

On December 6, 2003 appellant filed a claim for a schedule award. By letter dated March 10, 2004, the Office requested that she submit medical documentation in support of her claim.

Appellant filed a second claim for a schedule award on June 29, 2004. She submitted a June 11, 2004 medical report from Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon. Dr. Kaffen applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th edition) and concluded that she had no (zero) percent impairment of either the right or left lower extremity due to her work injury. He explained that impairments due to sensory loss was zero according to A.M.A., *Guides* 424, Table 15-15 and impairments due to loss of power and motor deficits were zero according to A.M.A., *Guides* 424, Table 15-16. Additionally, appellant found no conditions of the lower extremities. Dr. Kaffen noted that appellant had reached maximum medical improvement (MMI) sometime in the year 2000.

By decision dated November 9, 2004, the Office denied appellant's claim for a schedule award, as Dr. Kaffen reported no ratable impairment.

By letter dated November 14, 2004, she requested an oral hearing which was held on August 2, 2005. No new evidence was submitted. By decision dated September 29, 2005, the hearing representative affirmed the denial of appellant's claim for a schedule award for the reason that there was no medical evidence to establish that she sustained any permanent impairment to a scheduled member related to her employment injury of March 2, 1998.

By letter dated October 7, 2005, appellant requested reconsideration. She submitted a September 27, 2005 medical report from Dr. Jeff Kirschman, a Board-certified family practitioner, with a general certificate in occupational medicine. He stated:

"I am the treating physician of the above-named injured worker. Utilizing the A.M.A., *Guides* 5th [e]dition, it is my opinion, with a reasonable degree of medical certainty, that the injured worker has the following permanent impairments due to her work-related injuries:

"Thoracic Spine: 8 [percent] Whole Person Impairment

Based on Table 15-4, page 389, DRE

[Diagnosis-Related Estimates Method]

Thoracic Category II

"Lumbar Spine: 6 [percent] Whole Person Impairment

Based on Table 15-3, page 384, DRE

Lumbar Category II

"Overall [i]mpairment = 14 [percent] [w]hole [p]erson [i]mpairment."

By letter dated January 11, 2006, the Office explained to Dr. Kirschman that impairment ratings under the Federal Employees' Compensation Act are based on the effected body part, not the whole person. It noted that the Act did not provide for a schedule award for loss of use of the back or spine. The Office requested that Dr. Kirschman address whether there was significant pain, sensory deficit or motor impairment of the lower extremities as a result of the accepted low back, injury. The Office requested Dr. Kirschman's reply by February 10, 2006.

After receiving no response from Dr. Kirschman, the Office referred the record to an Office medical adviser on February 21, 2006 in order to make a determination as to whether appellant had any ratable impairment. In a report dated February 25, 2006, the Office medical adviser noted that she had a no impairment of the lower extremities because she had no motor or sensory deficits and no atrophy. He opined:

"The date of MMI is 'sometime in the year 2000,' based on Dr. Kaffen's office note from [June 11, 2004]. The date of MMI is thus, no later than [December 31, 2000]. Based on the office note from Dr. Kaffen dated [June 11, 2004], the bilateral lower extremity exam[ination] is essentially normal. With a normal exam[ination], the claimant has a 0 [percent] [permanent partial impairment] for both lower extremities. There are no lower extremity findings to justify an impairment rating. [Appellant] does, however, have significant complaints pertaining to her low back. Subjectively, she has constant, severe, low back pain. [Appellant] denies radicular symptoms in her lower extremities. There are also no objective (*i.e.*, physical exam[ination] or radiographic) findings. Based on this, [appellant] is DRE lumbar Category II. This would give her a maximum eight [percent] whole person impairment for her lumbar complaints. This is not to be confused with [her] bilateral lower extremity PPI which is zero [percent] due to a normal exam[ination] as mentioned above.

In a decision dated March 6, 2006, the Office affirmed the denial of appellant's claim for a schedule award.

LEGAL PRECEDENT

The schedule award provision of the Act¹ and its implementing regulation² 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *See id.*; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.⁴ Neither the Act nor its implementing regulation provides for the payment of a schedule award for the permanent loss of use of the back or the body as a whole and no claimant is entitled to such a schedule award.⁵ The Board notes that section 8101(20) 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.⁷

ANALYSIS

The Board finds that appellant has not submitted medical evidence to support her entitlement to a schedule award. Her claim was accepted for a paralumbar strain. The Act does not provide for a schedule award for impairment to the back.⁸ Appellant would be entitled to a schedule award if her back injury resulted in a permanent impairment to either her upper or lower extremities.⁹ However, there is no evidence in this case that she sustained any impairment to an extremity as a result of her accepted paralumbar strain. Dr. Kaffen found that appellant had sustained a zero percent impairment of the right and left lower extremity due to her injury as there was no evidence of sensory loss, no loss of power, no motor deficits and a normal examination. Dr. Kirschman made no findings with regard to whether she had sustained an impairment to her lower extremities as a result of her accepted work condition. Rather, Dr. Kirschman found that appellant sustained a 14 percent whole person impairment based on the impairment to the thoracic and lumbar regions of the spine. However, a schedule award is not payable under the Act for an impairment of the whole person.¹⁰ Dr. Kirschman did not respond to the Office's request to clarify his opinion. The Office properly referred the record to the Office medical adviser, who found that she had no impairment of her lower extremities as the examination was normal, with no motor or sensory deficits. There were no lower extremity findings to justify an impairment rating. Appellant failed to establish that she is entitled to a schedule award under the Act.

CONCLUSION

The Board finds that appellant is not 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. § 8101(20).

⁷ *Thomas J. Engelhart*, *supra* note 4.

⁸ *Jay K. Tomokiyo*, *supra* note 5.

⁹ *Thomas J. Engelhart*, *supra* note 4.

¹⁰ *Phyllis F. Cundiff*, 52 ECAB 439, 440 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 6, 2006 and September 29, 2005 are affirmed.

Issued: August 22, 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