

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

MICHAEL R. CURRY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Duncanville, TX, Employer**

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**Docket No. 05-1617
Issued: January 6, 2006**

Appearances:
Michael R. Curry, 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 July 27, 2005 appellant filed a timely appeal of the June 7, 2005 merit decision of the Office of Workers' Compensation Programs which denied his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.¹

ISSUE

The issue is whether appellant is entitled to a schedule award.

FACTUAL HISTORY

Appellant, a 52-year-old mail processor, has an accepted traumatic injury claim for lumbar strain, which arose on November 19, 2003. On April 4, 2005 he filed a claim for a

¹ The record on appeal includes evidence that the Office received after issuing the June 7, 2005 decision. The Board's review is limited to the evidence in the case record that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

schedule award. In a March 15, 2005 report, Dr. Nicolas A. Padron, a Board-certified family practitioner, noted that appellant's physical examination revealed lumbar tenderness to palpation and some decreased range of motion. He found that appellant had five percent whole person impairment based on a diagnosis-related estimate, category II, lumbar spine injury. According to Dr. Padron, he reached maximum medical improvement on March 15, 2005.

The Office referred Dr. Padron's March 15, 2005 report to its medical adviser for review. In a report dated June 3, 2005, the Office medical adviser noted that Dr. Padron's whole person impairment rating was based on abnormalities of the lumbar spine. He explained that, because the spine was not a schedule member, Dr. Padron's March 15, 2005 impairment rating could not form the basis of a schedule award. The medical adviser also noted that, while there were guidelines for rating impairment due to radiculopathy, there was no medical evidence that appellant had any radiculopathy involving the lower extremities. He concluded that there was no evidence to support a ratable impairment.

In a decision dated June 7, 2005, the Office denied appellant's claim for a schedule award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use, of specified members, functions and organs of the body.² No schedule award is payable for a member, function or organ of the body that is not specified in the Act or in the implementing regulations.³ The Act's list of schedule members includes the eye, arm, hand, fingers, leg, foot and toes.⁴ The Act also specifically provides for compensation for loss of hearing and loss of vision.⁵ By authority granted under section 8107(c)(22) of the Act, the Secretary of Labor added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue to the list of schedule members.⁶

The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating

² 5 U.S.C. § 8107(a), (c).

³ *Henry B. Floyd, III*, 52 ECAB 220, 222 (2001).

⁴ 5 U.S.C. § 8107(c).

⁵ *Id.*

⁶ 20 C.F.R. § 10.404(a) (1999).

schedule losses.⁷ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁸

ANALYSIS

Neither the Act, nor the regulations provide for the payment of a schedule award for the permanent loss of use, of the back or the body as a whole.⁹ Appellant's treating physician, Dr. Padron, rated five percent impairment of the whole person under Table 15-3, A.M.A., *Guides*, based on finding of the lumbar spine. This particular table provides impairment ratings for injuries due to the lumbar spine. The only physical findings Dr. Padron reported were lumbar tenderness to palpation and some decreased spinal range of motion. The Office medical adviser correctly noted that, because the spine was not a schedule member, an award could not be granted for impairment of the back. Therefore, appellant is not entitled to a schedule award based on Dr. Padron's finding of five percent whole person impairment due to a diagnosis-related estimate category II, lumbar spine injury. To the extent that appellant's accepted back injury results in impairment to his lower extremities, an award would be appropriate under the Act. In this case, however, Dr. Padron did not provide findings of any radiculopathy involving appellant's extremities. Accordingly, the Board finds that the medical evidence of record fails to establish that he has an impairment of a schedule member. The Office, therefore, properly denied appellant's claim for a schedule award.

CONCLUSION

The Board finds that appellant is not entitled to a schedule award.

⁷ 20 C.F.R. § 10.404 (1999).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003); FECA Bulletin No. 01-05 (issued January 29, 2001).

⁹ *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 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