

On January 17, 2005 Dr. Patrick J. Carolan, a Board-certified orthopedic surgeon, reported that appellant had reached maximum medical improvement with regard to his neck. Noting decreased range of motion on physical examination, he reported a 15 percent permanent impairment secondary to the herniated cervical disc, cervical fusion and loss of motion. On January 19, 2005 appellant filed a claim for a schedule award.

In a decision dated February 8, 2005, the Office denied appellant's claim based on the observation of its medical adviser that in the presence of impairment intrinsic to the spine alone, and in the absence of impairment to any of the claimant's extremities, there was no basis on which to assign a schedule award.

On March 21, 2005 appellant requested reconsideration. In support thereof, he submitted the February 17, 2005 report of Dr. Carolan:

"A review of my office notes of January 17, 2005 indicated that I had calculated the permanent partial disability in his neck in error. A review of the A[merican] M[edical] A[ssociation], *Guides to the Evaluation of Permanent Impairment*, 5th edition in dealing with the DRE [diagnosis-related estimate] categories of cervical spine impairment would indicate that the patient's current condition, that is status post three level fusion of the cervical spine with limited range of motion, would fall under category IV as indicated on page 392. This would indicate that the patient has a 28 percent permanent partial disability of the whole person which calculates to 80 percent of the cervical spine as indicated on page 427. This is in place of the 15 percent that I previously had calculated. This is at variance with a statement signed by Dr. David I. Krohn, District Medical Advis[e]r who indicated that the patient has no disability following the excision of the cervical dis[c]s and the three level fusion."

In a decision dated May 23, 2005, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office held that a schedule award is not payable for impairment of the back or to the body as a whole.

On appeal appellant argues that the Office refused to accept the disability rating issued by the treating physician -- 28 percent -- despite the fact that it was in accordance with the A.M.A., *Guides* (5th ed. 2001).

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of

¹ 5 U.S.C. § 8107.

permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.²

It is well established that no schedule award is payable for a member, organ or function of the body not specified in the Act or in the regulations.³ Because neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back, neck or spine, no claimant is entitled to such an award.⁴ Indeed, the Act specifically excludes the back from the definition of “organ.”⁵

ANALYSIS

Appellant filed a claim for a schedule award for the cervical spine impairment caused by his January 20, 2004 employment injury and his authorized spinal surgery. He supported his claim with medical opinion evidence explaining that he had a 28 percent permanent impairment of the whole person, or an 80 percent permanent impairment of the cervical spine, under the criteria set forth in the A.M.A., *Guides*. But no such schedule award is payable as a matter of law. Although the Office evaluates the degree of permanent impairment according to the standards set forth in the A.M.A., *Guides*, and although Dr. Carolan’s rating may be correct under those standards, the Office may not issue a schedule award for a member, organ or function of the body not specified in the Act or its implementing regulations. The statute is controlling in this matter. Congress has determined what schedule awards are payable, and no award may issue for impairment of the cervical spine. For the same reason, no schedule award is payable for permanent impairment of “the whole person,” notwithstanding the provision for such ratings in the A.M.A., *Guides*.⁶ The Board will affirm the Office’s February 8 and May 23, 2005 decisions denying appellant’s claim for a schedule award.

CONCLUSION

The Board finds that appellant is not entitled to a schedule award for the cervical spine impairment causally related to his January 20, 2004 employment injury. No such award is authorized by law.

² 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001).

³ *William Edwin Muir*, 27 ECAB 579 (1976) (this principle applies equally to body members that are not enumerated in the schedule provision as it read before the 1974 amendment, and to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendment).

⁴ *E.g.*, *Timothy J. McGuire*, 34 ECAB 189 (1982) (back); *Robert Henry Guy*, 29 ECAB 734 (1978) (neck, esophagus, chest); *Luis Manalo*, 15 ECAB 400 (1964) (spine).

⁵ 5 U.S.C. § 8101(19).

⁶ *E.g.*, *Ernest P. Govednick*, 27 ECAB 77 (1975).

ORDER

IT IS HEREBY ORDERED THAT the May 23 and February 8, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 17, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board