

the position of the flat buggies. Appellant stopped work on February 10, 2001. On June 27, 2001 the Office accepted appellant's claim for a herniated disc at L5-S1 and authorized surgeries of February 18 and 24, 2001.² Additionally, on September 7, 2001 the Office authorized a repeat discectomy.

On July 10, 2003 appellant filed a claim for a schedule award and submitted a February 27, 2003 report from Dr. Joel B. Ragland, a Board-certified neurological surgeon, who utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (A.M.A., *Guides*) and noted appellant's history of injury and treatment, including a recent functional capacity evaluation which gave appellant a light-duty level of function. He advised that appellant was no longer in need of neurological examination and recommended intermittent treatment with her family physician. Dr. Ragland released appellant from treatment and indicated that she had a 12 percent whole person rating using a diagnosis estimate category III classification.

By letter dated July 22, 2003, the Office advised Dr. Ragland that, while schedule awards were not payable for an impairment to the back, they were payable for impairment of the lower extremities. The Office requested additional information pursuant to the A.M.A., *Guides* and advised Dr. Ragland that an attached lower extremity impairment evaluation worksheet should be used. No response was received.

By letter dated September 17, 2003, appellant requested additional information and provided a duplicate of Dr. Ragland's February 27, 2003 report.

In a February 2, 2004 report, an Office medical adviser noted that appellant had a 12 percent whole person impairment for low back pain. He advised that there was no evidence of impairment to the lower extremities. He noted that the schedule awards were not given for spinal impairment.

By decision dated February 10, 2004, the Office denied appellant's claim for a schedule award. The Office found that, under the Federal Employees' Compensation Act, the back is not a listed member for schedule award purposes.

LEGAL PRECEDENT

The schedule award provision of the Act³ and its implementing regulation⁴ sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of specified members or functions of the body. However, the Act does not specify the manner in which the percentage 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

² The record reflects that appellant's claim was originally denied by decision dated May 22, 2001.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

claimants. The A.M.A., *Guides* 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 a part of the body that is not specifically enumerated under the Act⁶ or under its implementing federal regulations.⁷ Neither the Act nor its implementing regulations provides for a schedule award for impairment to the back or the body as a whole.⁸ However, as the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for any permanent impairment to an extremity even though the cause of the impairment originated in the spine.⁹

ANALYSIS

On appeal, appellant contended that she was entitled to a schedule award.

The Board finds that the medical evidence is insufficient to support a schedule award as it provides no basis for finding impairment under the Act. Dr. Ragland's February 27, 2003 report noted that appellant had a 12 percent impairment to the whole person; however, his report is insufficient as he did not make any findings of impairment with respect to a member of the body specifically enumerated under the Act or its implementing regulation.¹⁰ The Office advised Dr. Ragland that there is no provision under the Act for impairments to the back and requested additional information regarding whether appellant might have any impairment to her lower extremities. Dr. Ragland did not respond. The physician failed to provide any impairment rating for a covered member. Therefore his report was insufficient to establish that appellant had any permanent impairment due to her employment injury which would entitle her to a schedule award.¹¹ The Office medical adviser reviewed Dr. Ragland's report and noted that there was no evidence of any impairment of appellant's lower extremities. The Board notes that appellant is not entitled to a schedule award based on impairment pertaining solely to her back or as a whole person impairment.¹²

The Board finds that the evidence of record is insufficient to establish that appellant is entitled to a schedule award. Appellant has submitted no medical evidence from a physician

⁵ *Janet L. Adamson*, 52 ECAB 431 (2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, Schedule Awards, Chapter 3.700.2 (June 2003); 20 C.F.R. § 10.404.

⁶ 5 U.S.C. § 8107(c).

⁷ 20 C.F.R. § 10.404.

⁸ 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. *Jay K. Tomokiyo*, 51 ECAB 361 (2000); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

⁹ *George E. Williams*, 44 ECAB 530 (1993).

¹⁰ See footnotes 6 and 7.

¹¹ *Annie L. Billingsley*, 50 ECAB 210 (1998).

¹² See footnote 8.

explaining how, pursuant to the fifth edition of the A.M.A., *Guides*, her accepted herniated disc at L5-S1 caused impairment to a scheduled member of the body.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 10, 2004 is hereby affirmed.

Issued: September 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member