

May 22, 2002 magnetic resonance imaging scan testing showed small disc bulges at C4-5, C5-6 and C6-7 without significant spinal stenosis or neural foraminal narrowing.

The Office accepted that appellant sustained cervical and thoracic spine strains. She received appropriate compensation for periods of disability.

Appellant continued to receive medical treatment from attending physicians who diagnosed such conditions as cervical and thoracic facet syndrome, cervical radiculopathy, intervertebral disc syndrome, myofascial pain syndrome and occipital neuralgia headaches.¹

On July 8, 2003 appellant claimed that she was entitled to schedule award compensation due to her accepted employment injuries.

In a report dated August 6, 2003, Dr. Bernard Z. Albina, a Board-certified orthopedic surgeon, who served as an Office referral physician, concluded that appellant continued to show clinical signs of cervical and thoracic strains which were related to her March 13, 2002 employment injury. Dr. Albina indicated that x-rays of the cervical spine showed normal cervical curvature with no bony abnormalities.

The findings of December 19, 2003 electromyogram (EMG) and nerve conduction testing of the upper extremities showed mild right median mononeuropathy at the wrist consistent with carpal tunnel syndrome with no evidence of radiculopathy, plexopathy or “any other significant peripheral nerve or muscle pathology affecting any extremity.”²

In a report dated January 21, 2004, Dr. E. Floyd Robinson, an attending Board-certified neurosurgeon, stated that appellant did not appear to have any significant injury to her spine and posited that she could return to her regular work for the employing establishment.

The Office terminated appellant’s disability compensation effective March 2, 2004. She continued to receive compensation for medical treatment related to her accepted employment injuries.

In a report dated October 29, 2005, Dr. Trinh Tran, an attending chiropractor, indicated that on examination appellant did not exhibit any upper extremity weakness but did show some limitation of upper extremity motion. He diagnosed cervical intervertebral disc syndrome, cervicgia and thoracic back pain related to the employment injury and indicated that appellant had reached maximum medical improvement. Dr. Tran concluded that appellant had a five percent impairment of the whole person by applying Table 73 of the fourth edition of the

¹ Appellant returned to limited-duty work for the employing establishment for a short period in October 2003. Around this time she began to complain of intermittent pain, tingling and numbness in her upper extremities. Appellant periodically returned to limited-duty work thereafter.

² Electromyogram and nerve conduction testing of the lower extremities showed completely normal results. In a report dated January 13, 2004, Dr. Viet Nguyen, an attending Board-certified family practitioner, stated that appellant did not have any clinical signs consistent with carpal tunnel syndrome.

American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He stated that appellant fell under Category 2 of Table 73 because she had clinical signs of a neck injury without radiculopathy or loss of motion segment integrity. In a supplemental report received by the Office on January 23, 2006, Dr. Tran indicated that he applied the standards of Table 15-5 of the fifth edition of the A.M.A., *Guides* and still found that appellant had a five percent impairment of the whole person.

In a report dated February 21, 2006, Dr. Frank Sifuentes, an attending Board-certified family practitioner, stated that he agreed with Dr. Tran that appellant had a five percent impairment of the whole person.

In a report dated March 7, 2006, Dr. Ronald Blum, a Board-certified orthopedic surgeon serving as an Office district medical adviser, concluded that appellant was not entitled to schedule award compensation due to her employment injuries. Dr. Blum noted that a schedule award could not be granted for impairment of the cervical spine or whole person and that there was no evidence that appellant had any employment-related impairment of either upper extremity.

By decision dated March 20, 2006, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she is entitled to schedule award compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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. The Board has found that schedule awards may also be granted for conditions which are not covered under the compensation schedule if the condition is shown to have contributed to impairment of a scheduled member.⁵ The Board has specifically held that a schedule award may not be granted for impairment of the spine⁶ or the whole person.⁷

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* (5th ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁸

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ See *Thomas J. Engelhart*, 50 ECAB 319, 320-21 (1999).

⁶ *Pamela J. Darling*, 49 ECAB 286 (1989); *James E. Mills*, 43 ECAB 215, 219 (1991).

⁷ See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

⁸ *Id.*

Under section 8101(2) of the Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.⁹

ANALYSIS

The Office accepted that appellant sustained cervical and thoracic spine strains on March 13, 2002. She later claimed that she was entitled to schedule award compensation due to these injuries. The Board finds that appellant did not submit sufficient medical evidence to establish that she is entitled to schedule award compensation.

Appellant submitted an October 29, 2005 report and an undated supplemental report of Dr. Tran, an attending chiropractor, who concluded that she had a five percent permanent impairment of the whole person by applying Table 15-5 of the fifth edition of the A.M.A., *Guides*.¹⁰ The Board notes, however, that the reports of Dr. Tran do not constitute probative medical evidence. His treatment was not limited to manual manipulation of the spine nor did he diagnose a spinal subluxation from x-rays taken around the time of appellant's injury.¹¹

Appellant also submitted a February 21, 2006 report in which Dr. Sifuentes, an attending Board-certified family practitioner, agreed with Dr. Tran that appellant had a five percent impairment of the whole person. Therefore, Dr. Sifuentes appears to have applied Table 15-5 of the A.M.A., *Guides*, which relates to impairment of the cervical spine. Although this report constitutes medical evidence, it does not show that appellant is entitled to schedule award compensation as a schedule award may not be made for impairment of the spine¹² or the whole person.¹³

In addition, there is no evidence that appellant is entitled to a schedule award because the effects of her employment-related cervical condition extended into a scheduled member, *i.e.*, her left or right upper extremity, and caused permanent impairment there.¹⁴ It should be noted that the findings of December 19, 2003 EMG and nerve conduction testing of the upper extremities showed no evidence of radiculopathy, plexopathy or "any other significant peripheral nerve or muscle pathology affecting any extremity."¹⁵ Dr. Blum, a Board-certified orthopedic surgeon,

⁹ 5 U.S.C. § 8101(2). See *Jack B. Wood*, 40 ECAB 95, 109 (1988).

¹⁰ A.M.A., *Guides* 392, Table 15-5. Dr. Tran found that appellant fell under Category 2 of Table 15-5 because she had clinical signs of a neck injury without radiculopathy or loss of motion segment integrity.

¹¹ See *supra* note 9 and accompanying text.

¹² *Pamela J. Darling*, 49 ECAB 286 (1989); *James E. Mills*, 43 ECAB 215, 219 (1991).

¹³ See *supra* notes 6 and 7 and accompanying text.

¹⁴ See *supra* note 5 and accompanying text.

¹⁵ The testing showed mild right median mononeuropathy at the wrist consistent with a carpal tunnel syndrome, but the objective clinical findings did not support a finding of carpal tunnel syndrome and the Office has not accepted that appellant has employment-related carpal tunnel syndrome.

serving as an Office district medical adviser, properly concluded in his March 7, 2006 report that appellant was not entitled to schedule award compensation due to her employment injuries.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she is entitled to schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' March 20, 2006 decision is affirmed.

Issued: December 28, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board