

claim for which an appropriate decision was warranted.¹ The law and the facts of the previous Board decision are incorporated herein by reference.

By letter dated June 6, 2007, addressed to her treating physician, and forwarded to appellant, the Office asked for an impairment rating in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).² The Office attached information entitled “Guidelines for the Spinal Nerves Impairment Rating” and provided a form with instructions to “please review the attached Guidelines ... in completing this evaluation.” On June 6, 2007 appellant was also asked to forward the requested information within 30 days.

In a July 9, 2007 decision, the Office denied appellant’s claim for a schedule award. The Office noted that she had failed to submit any medical evidence as requested in its June 6, 2007 letter. On July 23, 2007 appellant requested reconsideration. She submitted a form report in which Dr. Luis Pannocchia, Board-certified in family medicine and geriatrics, advised that maximum medical improvement was reached in 1991, that L3-4 and L4-5 were the affected nerve roots, and that appellant had 100 percent impairment due to loss of function from sensory deficit and 100 percent loss of function from decreased strength.³ By decision dated September 6, 2007, the Office denied modification of the July 9, 2007 decision, finding that Dr. Pannocchia’s report did not comport with the A.M.A., *Guides*.

LEGAL PRECEDENT

Pursuant to section 8107 of the Federal Employees’ Compensation Act⁴ and section 10.404 of the implementing federal regulations,⁵ 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

¹ Docket No. 06-558 (issued July 24, 1996). Appellant’s claim was accepted by the Office for low back strain, lumbago, an aggravation of degenerative disc disease and temporary aggravation of dysthymic disorder. She had not worked since June 3, 1991 and her compensation benefits were terminated effective June 7, 2001.

² A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

³ Additional medical evidence submitted subsequent to the termination of appellant’s wage-loss compensation and medical benefits effective June 17, 2001 included reports dated September 21 and December 20, 2005 in which Dr. Pannocchia described appellant’s history of injury, treatment regimen, provided physical findings, and diagnosed degenerative disc disease of the lumbar spine, herniated disc with radiculopathy secondary to 1990 injury, cervical arthritis, chronic cervical pain secondary to injury, chronic depression/anxiety secondary to chronic pain, chronic pain syndrome, hypertension, noninsulin-dependent diabetes mellitus, osteoporosis, coronary artery disease, chronic obstructive pulmonary disease and tobacco use. In a January 10, 2006 report, appellant’s attending Board-certified psychiatrist, advised that she had treated appellant since February 1992 and opined that she would never work again.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

all claimants. The A.M.A., *Guides*⁶ has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁷

It is well established that a schedule award is not payable under the Act for injury to the spine.⁸ In 1960 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. As the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.⁹

The A.M.A., *Guides* provide that, if lower extremity impairment is due to an underlying spine disorder, the lower extremity impairment would, in most cases, be accounted for in the spine impairment rating.¹⁰ Section 15.12 of the fifth edition of the A.M.A., *Guides* describes the method to be used for evaluation of impairment due to sensory and motor loss of the extremities as follows. The nerves involved are to be first identified. Then, under Tables 15-15 and 15-16, the extent of any sensory and/or motor loss due to nerve impairment is to be determined, to be followed by determination of maximum impairment due to nerve dysfunction in Table 15-17 for the upper extremity and Table 15-18 for the lower extremity. The severity of the sensory or motor deficit is to be multiplied by the maximum value of the relevant nerve.¹¹ It is appellant's burden to submit sufficient evidence to establish entitlement to a schedule award.¹²

ANALYSIS

The Board finds that appellant has not established that she has sustained any permanent impairment to her lower extremities due to her accepted low back conditions. Schedule awards under the Act are to be based on the A.M.A., *Guides*, and an estimate of permanent impairment is not probative where it is not based on the A.M.A., *Guides*.¹³ Factors such as employability or limitations on daily activities have no bearing on the calculation of a schedule award.¹⁴ Schedule awards are to be based on the A.M.A., *Guides*.

⁶ A.M.A., *Guides*, *supra* note 2.

⁷ See *Joseph Lawrence, Jr.*, *supra* note 2; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁸ *Pamela J. Darling*, 49 ECAB 286 (1998).

⁹ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

¹⁰ *Vanessa Young*, 55 ECAB 575 (2004).

¹¹ A.M.A., *Guides*, *supra* note 2 at 423.

¹² See *Annette M. Dent*, 44 ECAB 403 (1993).

¹³ *James R. Hill*, 57 ECAB ____ (Docket No. 05-1899, issued May 12, 2006); *Shalanya Ellison*, 56 ECAB 150 (2004).

¹⁴ *Kimberly M. Held*, 56 ECAB 670 (2005).

In a July 3, 2007 report, Dr. Pannocchia did not provide any impairment rating for appellant's lower extremities under the A.M.A., *Guides*. He advised that appellant had 100 percent impairments due to sensory and motor deficits of the spine at L3-5. However, as noted a schedule award is not payable for the spine or back. Dr. Pannocchia did not provide a proper analysis as instructed by utilizing Tables 15-15, 15-16 and 15-18 of the A.M.A., *Guides*. His report is therefore insufficient to establish entitlement to a schedule award.¹⁵ The record contains no other medical evidence providing an impairment rating.

CONCLUSION

The Board finds that appellant has not established that she has any permanent impairment of a scheduled member.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 6 and July 9, 2007 be affirmed.

Issued: April 24, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁵ See *Carl J. Cleary*, 57 ECAB ____ (Docket No. 05-1558, issued May 10, 2006).