

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

G.G., Appellant

and

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

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**Docket No. 06-1742
Issued: November 21, 2006**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 24, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 7, 2006 denying his schedule award claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of the schedule award decision.

ISSUE

The issue is whether appellant has established that he is entitled to a schedule award.

FACTUAL HISTORY

On April 15, 2004 appellant, then a 48-year-old carrier, filed a traumatic injury claim alleging injury to his neck, shoulder and lower back after a group of mailboxes fell from the wall. On February 3, 2005 the Office accepted his claim for lumbar strain and cervical sprain.

On April 7, 2006 appellant filed a claim for a schedule award. By letter dated May 4, 2006, the Office requested that Dr. Lubor Jarolimek, an attending orthopedic surgeon, provide an

impairment rating utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.). In a report dated May 10, 2006, Dr. Jarolimek determined that appellant had an eight percent whole person impairment under Table 15-20 of the cervical spine. He diagnosed cervical spine strain, cervical spine muscle spasm, lumbar spine strain and lumbar spine muscle spasm.

In a report dated June 6, 2006, an Office medical adviser reviewed the medical evidence and opined that appellant had no impairment of the upper or lower extremities. He explained:

“The fifth [edition] of the [A.M.A., *Guides*] makes no provision for impairment awards due to [s]trains or [s]prains.

“Strains or sprains are not probative for [Office] adjudication because they are not considered to be permanent.

“Whole person awards are not probative for [Office] adjudication.

“The cervical [magnetic resonance imaging] [scan] in this claimant did show ‘multiple dis[c] protrusions with degenerative changes throughout the cervical spine’; however, Dr. Jarolimek did not diagnoses those as being part of the injury of [appellant].

“OPINION

“There is [no] probative medical evidence to support a PPI [permanent partial impairment] of the extremities in [appellant].”

By decision dated July 7, 2006, the Office denied appellant’s claim for a schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act¹ provides for compensation to employees sustaining permanent loss, or loss of use, of specified members of the body. The Act, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such a determination is a matter which results in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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 Office for evaluating schedule losses and the Board has concurred in such adoption.²

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulation.³ As neither the Act nor its regulations provide for

¹ 5 U.S.C. §§ 8101-8193.

² See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

³ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

the payment of a schedule award for the permanent loss of use of the back or the body as a whole, no claimant is entitled to such a schedule award.⁴ The Board notes that section 8107(19) specifically excludes the back from the definition of organ.⁵ 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.⁶

ANALYSIS

The Office accepted appellant's claim for lumbar strain and cervical strain. However, the Act does not provide for a schedule award based on impairment to the back or spine. Appellant may receive a schedule award if the accepted condition causes impairment to the upper or lower extremities. However, the medical evidence of record does not establish any such impairment.

Appellant submitted the report of Dr. Jarolimek who opined that appellant had an eight percent impairment of the whole person. However, the Act does not authorize the payment of a schedule award for the permanent impairment of the "whole person."⁷ Accordingly, Dr. Jarolimek's findings with regard to whole person impairment may not be used as a basis for entitlement to schedule award compensation.

Amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member.⁸ As the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for the permanent impairment of upper or lower extremities even though the cause of the impairment originates in the spine.⁹ However, Dr. Jarolimek did not address any impairment to appellant's extremities. The Office medical adviser specifically noted that there was no probative medical evidence to support a permanent partial impairment of a schedule award. Although the MRI scan revealed multiple disc protrusions accompanied by degenerative changes in the cervical spine, Dr. Jarolimek did not address how the accepted condition gave rise to impairment of the upper extremities.

There is no evidence that appellant sustained a permanent impairment to a scheduled member of the body. The Office properly denied his claim for a schedule award.

⁴ See *Jay M. Tomokiyo*, 51 ECAB 361 (2000).

⁵ 5 U.S.C. § 8107(c).

⁶ *Thomas J. Engelhart*, *supra* note 3.

⁷ *Ernest P. Govednick*, 27 ECAB 77 (1975).

⁸ *Rozella L. Skinner*, 37 ECAB 398 (1986).

⁹ *Id.*

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 7, 2006 is affirmed.

Issued: November 21, 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