



shoulders; aggravation of osteoarthritis, bilateral acromioclavicular joints<sup>1</sup> and cervical somatic dysfunction.<sup>2</sup>

On January 7, 2001 appellant filed a claim for a schedule award. On June 12, 2001 the Office asked her to submit medical evidence to support her claim, including a physician's opinion on whether she had reached maximum medical improvement and an impairment rating based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001).

In a decision dated March 1, 2002, the Office denied appellant's claim for a schedule award. The Office noted that it had received no response to its June 12, 2001 request for supporting medical evidence. The Office also noted that a March 29, 2000 report from Dr. Charles F. Xeller, a Board-certified orthopedic surgeon, established that she had no residuals or permanent impairment to her neck, shoulder or wrist as a result of any work-related injury.

In a decision dated July 14, 2003, an Office hearing representative set aside the March 1, 2002 denial of a schedule award and remanded the case to an Office medical adviser for review of Dr. Xeller's report to determine whether appellant was entitled to a schedule award. The hearing representative noted that Dr. Xeller reported continuing tendinitis and carpal tunnel syndrome and some permanent impairment to appellant's right wrist.

On August 26, 2003 an Office medical adviser reviewed Dr. Xeller's March 29, 2000 report and found that it supported no permanent impairment: range of motion was full, there was no atrophy and no motor deficits. Although Dr. Xeller noted numbness in the second and third digits, sensory deficit was graded on no scale, and in the medical adviser's opinion appellant's impairment was zero.

In a decision dated September 11, 2003, the Office denied appellant's claim for a schedule award on the grounds that the evidence demonstrated no measurable impairment. On November 23, 2004 an Office hearing representative affirmed the schedule award denial, finding that appellant had provided no evidence to establish permanent impairment.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> Section 8107 provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>4</sup>

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<sup>1</sup> OWCP File No. A9-446726.

<sup>2</sup> OWCP File No. A9-451872.

<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8107(a).

A claimant seeking compensation under the Act has the burden to establish the essential elements of her claim by the weight of the reliable, probative and substantial evidence.<sup>5</sup> A claimant seeking a schedule award under section 8107 has the burden to establish that she sustained a permanent impairment of a scheduled member or function as a result of an injury sustained in the performance of duty.<sup>6</sup>

### ANALYSIS

Appellant filed a claim for a schedule award, and therefore has the burden of proof to establish that her accepted employment injuries have caused permanent impairment to a scheduled member of the body. Although the Office advised her of the medical evidence needed to support her claim, appellant submitted no opinion from her physician stating that she had reached maximum medical improvement, nor did she submit her physician's evaluation of permanent impairment based on the A.M.A., *Guides*. She failed to come forward with medical evidence to support her claim. The Office reviewed Dr. Xeller's report to determine if it revealed any permanent impairment. The Board notes that Dr. Xeller did not evaluate her for the purpose of determining maximum medical improvement or rating her under the A.M.A., *Guides*. The record is thus one of a claim unsupported by any relevant medical evidence. Appellant has failed to establish a *prima facie* claim. The Board will affirm the denial of appellant's claim for failure to discharge her burden of proof.

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her accepted employment injuries caused any permanent impairment to a scheduled member of the body.

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<sup>5</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>6</sup> *See, e.g., Ernest P. Govednik*, 27 ECAB 77 (1975) (no medical evidence that the employment injury caused the claimant to have a permanent loss of use of a leg or any other member of the body specified in the schedule).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 23, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member