

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

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VINCENT F. RATCLIFF, Appellant )

and )

U.S. POSTAL SERVICE, OFFICE OF THE )  
INSPECTOR GENERAL, Dallas, TX, Employer )

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**Docket No. 06-385  
Issued: April 20, 2006**

*Appearances:*  
*Vincent F. Ratcliff, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On December 7, 2005 appellant filed a timely appeal from the August 26, 2005 merit decision of the Office of Workers' Compensation Programs, which awarded compensation for permanent impairment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the schedule award.

**ISSUE**

The issue is whether appellant has more than a two percent permanent impairment of his right upper extremity and a one percent permanent impairment of his left upper extremity.

**FACTUAL HISTORY**

On April 28, 2000 appellant, then a 39-year-old special agent, sustained an injury in the performance of duty when he was involved in a car accident. The Office accepted his claim for multiple spasms and contusions, concussion, left ankle sprain and aggravation of degenerative

disc disease of the cervical and lumbar spine. The Office authorized a total anterior discectomy and partial vertebrectomy at L5-S1, an anterior interbody fusion at L5-S1 with iliac bone graft and anterior instrumentation at the same level.

On April 28, 2002 appellant filed a claim for a schedule award. On October 16, 2002 Dr. James D. Cable, Board-certified in family medicine, reported that appellant's sensory deficit in the right upper extremity was most consistent with a C6 radiculopathy, which can cause a maximum upper extremity impairment of eight percent. He graded appellant's sensory deficit at 20 percent, resulting in a 2 percent impairment of the right upper extremity. Dr. Cable added that the sensory deficit involving the dorsum of appellant's left hand was most consistent with a C7 radiculopathy, which can cause a maximum upper extremity impairment of five percent. He graded the sensory deficit at 20 percent, leaving a 1 percent impairment of the left upper extremity. Dr. Cable reported that motor and sensory examination was intact for both lower extremities. He explained that he was unable to rate any impairment resulting from the lower back because appellant had no residual radiculopathy, even though he did have surgery in that area.

On March 3, 2004 Dr. Tracey Rae Adams, Board-certified in physical medicine and rehabilitation, rated the permanent impairment of appellant's spine, cervical and lumbar, at 10 percent.

On August 18, 2005 an Office medical adviser reviewed the reports of Dr. Cable and Dr. Adams. He noted that Dr. Adams' rating was a diagnosis-based estimate for the spine, which was not a scheduled member of the body. The Office medical adviser noted that Dr. Cable reported no evidence of motor or sensory deficits in the lower extremities, and therefore there was no impairment of the lower extremities. The medical adviser reported that Dr. Cable properly calculated a two percent permanent impairment of the right upper extremity and a one percent permanent impairment of the left.

In a decision dated August 26, 2005, the Office issued a schedule award for a two percent permanent impairment of the right upper extremity and a one percent permanent impairment of the left upper extremity. The Office denied any schedule award for impairment of the lower extremities.

On appeal, appellant argues that the Office disregarded the ratings reported by Dr. Cable on October 16, 2002 and by Dr. Adams on March 3, 2004.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> 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

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<sup>1</sup> 5 U.S.C. § 8107.

permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>2</sup>

### ANALYSIS

No schedule award is payable for a member, function or organ of the body that is not specified in the Act or in the regulations.<sup>3</sup> Because neither the Act nor the regulations provide a schedule award for the permanent loss of use of the back, no claimant is entitled to such an award.<sup>4</sup>

Dr. Adams, the physiatrist, rated the impairment of appellant's spine at 10 percent. Although such a rating is provided by the A.M.A., *Guides*, the statute does not authorize such a schedule award because neither the back, cervical spine nor the lumbar spine are specified in the Act or in the regulations as members of the body for which a schedule award is payable. Indeed, the Act specifically excludes the back from the definition of "organ."<sup>5</sup> The Office medical adviser did review Dr. Adams' report and correctly observed that no schedule award is payable for the impairment rating she reported.

Amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. As the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.<sup>6</sup>

Dr. Cable, the specialist in family medicine, reported that appellant's motor and sensory examination was intact for both lower extremities; there was no residual radiculopathy following surgery. He correctly noted that no schedule award was payable for the lower extremities under those circumstances, and the Office properly denied such a schedule award.

Dr. Cable did find an impairment of both upper extremities originating from the cervical spine. He determined that sensory deficit in the right upper extremity was most consistent with a C6 radiculopathy. According to Table 16-13, page 489, of the A.M.A., *Guides*, the maximum upper extremity impairment due to unilateral sensory deficit of the C6 spinal nerve is eight percent. Using the grading scheme set out in Table 16-10, page 482, Dr. Cable graded the severity of the sensory deficit at 20 percent, or Grade 4 for "distorted superficial tactile

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

<sup>3</sup> *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).

<sup>4</sup> *E.g., Timothy J. McGuire*, 34 ECAB 189 (1982).

<sup>5</sup> 5 U.S.C. § 8101(19).

<sup>6</sup> *Rosella L. Skinner*, 37 ECAB 398 (1986).

sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity.” Following the procedure set forth in Table 16-10, Dr. Cable correctly multiplied the severity of the sensory deficit, 20 percent, by the maximum upper extremity impairment of 8 percent to obtain a 1.6 percent impairment of the right upper extremity due to sensory deficit of the C6 spinal nerve, which the Office rounded to 2 percent.

Dr. Cable also reported that the sensory deficit involving the dorsum of appellant’s left hand was most consistent with a C7 radiculopathy. Table 16-13, page 489, of the A.M.A., *Guides* provides that the maximum upper extremity impairment due to unilateral sensory deficit of the C7 spinal nerve is five percent. He graded the sensory deficit again at 20 percent (Grade 4) under Table 16-10, page 482, and correctly calculated that appellant had a 1 percent impairment of the left upper extremity due to sensory deficit of the C7 spinal nerve.

### **CONCLUSION**

The Board finds that appellant has no more than a two percent permanent impairment of his right upper extremity or a one percent permanent impairment of his left upper extremity. The Office properly followed standardized procedures for determining appellant’s permanent impairment and properly denied a schedule award for the back and for the lower extremities.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 26, 2005 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: April 20, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees’ Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees’ Compensation Appeals Board