United States Department of Labor
Employees' Compensation Appeals Board

STEVAN N. TORRES, Appellant	)	
and	)	**Docket No. 04-1837**
	)	**Issued: December 7, 2004**
FEDERAL BUREAU OF INVESTIGATION, Washington, DC, Employer	)	

Appearances:
Stevan N. Torres, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 15, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 30, 2004 finding that he was not entitled to a schedule award. 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 is whether appellant is entitled to a schedule award for his back condition.

FACTUAL HISTORY

On May 18, 1987 appellant, then a 40-year-old special agent, filed a traumatic injury claim alleging that on April 24, 1987 he sustained multiple injuries as a result of a motor vehicle accident that he sustained in the performance of his federal duties. Appellant's claim was accepted for cervical sprain, lumbar sprain and myocardial contusion.

On March 4, 2002 appellant requested a schedule award. By letter dated July 3, 2003, the Office requested that appellant have his attending orthopedist provide a detailed report outlining appellant's impairment rating according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.* In a medical report dated April 22, 2003, Dr. Bruce M. Berkowitz, appellant's treating Board-certified orthopedic surgeon, noted his impressions as cervical disc herniations, C5-6, with concomitant C5-6 degenerative changes present at this time as a result of the previous disc herniations; chronic sacroiliac (SI) pain with subsequent degenerative changes as a result of initial trauma; and mild degenerative changes, right hip. He noted that appellant had a disc herniation as a result of the trauma, with concomitant degenerative changes. Dr. Berkowitz then concluded:

> "While we know there was no abnormality to the dis[c] as indicated by subsequent MRI [magnetic resonance imaging] [scan], his pain has been consistent in the area of the sacroiliac joint, and now we see the degenerative changes that have occurred to that joint 14 years ago.
>
> "It is, therefore, my opinion that the patient did sustain an impairment as a result of the original accident. Using the [A.M.A., *Guides*], I would rate his impairment as six percent for the cervical dis[c] with significant degenerative changes now present, with the addition of two percent for the sacroiliac joint injury with the subsequent degenerative changes that have also occurred. Therefore, a total of eight percent whole person impairment as a direct result of the motor vehicle accident of 1987. I believe he has an additional two percent impairment from the exacerbation from the SI joint as it relates to the new 2002 accident according to the Florida Impairment Rating Guide."

In a February 13, 2004 report, Dr. Berkowitz noted that the MRI scan of February 2, 1988 clearly demonstrated the C5-6 disc herniations to the right.

By decision dated June 10, 2003, the Office denied appellant's claim for a schedule award. On June 23, 2003 appellant requested an oral hearing which was held on February 23, 2004. By decision dated April 30, 2004, the hearing representative affirmed the Office's June 10, 2003 decision. The hearing representative determined that the evidence was not sufficient to support that the claimant had any impairment to a scheduled member which would entitle him to a schedule award under the Act.

LEGAL PRECEDENT

An employee seeking compensation under the Act[1] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,[2]

[1] 5 U.S.C. §§ 8101-8193.

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

including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.[3]

The schedule award provision of the Act[4] and its implementing regulation[5] sets 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]

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 regulation provide for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of organ under the Act.[7]

ANALYSIS

In the present case, appellant has not submitted medical evidence to support that he has an impairment to a scheduled body member. Although appellant's case was accepted for cervical sprain, lumbar sprain and myocardial contusion, he is not entitled to a schedule award for this condition. 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 regulation provide for a schedule award for an impairment to the back or the body as a whole. Accordingly, Dr. Berkowitz's report noting a whole person impairment will not establish appellant's entitlement to a schedule award. Appellant has not submitted any medical evidence indicating that he has any impairment to a part of the body that is covered by the schedule. Accordingly, the Office properly determined that appellant was not entitled to a schedule award in this case.

CONCLUSION

Appellant has not established that he is entitled to a schedule award for his back injury.

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

[4] 5 U.S.C. §§ 8101-8193.

[5] 20 C.F.R. § 10.404 (1999).

[6] *James E. Mills*, 43 ECAB 215, 219 (1991); *James E. Jenkins*, 39 ECAB 860, 866 (1990).

[7] *George E. Williams*, 44 ECAB 530 (1993); *James E. Mills*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 30, 2004 is affirmed.

Issued: December 7, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member