

**United States Department of Labor
Employees' Compensation Appeals Board**

BILLIE R. PARKER, Appellant)
and) Docket No. 04-269
U.S. POSTAL SERVICE, POST OFFICE,) Issued: July 6, 2004
Tulsa, OK, Employer)

)

Appearances:

Billie R. Parker, 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
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On November 10, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated April 10, August 13 and September 11, 2003, finding that she 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 her back condition.

FACTUAL HISTORY

On November 29, 2000 appellant, then a 42-year-old distribution clerk, filed a traumatic injury claim (Form CA-1), alleging that she injured her back on November 22, 2000 while lifting trays in the performance of her federal duties. On January 5, 2001 the Office accepted the claim for aggravation of a lumbar sprain.¹

In a January 9, 2001 report, Dr. Allan Fielding, an attending Board-certified neurosurgeon, stated that a magnetic resonance imaging (MRI) scan showed some degenerative changes within the L4-5 disc with a small right paracentral disc protrusion at L4-5 level which he felt was probably compressing, to some degree, the L5 root. He stated that appellant was "neurologically intact" and opined that she could return to work in a limited-duty capacity. She returned to light-duty work for four hours a day on March 3, 2001. In an April 13, 2001 report, Dr. Fielding stated that appellant could return to work full time with no restrictions. He noted that she had very nonspecific complaints of pain and that an MRI revealed degenerative changes that were consistent with her age and build.

On June 8, 2001 appellant requested a schedule award. She submitted no medical evidence with her request, but the record contains a May 16, 2001 report from Dr. Timothy Pettingell, an attending physiatrist, who stated that appellant was significantly improved and was asymptomatic concerning the lumbar spine and right sacroiliac joint. He stated that she had reached maximum medical improvement and that she had no permanent impairment. Dr. Pettingell diagnosed resolved right joint dysfunction and chronic lumbar back strain.

In an April 10, 2003 decision, the Office denied appellant's request for a schedule award, finding that the medical evidence did not support an award. Appellant requested reconsideration.

The record contains an April 22, 2003 report from Dr. Pettingell, who stated that he had already documented, in his May 16, 2001 report, that appellant had no permanent impairment of the lumbar spine, pelvis or lower extremities. In a May 1, 2003 report, Dr. Paul Higbee, an attending Board-certified family practitioner, stated that he believed appellant had a permanent impairment as a result of her chronic pain and that she had reached maximum medical improvement. He also referred to an April 18, 2003 report from Kim Wimberley, a physical therapist, who stated that appellant worked hard to improve her physical function and she should continue to improve with significant weight loss. In an August 13, 2003 decision, the Office denied modification, finding that the medical evidence did not support entitlement to a schedule award.

In a July 21, 2003 letter, appellant requested reconsideration and argued that she has worked with the employing establishment since 1986 and has sustained three back injuries and she has chronic pain in her lower back, legs, lower right leg and right foot, as well as sciatica, nerve root compression, mobility impairment, numbness, depression and psychological damage. She added that her lower back injuries which she attributed to her employment impaired her

¹ Appellant also sustained a back injury on June 21, 2000 though it is not clear from the record if it was work related.

from doing many activities, such as taking long walks, lifting and playing sports. Appellant added that her federal employment put a lot of wear and tear on her body. In an August 14, 2003 letter, Dr. Stephen Eichert, an osteopath, stated that he performed a disability rating on appellant and found, based on the fifth edition of the American Medical Association, *Guides to Evaluation of Permanent Impairment*, that she had a seven percent impairment of the whole person. In a September 11, 2003 decision, the Office denied modification, finding that the medical evidence did not support entitlement to a schedule award. The decision also noted that the Federal Employees' Compensation Act does not provide for impairment of the whole person.

LEGAL PRECEDENT

An employee seeking compensation under the Act² has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,³ 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.⁴

The schedule award provision of the Act⁵ and its implementing regulation⁶ 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.⁷

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.⁸

ANALYSIS

In the present case, appellant has not submitted medical evidence that supports that she has an impairment to a scheduled body member. The May 1, 2003 medical report from Dr. Higbee indicates that she has an impairment and has reached maximum medical

² 5 U.S.C. §§ 8101-8193.

³ *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

⁷ See *id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁸ *James E. Mills*, 43 ECAB 215, 219 (1991); *James E. Jenkins*, 39 ECAB 860, 866 (1990).

improvement, but it fails to identify the body member sustaining permanent impairment or to apply the relevant standards of the A.M.A., *Guides*. The Board has found that an opinion on impairment is of limited probative value if it fails to provide an explanation of how the impairment rating was derived in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.⁹ An August 14, 2003 report from Dr. Eichert stated that appellant had a seven percent impairment to her whole body. As mentioned above, the Act does not provide for impairments to the whole body and specifically excludes paying a schedule award for impairment to the back. In addition, Dr. Pettingell stated in his May 16, 2001 and April 21, 2003 reports that appellant had no impairment.

CONCLUSION

The Board finds that appellant has not submitted sufficient medical evidence to establish that she is entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 11, August 13 and April 10, 2003 are hereby affirmed.

Issued: July 6, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁹ See Kennedy, *supra* note 7.