

impairment and the Federal Employees' Compensation Act does not provide a schedule award for whole body impairment. However, Dr. Lazar did report intermittent radicular pain into the left arm. The case was remanded for a medical report that properly addressed whether appellant had any permanent impairment to a scheduled member of the body.

The Office referred appellant, together with medical records and a statement of accepted facts, to Dr. Georges Boutin, a Board-certified orthopedic surgeon.² The Office provided information regarding schedule awards under the Act and application of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. In a report dated June 28, 2004, Dr. Boutin provided a history and results on examination. He noted that appellant reported neck and lumbar pain, radiating into the arms and legs. Dr. Boutin diagnosed status post cervical and lumbar sprain with persistent pain. He stated, "The question arises as to impairment of the upper or lower extremities for a schedule award. We do agree with Dr. Lazar that this patient remains with an impairment of the whole body of 10 percent. However, there is no objective evidence of impairment of either the lower or the upper extremities based on the schedule award guidelines and [the] A.M.A., *Guides* -- 5th edition."

By decision dated July 21, 2004, the Office found that appellant was not entitled to a schedule award under 5 U.S.C. § 8107 based on the medical evidence. Appellant requested a review of the written record on August 13, 2004. In a decision dated May 31, 2005, an Office hearing representative affirmed the July 21, 2004 decision.

LEGAL PRECEDENT

Under section 8107 of the Act³ and section 10.404 of the implementing federal regulations,⁴ schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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* has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁵

² The referral letter stated that a conflict in the medical evidence existed.

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.404.

⁵ *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

ANALYSIS

The Office referred appellant to Dr. Boutin for an opinion with respect to a permanent impairment to a scheduled member of the body.⁶ Dr. Boutin stated that he agreed with Dr. Lazar that appellant had a 10 percent whole body impairment. However, as noted in the prior Board decision, the Act does not provide for a whole body impairment, nor is the back a scheduled member of the body.⁷ Unlike Dr. Lazar, Dr. Boutin does address the issue of impairment to the arms or legs. He stated that there was no objective evidence of an impairment to either the upper or lower extremities based on the A.M.A., *Guides*. This represents the weight of the medical evidence in the case. Dr. Boutin's opinion was based on a complete background and addressed the relevant issue presented. There is no probative medical evidence supporting a ratable permanent impairment to the arms or the legs. Based on the evidence of record, the Office properly determined that appellant was not entitled to a schedule award under 5 U.S.C. § 8107.

CONCLUSION

The record does not establish that appellant is entitled to a schedule award pursuant to 5 U.S.C. § 8107.

⁶ Although the referral letter reported a conflict in the evidence, there was no conflict under 5 U.S.C. § 8123(a), nor did the Board find a conflict in its prior decision. Dr. Boutin is considered a second opinion referral physician. See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

⁷ See *James E. Jenkins*, 39 ECAB 860 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 31, 2005 is affirmed.

Issued: October 31, 2006
Washington, DC

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

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

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