

joint (TMJ) disorder of the jaw, as causally related to the May 23, 2002 employment injury. On December 27, 2005 appellant filed a claim for a schedule award.

The Office advised appellant that a schedule award is not payable for the back but, if the accepted back condition caused permanent impairment of a lower extremity, a schedule award was payable for the lower extremity.

On March 31, 2006 Dr. Benjamin Gulli, an attending orthopedic surgeon, provided findings on examination and diagnosed a chronic lumbar strain. He stated that appellant had a six percent impairment of the whole person due to his lumbar spine injury according to Table 15-3 at page 384 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, based on the diagnosis based estimate method for determining impairment. He stated that the criteria for this impairment rating included muscle guarding, asymmetry of spinal motion and imaging that revealed abnormality of the lumbar spine.

On October 16, 2006 a district medical adviser stated that there was no evidence of any lower extremity impairment in Dr. Gulli's report. There was no objective evidence on physical examination or magnetic resonance imaging (MRI) scan to establish impairment in a lower extremity. The district medical adviser stated that appellant had no impairment of the lower extremities for which a schedule award could be granted.

By decision dated December 27, 2006, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence did not establish that he had any permanent impairment of a scheduled member of the body causally related to his May 23, 2002 employment injury.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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*³ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

ANALYSIS

The Office accepted appellant's claim for lumbar subluxations at L4 and 5 and a TMJ disorder of the jaw.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ A.M.A., *Guides* (5th ed. 2001); *Guisepppe Aversa*, 55 ECAB 164 (2003).

On appeal, appellant contends that he is entitled to a schedule award for his accepted jaw condition. Section 8107 of the Act specifies bodily members or functions as the upper and lower extremities, eye or vision and loss of hearing.⁴ No schedule award is payable for any member, function or organ of the body not listed in section 8107 or its implementing regulation.⁵ The implementing regulation lists the breast, kidney, larynx, lung, tongue, penis, testicle, ovary, uterus/cervix and vulva/vagina. The Act does not provide for the Office to add organs to the compensation schedule on a case-by-case basis⁶ nor does the Board have the power to enlarge the provisions of either statute or regulation.⁷ In this case, a schedule award cannot be granted for any permanent impairment of appellant's jaw condition because it has not been included under the Act or regulations as a scheduled member.

Dr. Gulli found that appellant had a six percent impairment of the whole person for his lumbar spine condition based on the diagnosis based estimate method for determining impairment. While the A.M.A., *Guides* provides for impairment to the individual member and to the whole person, the Act does not provide for permanent impairment for the whole person.⁸ Therefore, appellant is not entitled to a schedule award for the whole body based on his accepted conditions. Additionally, neither the Act nor the regulations provide for the payment of a schedule award for any impairment of the back.⁹ The Act excludes the back from the definition of "organ."¹⁰ Appellant is therefore not entitled to a schedule award for impairment to his lumbar spine. A claimant may be entitled to a schedule award for permanent impairment of an extremity even though the cause of the impairment originated in the spine.¹¹ However, Dr. Gulli did not find that appellant had any impairment of his lower extremities as a result of his work-related back condition.

CONCLUSION

The Board finds that appellant failed to establish that he has any impairment causally related to his May 23, 2002 employment injury for which he is entitled to a schedule award.

⁴ 5 U.S.C. § 8107.

⁵ See *Janet C. Anderson*, 54 ECAB 394 (2003).

⁶ *Id.*

⁷ *Id.*

⁸ *Phyllis F. Cundiff*, 52 ECAB 439 (2001); *John Yera*, 48 ECAB 243 (1996).

⁹ See *Tomas Martinez*, 54 ECAB 623 (2003).

¹⁰ 5 U.S.C. § 8101.

¹¹ See *Tomas Martinez*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 27, 2006 is affirmed.

Issued: June 15, 2007
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