

to deliver mail during my workday caused my injury. My injury began with the exceptionally heavy volume of mail (catalogs, magazines, parcels, *etc.*) during November and December 1998 and has continued to be aggravated since then. Dr. [Andrew J.] Cole instructed me to file a claim at work because my job duties are the reason for the aggravation of my lower back. I have done nothing off the job to injure my lower back.”

The Office initially accepted appellant’s claim for lumbar sprain but later expanded its acceptance to include aggravation of lumbar degenerative disc disease at L5-S1.

On January 3, 2002 Dr. Harry Reese, an orthopedic surgeon and Office second-opinion physician, reported that appellant’s prognosis for improvement was poor: “It is the opinion of this examiner that she is for all intents and purposes medically fixed and stable and has received the maximum benefit of curative medical care. All additional treatment provided will be expected to be palliative.”

On March 6, 2005 appellant filed a claim for a schedule award. She submitted a February 9, 2005 “[a]ttending [p]hysician [i]mpairment [r]ating [e]xamination” from Dr. John E. Nimlos, a specialist in occupational medicine. Dr. Nimlos related appellant’s history, reviewed her medical records, described her current complaints and reported his findings on physical and electrodiagnostic examination. He diagnosed a work-related aggravation of preexisting lumbar degenerative discs with imaging and symptoms consistent with radiculopathy with predominant characteristics suggestive of S1. Dr. Nimlos rated appellant’s impairment as follows:

“[A]s I understand impairment ratings of the [employing establishment], there is no ratable impairment assigned to spinal disorders unless they cause an effect in the lower extremities as a result of nerve impingement. Relative to that, since [appellant’s] lower extremity examination is unremarkable and certainly unaffected by the nerve root irritability as there is no atrophy, fasciculation or reflex findings as an objective criterion for impairment, the motor and reflex findings would not provide for such an impairment.

“There is left side S1 consistent dorsolateral foot and lateral calf reduction in sensation, which was consistent and is similar to that noted by the independent examiner noted as far back as 2002, thus[,] consideration should be given here for that defect.

“Using the [American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001)] in the area of nerve deficits there is guidance specifically for peripheral nerves. The nervous system chapter refers to [T]able 15-18 in the section on the spine for impairment of spinal nerve root impairment affecting the lower extremity. This would be the S1 impairment. There is no objective finding for loss of strength and thus[,] the sensory impairment would be used. Using the method outlined in [C]hapter 15, section 15.12, supported by [T]able 15-15 for sensory loss, [appellant] has distorted tactile sensation with abnormal sensation and moderate pain that prevents some activities and thus[,] an appropriate multiplier would be the category two grade

multiplying the maximum percent for S1 in [T]able 15-18 x the conversion percent in [T]able 15-15 provides for a four percent impairment of the lower extremity. Thus[,] the final ratable impairment based on the [employing establishment] criteria for impairment would be four percent of the lower extremity on the left.”

In a decision dated March 14, 2006, the Office denied appellant’s claim for a schedule award. It stated that in support of her claim it had received two duty status reports and a work restriction form. The Office concluded: “The medical evidence does not support an impairment to a member or function of the body that is scheduled in 5 U.S.C. [§] 8107 or 20 C.F.R. [§] 10.404.”

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 A.M.A., *Guides*.²

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the regulation.³ Because neither the Act nor the regulation provide for the payment of a schedule award for the permanent loss of use of the back,⁴ no claimant is entitled to such an award.⁵ Amendments to the Act modified the schedule award provisions to provide for an award for 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. As the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for impairment to an extremity even though the cause of the impairment originated in the spine.⁶

A claimant seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.⁷ A claimant seeking a schedule award therefore has the burden of establishing that her accepted

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 *William Edwin Muir*, 27 ECAB 579 (1976) (this principle applies equally to body members that are not enumerated in the schedule provision as it read before the 1974 amendment and to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendment).

⁴ The Act itself specifically excludes the back from the definition of “organ.” 5 U.S.C. § 8101(19).

⁵ *E.g., Timothy J. McGuire*, 34 ECAB 189 (1982).

⁶ *Rozella L. Skinner*, 37 ECAB 398 (1986).

⁷ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

employment injury caused permanent impairment of a scheduled member, organ or function of the body.⁸

ANALYSIS

The Office overlooked the February 9, 2005 impairment evaluation by Dr. Nimlos, the orthopedic surgeon and consultant to appellant's attending physician. Dr. Nimlos followed the procedure set out on page 423 of the A.M.A. *Guides*. He identified a long-standing left-side S1 reduction in sensation and graded the sensory loss at 80 percent under Table 15-15, page 424: "Decreased superficial cutaneous pain and tactile sensibility (decreased protective sensibility), with abnormal sensations or moderate pain, that may prevent some activities." Multiplying the severity of the sensory deficit by five percent (the maximum loss of function due to an S1 sensory deficit under Table 15-18, page 424), Dr. Nimlos calculated that appellant had a four percent impairment of her left lower extremity.

Dr. Nimlos correctly evaluated appellant's impairment under the A.M.A. *Guides*. His report is well reasoned and establishes that she has a four percent impairment of her left lower extremity causally related to the accepted aggravation of degenerative disc disease at L5-S1. Maximum medical improvement, reported by the Office second-opinion physician in 2002, is established. The Board will, therefore, reverse the Office's March 14, 2006 decision denying appellant's claim and remand the case for payment of an appropriate schedule award.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that she is entitled to a schedule award as a result of her accepted employment injury.

⁸ *E.g., Russell E. Grove*, 14 ECAB 288 (1963) (where medical reports from the attending physicians showed that the only leg impairment was due to arthritis of the knees, which was not injury related, the claimant failed to meet his burden of proof to establish entitlement to a schedule award).

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2006 decision of the Office of Workers' Compensation Programs is reversed and the case remanded for further action consistent with this opinion.

Issued: January 25, 2007
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