

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

PAULA J. SORAH, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Amherst, OH, Employer**

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**Docket No. 05-684
Issued: July 14, 2005**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On January 24, 2005 appellant, through her representative, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated December 21, 2004, in which an Office hearing representative affirmed the denial of her claim for 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 has met her burden of proof in establishing that her accepted back condition resulted in impairment of her lower extremities.

FACTUAL HISTORY

On August 17, 2000 appellant, a 35-year-old mail carrier, filed a traumatic injury claim alleging that she sustained a low back strain on August 14, 2000 due to lifting a tub of mail into a bin. The Office accepted the claim for a lumbar strain and right sciatic radiculitis.

Appellant filed a claim for a schedule award on May 1, 2003.

In a July 3, 2003 letter, the Office requested Dr. William R. Bauer, a treating Board-certified neurologist, to provide an opinion on whether appellant has a permanent impairment of the lower extremities as a schedule award may not be paid for impairment to the back. The Office advised Dr. Bauer to use the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition 2003) in determining any impairment rating. In response to the Office's request, Dr. Bauer provided a work capacity evaluation form dated August 6, 2003, which noted "testing not done at this facility."

In a report dated October 14, 2003, Dr. Timothy J. Nice, a second opinion Board-certified orthopedic surgeon, concluded that appellant had a six percent whole person impairment based upon spinal impairment. In so concluding, he reported 45 degrees of true lumbar flexion and 20 degrees retained lumbar extension based on Table 15-8 of the A.M.A., *Guides* for a whole person impairment of two percent each. Dr. Nice also reported 20 degrees of left lateral bending and 20 degrees of right lateral bending for a one percent whole person impairment each per Table 15-9 of the A.M.A., *Guides*. He also concluded that she had no impairment of the upper or lower extremities.

In a report dated March 26, 2004, the Office medical adviser concluded that appellant had a zero percent impairment of her lower extremities.

By decision dated April 8, 2004, the Office denied appellant's claim for a schedule award.

Appellant through her attorney requested, by letter dated April 10, 2004, an oral hearing before an Office hearing representative, which was held on November 17, 2004.

By decision dated December 21, 2004, the Office hearing representative affirmed the denial of appellant's schedule award claim. In support of this conclusion, the hearing representative found the evidence of record contains no evidence of any permanent impairment to her lower extremities.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation,² 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ *Id.*; see *Linda R. Sherman*, 56 ECAB ____ (Docket No. 04-1510, issued October 14, 2004).

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulation.⁴ As neither the Act nor its regulation provide for the payment of a schedule award for the permanent loss of use of the neck, back or the body as a whole, no claimant is entitled to such a schedule award.⁵ The Board notes that section 8101(19) specifically excludes the back from the definition of “organ.”⁶ However, a claimant may be entitled to a schedule award for permanent impairment to an upper or lower extremity even though the cause of the impairment originated in the neck, shoulders or spine.

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. Appellant’s treating physician, Dr. Bauer, provided a work restriction evaluation form in response to the Office’s request for an impairment rating. In reports dated October 14, 2003, Dr. Nice indicated that appellant had reached maximum medical improvement. He concluded that appellant had a six percent whole person permanent impairment due to her back condition and no ratable impairment to either of her lower extremities. 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.⁷ Dr. Young, the Office medical adviser, concluded that appellant had a zero percent impairment of the lower extremities. 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.

⁴ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

⁵ *See Jay K. Tomokiyo*, 51 ECAB 361 (2000).

⁶ 5 U.S.C. § 8107.

⁷ *Supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 9, 2004 is affirmed.

Issued: July 14, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board