United States Department of Labor
Employees' Compensation Appeals Board

JOHN RANCK, Appellant	)	
	)	**Docket No. 04-385**
and	)	**Issued: April 2, 2004**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Dallas, TX, Employer	)	

Appearances:
John Ranck, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

Appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated November 6 and 21, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant has established his entitlement to a schedule award for permanent impairment causally related to his accepted work injury.

FACTUAL HISTORY

On June 20, 2003 appellant, then a 55-year-old clerk, filed an occupational disease claim alleging claiming that he hurt the lumbar part of his back on May 31, 2003 while pulling wickets in the course of his employment. On August 4, 2003 the Office accepted the claim for lumbar subluxation and authorized chiropractic treatment.

On September 15, 2003 appellant filed a Form CA-7 claim for a schedule award. In support of the claim, appellant submitted an August 8, 2003 diagnostic report and a September 4, 2003 functional capacity evaluation summary concerning his lumbar condition.

In a letter dated October 2, 2003, the Office advised appellant that schedule awards are not paid for impairment to the back, however, that such awards can be paid for impairment of the lower extremities if there is significant pain, sensory deficit or motor impairment of the lower extremities resulting from the work-related injury. The Office informed appellant of the type of medical evidence needed to establish lower extremity impairment compensable by the Office and requested that appellant submit such evidence in support of the claim. No further evidence was received.

By decision dated November 6, 2003, the Office denied appellant's claim for a schedule award on the grounds that he failed to submit evidence, which established that he sustained permanent impairment to a scheduled member due to the accepted work injury as defined by the Federal Employees' Compensation Act.

In a letter dated November 8, 2003, appellant requested reconsideration and submitted reports from Dr. Scott Moulton, his attending chiropractor, dated June 19 and November 6, 2003, in support of the request. In the June 19, 2003 evaluation report, Dr. Moulton diagnosed lumbar subluxation, lumbar intervertebral disc syndrome and muscle spasms related to the May 31, 2003 employment injury.[1] In the November 6, 2003 report, Dr. Moulton stated that appellant had no significant pain, sensory deficit or motor impairment of the lower extremities resulting from the accepted employment injury.

By decision dated November 21, 2003, the Office conducted a merit review and denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. The Office found that the report submitted on reconsideration established that appellant had a zero percent impairment due to his accepted back condition.

LEGAL PRECEDENT

The schedule award provisions of the Act[2] and its implementing federal regulation,[3] 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.[4] 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

[1] Dr. Moulton indicated that the lumbar subluxation was found on x-ray testing.

[2] 5 U.S.C. §§ 8101-8193.

[3] 20 C.F.R. § 10.404 (1999).

[4] 5 U.S.C. § 8107(c)(19).

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.[5]

A schedule award is not payable for the loss or loss of use of any member of the body or function, which is not specifically enumerated in section 8107 of the Act or its implementing regulation.[6] The Act specifically excludes the back as an organ and, therefore, the back does not come under the provision for payment of a schedule award.[7] While a schedule award is not payable under the Act for an impairment of the back, a schedule award is payable for permanent impairment related to a scheduled member that is due to the work-related back condition.[8]

ANALYSIS

In this case, appellant sought a schedule award for permanent impairment due to his accepted lumbar back injury. The Office advised appellant that schedule awards are not paid for impairment to the back, however, that such awards can be paid for impairment of the lower extremities if there is significant pain, sensory deficit or motor impairment of the lower extremities resulting from the work-related injury. When appellant failed to submit the requisite evidence, the Office denied his claim. Appellant later requested reconsideration and submitted medical evidence from Dr. Moulton, his attending chiropractor, who treated him for the accepted lumbar subluxation. In his November 6, 2003 report, Dr. Moulton indicated that appellant had no significant pain, sensory deficit or motor impairment of the lower extremities resulting from the May 31, 2003 employment injury.

As noted above, the Act specifically excludes the back as an organ and, therefore, the back does not come under the provision for payment of a schedule award. Thus, to the extent that appellant sought a schedule award for permanent impairment due to his lumbar back injury, the Office correctly denied compensation. Furthermore, based on the opinion of Dr. Moulton in the November 6, 2003 report and the lack of medical evidence in the record to establish permanent impairment of the lower extremities due to significant pain or sensory or motor deficit

[5] *See* 20 C.F.R. § 10.404 (1999).

[6] 5 U.S.C. § 8107.

[7] *See James E. Mills*, 43 ECAB 215 (1991) (neither the Act nor its implementing regulation provides for a schedule award for impairment to the back or to the body as a whole).

[8] *See Thomas J. Engelhart*, 50 ECAB 319 (1999) (a claimant may be entitled to a schedule award for permanent impairment to an upper extremity or lower extremity even though the cause of the impairment originated in the neck, shoulders or spine).

related to the employment injury, the Board concludes that the Office properly denied appellant's request for a schedule award.[9]

CONCLUSION

The Board finds that appellant failed to establish his entitlement to a schedule award based on permanent impairment causally related to his accepted work injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 6 and 21, 2003 are affirmed.

Issued: April 2, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[9] In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under the Act. Section 8101(2) of the Act provides that the term "'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist." 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986). Therefore, a chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray evidence. *Kathryn Haggerty*, 45 ECAB 383 (1994). Evidence of record from Dr. Moulton included a diagnosis of lumbar subluxation as demonstrated by x-ray, which was accepted by the Office. Accordingly, Dr. Moulton's opinion constitutes medical evidence in this case.