has submitted no medical reports from a physician explaining how, pursuant to the fifth edition of the A.M.A., *Guides*, his accepted low back strain caused impairment to a schedule member of the body. Consequently, appellant has not established entitlement to a schedule award.

The decision of the Office of Workers' Compensation Programs dated November 22, 2002 is affirmed.

Dated, Washington, DC
September 23, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ *Annie L. Billingsley*, 50 ECAB 210 (1998).

⁹ 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994).