

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

C.F., Appellant)

and)

FEDERAL JUDICIARY, U.S. DISTRICT)
COURT, WESTERN DISTRICT, OK, Employer)

Docket No. 06-1233
Issued: November 6, 2006

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 9, 2006 appellant filed a timely appeal from the April 28, 2006 merit decision of the Office of Workers' Compensation Programs, which denied her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether appellant is entitled to a schedule award as a result of her accepted employment injury.

FACTUAL HISTORY

On April 19, 1995 appellant, then a 49-year-old legal secretary, sustained an emotional condition in the performance of duty as a result of the Oklahoma City bombing of the A.P. Murrah Federal Building, which was next to the courthouse in which she worked. The Office accepted her claim for "emotional reaction" and paid compensation for wage loss on the periodic rolls.

On June 9, 1995 appellant filed a claim for a schedule award. No action appeared to be taken on this claim until August 29, 2002, when the Office asked Dr. Donald B. Chesler, the attending psychiatrist, to evaluate any permanent impairment. On September 6, 2002 Dr. Chesler explained that an evaluation of permanent impairment was beyond the scope of his care because he saw appellant only for medication management. He recommended that the Office use an outside consultant. Dr. Chesler reported, however, that physically, to his knowledge, appellant was in relatively good shape.

On March 9, 2006 appellant filed another claim for a schedule award. In a periodic report dated April 12, 2006, Dr. Chesler related appellant's history, her diagnosis of post-traumatic stress disorder and recurrent major depressive disorder, her continuing disability for work and her poor prognosis.

In a decision dated April 28, 2006, the Office denied appellant's claim for a schedule award. The Office found no medical evidence to support that appellant had any impairment of a scheduled member or function of the body.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ 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 permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.²

The burden is upon the employee to establish by evidence that she is entitled to compensation.³

ANALYSIS

Appellant has filed claims for a schedule award but has submitted no evidence that she is entitled to such an award. Had she lost one of her arms as a result of her accepted employment injury, she would be entitled to 312 weeks' compensation.⁴ Had she lost one of her legs, she would be entitled to 288 weeks' compensation.⁵ But there is no indication in the record that she has suffered any loss or any permanent impairment of one of the members, functions or organs

¹ 5 U.S.C. § 8107.

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

³ *Harold Hendrix*, 1 ECAB 54 (1947).

⁴ 5 U.S.C. § 8107(c)(1).

⁵ *Id.* at § 8107(c)(2).

listed in the schedule.⁶ Her injury was a mental one, an emotional reaction to the 1995 bombing. No physician has even suggested that this emotional reaction has permanently impaired a scheduled member, function or organ of her body. To the contrary, Dr. Chesler, the attending psychiatrist, reported on September 6, 2002 that, physically, to his knowledge, appellant was in relatively good shape. With no evidence to support her claim, appellant has not met her burden of proof.

CONCLUSION

The Board finds that appellant is not entitled to a schedule award as a result of her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁶ In addition to arm and leg, the schedule includes hand, foot, eye, fingers, toes, hearing, vision, serious disfigurement of the face or head or neck, breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina. *See* 20 C.F.R. § 10.404(a) (1999).