

In a medical report dated July 22, 2002, Dr. Sally Niles, a Board-certified physiatrist, noted that an April 11, 2002 magnetic resonance imaging (MRI) scan showed mild to moderate facet degenerative discs at L2-3 to L5-S1 with no disc herniation. On examination, she diagnosed lumbar pain stemming from a work-related accident from the tailbone radiating down to the posterior left thigh area with a symmetric neurological examination and no specific abnormality on imaging study or electromyography. She commented on appellant's severe deconditioning.

An April 26, 2003 MRI scan was interpreted by Dr. Ryan L. Taylor, a Board-certified radiologist, as showing mild degenerative facet changes in the lower lumbar spine.

On May 20, 2004 appellant filed a claim for a schedule award.

Appellant received treatment from Dr. John P. Kafrouni, a Board-certified physiatrist, from January 10 through September 16, 2003. In a May 27, 2004 report, he diagnosed disabling lumbar strain/radiculitis with gluteal area pain into the thighs and foot. He indicated that appellant was totally disabled due to lumbar radiculitis and multiple medical conditions caused by her injury. He noted that she had sciatica in her lower back and gluteal region and that maximum medical improvement had been reached.

By decision dated July 23, 2004, the Office denied appellant's claim for a schedule award.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,² 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.³

The schedule award provision of the Act⁴ and its implementing regulation⁵ 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 American Medical Association, *Guides to the Evaluation of Permanent*

¹ 5 U.S.C. §§ 8101-8193.

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

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

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

Impairment 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. The back is specifically excluded from the definition of organ under the Act.⁷

ANALYSIS

Appellant has not submitted medical evidence to establish that she sustained any impairment to a scheduled body member due to the accepted back condition. In a May 27, 2004 report, Dr. Kafrouni indicated that appellant had reached maximum medical improvement. However, he did not provide any impairment rating or address whether her back condition caused impairment to either of her lower extremities. There is no indication from Dr. Kafrouni's report that appellant sustained a permanent impairment to a part of the body covered by the schedule. Appellant's claim has been accepted for lumbar strain and Dr. Kafrouni's report notes lumbar radiculitis and sciatica in her lower back and gluteal region. The MRI scan on April 26, 2003 was interpreted as showing mild degenerative facet changes in the lower lumbar spine. However, as mentioned above, the Act does not provide for impairments to the whole body and specifically excludes schedule awards for impairment to the back. Without evidence that she sustained any impairment to her legs due to the accepted back condition, her claim for a schedule award must be denied.

CONCLUSION

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

⁶ See *id*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁷ *James E. Mills*, 43 ECAB 215, 219 (1991); *James E. Jenkins*, 39 ECAB 860, 866 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 23, 2004 is hereby affirmed.

Issued: January 25, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member