

FACTUAL HISTORY

On April 22, 2002 appellant, then a 55-year-old corrective therapist, filed a claim for a traumatic injury to his right leg and lower back occurring on October 16, 2002 in the performance of duty. The Office accepted the claim for a herniated disc at L5-S1.¹

On May 5, 2003 appellant filed a claim for a schedule award. In a letter dated May 17, 2003, he indicated that he had “a right paralyzed foot [and] right big toe due to severe nerve damage.” Appellant enclosed a May 24, 2002 magnetic resonance imaging (MRI) study, which revealed a “[l]arge epidural defect with typical features of a sequestered disc fragment on the right at the L5-S1 level with severe involvement of the right L5 nerve root.”

In an unsigned office visit note dated May 31, 2002, Dr. James M. Sunday, a Board-certified orthopedic surgeon, discussed appellant’s complaints of weakness in the great toe and “numbness in the lateral aspect of his leg.” He noted that an MRI scan showed a herniated nucleus pulposus at L5-S1 with a sequestered fragment and found that he was limited to lifting 20 pounds.

By letter dated November 2, 2004, the Office requested that appellant submit an impairment rating from his physician which included the date he reached maximum medical improvement. The Office informed appellant that if he did not have an impairment rating, he should take a copy of the November 2, 2004 letter and the accompanying form letter to his physician for completion. The Office enclosed a form letter dated November 2, 2004 requesting a report regarding the extent of appellant’s impairment rating in accordance with the provisions of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).² The Office provided appellant 30 days within which to submit the requested information.

Appellant resubmitted the May 24, 2002 MRI scan results.

In a decision dated December 8, 2004, the Office denied appellant’s claim for a schedule award on the grounds that the evidence was insufficient to establish that he sustained a permanent impairment due to his accepted employment injury.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees’ Compensation Act³ has the burden of establishing the essential elements of his claim by the weight of the reliable,

¹ In a decision dated July 10, 2002, the Office denied appellant’s claim on the grounds that he had not established fact of injury. In a decision dated March 11, 2003, a hearing representative reversed the July 10, 2002 decision and accepted the claim for a herniated disc at L5-S1.

² The Office noted that appellant should be evaluated for a permanent impairment of the upper rather than lower extremities; however, this appears to be a typographical error.

³ 5 U.S.C. §§ 8101-8193.

probative and substantial evidence,⁴ including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.⁵

The schedule award provision of the Act,⁶ and its implementing federal regulation,⁷ 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* (5th ed. 2001) as the uniform standard applicable to all claimants.⁸ Utilization of the A.M.A., *Guides* requires that a description of appellant's impairment be obtained from his attending physician,⁹ in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.¹⁰

ANALYSIS

Appellant has not submitted sufficient evidence to establish that, as a result of his employment injury, he sustained any permanent impairment to his lower extremities such that he would be entitled to a schedule award. He submitted the results of an MRI scan study dated May 24, 2002 which demonstrated an epidural defect with a sequestered disc fragment at L5-S1 on the right "with severe involvement of the right L5 nerve root." The MRI scan study, however, neither assesses appellant's degree of permanent impairment nor provides a description of any physical impairment in sufficient detail so that the claims examiner and others reviewing the file would be able to clearly visualize the impairment with its resulting restrictions and limitations.¹¹ It is, therefore, of little probative value in determining the issue of appellant's permanent impairment.

The record also contains an unsigned progress report dated May 31, 2002; however, the Board has held that an unsigned report cannot be considered probative medical evidence as it lacks proper identification.¹²

⁴ *Edward W. Spohr*, 54 ECAB ____ (Docket No. 03-1173, issued September 10, 2003).

⁵ *Trina Bornejko*, 53 ECAB 400 (2002).

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ 20 C.F.R. § 10.404(a).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(c) (August 2002).

¹⁰ *Noe L. Flores*, 49 ECAB 344 (1998).

¹¹ *Id.*

¹² *Merton J. Sills*, 39 ECAB 572 (1988).

The Office requested that appellant submit an impairment evaluation from his attending physician with an estimate of any permanent impairment due to his employment injury in accordance with the A.M.A., *Guides*. Appellant, however, did not submit such a report. It is appellant's burden to establish that he sustained a permanent impairment of a scheduled member as a result of an employment injury.¹³ The Board finds that appellant has failed to establish his claim for a schedule award.

CONCLUSION

The Board finds that appellant has not established that he has a permanent impairment of his right or left lower extremity causally related to his April 16, 2002 employment injury such that he is entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 8, 2004 is affirmed.

Issued: May 11, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹³ *Tammy L. Meehan*, 53 ECAB 229 (2001).