

nucleus pulposus (HNP) at L4-5, fracture at T-11, and reflex sympathetic dystrophy.² On June 3, 1986 appellant underwent a laminectomy, discectomy, and foraminotomy procedure at L4-5 and on February 6, 1990 she underwent a discectomy procedure at L3-4 and L4-5. Both procedures were authorized by the Office.

On May 4, 1996 appellant began working for the employing establishment as a modified part-time flexible clerk and the Office later adjusted her compensation effective that date based on its determination that her actual wages in the position represented her wage-earning capacity.

In November 2001 appellant stopped work after she fractured her right tibia in a nonwork-related accident.

Appellant filed a claim for schedule award entitlement related to her February 24, 1986 employment injury. By letter dated March 23, 2004, the Office requested that Dr. Gerald S. Goldberg, an attending Board-certified neurologist, submit a report based on a current examination which addressed the extent of appellant's permanent impairment.³

In June 2004 the Office received a February 11, 2004 report in which Dr. Goldberg stated that he reevaluated appellant on February 11, 2004 after last seeing her in January 2003. He indicated that appellant "injured her back and had left leg pain that was a workers' comp[ensation] accident" and noted that she was "stable with her back and left leg problem." Dr. Goldberg stated that appellant "also broke her right leg and due to complications required amputation."

By decision dated August 3, 2004, the Office denied appellant's claim on the grounds that she had not submitted medical evidence showing that she sustained permanent impairment which entitled her to a schedule award.⁴

Appellant requested a review of the written record by an Office hearing representative.

In September 2004 the Office received an undated form report in which Dr. Goldberg stated that appellant reached maximum medical improvement on January 27, 2004 and noted that he last examined her in February 2004. Dr. Goldberg indicated that appellant's L4-5 nerve root was affected, but provided the notation "defer to orthopedics" in response to a question regarding whether appellant had permanent impairment of her lower extremities.

By decision dated and finalized December 17, 2004, the Office hearing representative affirmed the Office's August 3, 2004 decision. The hearing representative stated that appellant did not meet her burden of proof to submit medical evidence showing that she sustained

² Appellant stopped work on February 24, 1986 and returned to work for several periods in light-duty positions for the employing establishment. She received compensation from the Office for periods of partial and total disability.

³ The letter was copied to appellant at her current address. For the several years prior to this referral, the record contained limited medical evidence concerning appellant's medical condition.

⁴ The Office did not receive a response from Dr. Goldberg in connection with its March 2004 request.

permanent impairment which entitled her to a schedule award. He indicated that there was no basis to further develop the medical evidence regarding this matter.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of her claim, including that she sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.⁶ The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.⁷

The schedule award provision of the Act⁸ and its implementing regulation⁹ 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.¹⁰

ANALYSIS

Due to a February 24, 1986 employment injury, appellant sustained a back strain, HNP at L4-5, fracture at T-11, and reflex sympathetic dystrophy. She filed a claim for schedule award entitlement but the Office determined that she did not submit medical evidence showing that she sustained permanent impairment which entitled her to a schedule award.

The Board finds that appellant did not meet her burden of proof to establish that she is entitled to a schedule award for permanent impairment because she did not submit medical evidence establishing such entitlement.

In support of her schedule award claim, appellant submitted a February 11, 2004 report in which Dr. Goldberg, an attending Board-certified neurologist, indicated that she "injured her back and had left leg pain that was a workers' comp[ensation] accident" and noted that she was "stable with her back and left leg problem." Dr. Goldberg stated that appellant "also broke her

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Bobbie F. Cowart*, 55 ECAB ____ (Docket No. 04-1416, issued September 30, 2004).

⁷ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁸ 5 U.S.C. § 8107.

⁹ 20 C.F.R. § 10.404 (1999).

¹⁰ *Id.*

right leg and due to complications required amputation.”¹¹ In an undated form report, received by the Office in September 2004, Dr. Goldberg noted that appellant reached maximum medical improvement on January 27, 2004 and indicated that her L4-5 nerve root was affected, but provided the notation “defer to orthopedics” in response to a question regarding whether appellant had permanent impairment of her lower extremities.

Dr. Goldberg did not provide any opinion on whether appellant had an employment-related permanent impairment which would entitle her to schedule award compensation. He did not indicate that she had permanent impairment related to her February 24, 1986 employment injury, nor did Dr. Goldberg provide any findings which would allow a calculation of permanent impairment in accordance with the standards of the A.M.A., *Guides*. The record does not contain a report from any physician which provides an opinion on permanent impairment in accordance with these standards.

Appellant was provided with an opportunity to submit medical evidence which addressed her claim that she had permanent impairment related to her February 24, 1986 employment injury. She failed to submit this evidence despite the fact that she had the primary responsibility to establish entitlement to schedule award compensation under the relevant standards for granting such compensation.¹² The Office properly noted that there was no basis to further develop the medical evidence regarding this matter and correctly denied her claim for schedule award compensation.

CONCLUSION

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

¹¹ It should be noted that this right leg injury was due to a nonwork-related accident.

¹² See *supra* notes 6 through 10 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated December 17 and August 3, 2004 are affirmed.

Issued: January 20, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board