



subluxations of the fifth cervical vertebra and the lumbar spine. Appellant returned to work and continued to receive treatment from Dr. Schwartz.

In a report dated April 24, 2000, Dr. Larry Burch, a chiropractor, opined that appellant had an eight percent cervical range of motion impairment, and six percent for an unoperated cervical disc. By letter dated June 18, 2001, the Office referred appellant to Dr. Alan Lazar, a Board-certified orthopedic surgeon, for an opinion as to the extent of permanent impairment.

In a report dated July 10, 2001, Dr. Lazar provided a history and results on examination. He noted that he had treated appellant in 1995, but not since that time. Dr. Lazar recommended that appellant undergo a magnetic resonance imaging (MRI) scan of the lumbar and cervical spine. An MRI scan was performed on July 20, 2001. Dr. Lazar submitted treatment notes dated August 7 and September 11, 2001.

In a report dated October 11, 2001, Dr. Lazar noted that appellant remained symptomatic with “intermittent radicular pain into the left arm.” He provided range of motion results for the cervical and lumbar spine, noting a “negative neurological” examination. Dr. Lazar opined that appellant had a 10 percent permanent impairment “to the body as a whole representing injuries involving the cervical and lumbar spine.”

The Office referred the record to an Office medical adviser for review. In a report dated October 19, 2001, the medical adviser opined that Dr. Lazar did not report any impairment to the upper or lower extremities. The medical adviser opined that appellant had no permanent impairment of an extremity due to the accepted injuries.

In a decision dated October 22, 2001, the Office determined that appellant was not entitled to a schedule award. Appellant requested an oral hearing, which was held on June 12, 2002.

By decision dated August 7, 2002, the Office hearing representative affirmed the October 22, 2001 decision. Appellant filed an appeal with the Board.<sup>1</sup>

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees’ Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>2</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal

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<sup>1</sup> The Board initially issued a decision in this case dated February 4, 2003. Following a petition for reconsideration from appellant, the Board granted the petition and vacated the February 4, 2003 decision.

<sup>2</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.<sup>3</sup>

Neither the Act nor its regulations 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.<sup>4</sup> The Board has recognized, however, that a claimant may be entitled to a schedule award for a permanent impairment to an extremity even though the cause of the impairment originated in the spine.<sup>5</sup>

### ANALYSIS

The Board notes that the April 24, 2000 report of Dr. Burch, a chiropractor, is not a basis for a schedule award determination. A chiropractor is a physician under the Act “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.”<sup>6</sup> As noted above, the spine itself is not a scheduled member and no schedule award is payable for the back. Moreover, an opinion from a chiropractor with respect to permanent impairment of a scheduled extremity or other member of the body is beyond the scope of the statutory limitation of a chiropractor’s services.<sup>7</sup> Dr. Burch’s report is of no probative value with regard to entitlement to a schedule award under the Act.

In this case, the Office referred appellant to Dr. Lazar, an orthopedic surgeon, for an opinion as to the extent of an employment-related permanent impairment. Dr. Lazar opined that appellant had a 10 percent whole body impairment; as noted above, the Act does not provide a schedule award based on a whole body impairment.

The Board notes, however, that Dr. Lazar stated that appellant had intermittent radicular pain into the left arm. The arm is a scheduled member, and radicular pain may support an impairment rating.<sup>8</sup> The medical adviser found that Dr. Lazar reported no impairment to the extremities, without discussing any impairment based on radicular pain to the left arm. Dr. Lazar reported a negative neurological examination without further explanation; he did not discuss the radicular pain or indicate whether his whole body impairment included an upper extremity impairment. As the Office sought the opinion of Dr. Lazar, it has the responsibility to obtain a report which resolves the issues presented in the case.<sup>9</sup>

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<sup>3</sup> A. *George Lampo*, 45 ECAB 441 (1994).

<sup>4</sup> See *James E. Jenkins*, 39 ECAB 860 (1988); 5 U.S.C. § 8101(20).

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

<sup>6</sup> 5 U.S.C. § 8101(2).

<sup>7</sup> *George E. Williams*, *supra* note 5.

<sup>8</sup> See, e.g., A.M.A., *Guides*, 482, Table 16-10 (5<sup>th</sup> ed. 2001).

<sup>9</sup> See *Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

**CONCLUSION**

The case will be remanded to the Office for additional development of the medical evidence. The Office should secure a medical report that properly addresses whether appellant has a permanent impairment to a scheduled member of the body. After such further development as the Office deems necessary, it should issue an appropriate decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 7, 2002 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: February 12, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member