

Appellant returned to work and continued to receive treatment from Dr. Rueben Weisz, a neurologist. In a report dated June 3, 2003, Dr. Weisz reported that appellant had severe low back pain. The record also contains an October 28, 1986 report from Dr. Peter Slabaugh, noting appellant had a 1979 back injury while in the military and currently had lumbosacral back pain. In a January 5, 2004 report, Dr. Weisz noted that appellant continued to have lumbar and cervical symptoms.

The Office referred appellant for a second opinion examination by Dr. Julie Wehner, an orthopedic surgeon. The statement of accepted facts noted that appellant reported low back pain following a March 19, 2003 incident outside of work. In a report dated March 26, 2004, Dr. Wehner opined that appellant's lumbar sprain had resolved.

On September 15, 2006 appellant filed a claim for compensation (Form CA-7) and indicated that he was requesting a schedule award. Dr. Weisz submitted a form report dated March 12, 2007 stating that maximum medical improvement was "not achieved" and indicating appellant had moderate-to-severe pain. In a May 8, 2007 report, an Office medical adviser stated that a permanent impairment rating could not be performed as appellant had not reached maximum medical improvement.¹ The Office advised appellant by letter dated May 21, 2007 that no action would be taken on the schedule award until maximum medical improvement was reached.

Appellant submitted additional reports from Dr. Weisz dated April 14 and October 25, 2006 and March 12 and June 6, 2007. In the June 6, 2007 report, Dr. Weisz stated that appellant continued essentially unchanged neurologically, with the same cervical and lumbar symptoms. He provided results on examination and noted limited range of motion of the lumbar and cervical spine. Dr. Weisz opined that appellant had reached maximum medical improvement for the back.

In a report dated June 30, 2007, the Office medical adviser noted that the reports from Dr. Weisz generally reported an unchanged motor examination with no pathology described. The medical adviser stated that there was no clear involvement of the lower extremities, with no evidence of pain or sensory deficit in a dermatomal pattern that could be used as a permanent impairment calculation. The Office medical adviser concluded that, without detailed information describing a leg impairment, no permanent impairment rating could be performed at this time.

By decision dated October 4, 2007, the Office determined that appellant was not entitled to a schedule award under 5 U.S.C. § 8107.

LEGAL PRECEDENT

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the

¹ In a May 4, 2007 letter to the Office medical adviser, the Office indicated "thoracic or lumbosacral neuritis or radiculitis" was an accepted condition.

permanent impairment of the scheduled member or function.² The permanent impairment must be causally related to an accepted employment injury.³ Neither the Federal Employees' Compensation Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.⁴

ANALYSIS

Appellant seeks a schedule award under 5 U.S.C. § 8107 for a permanent impairment. He did not identify the specific scheduled member or function under the Act. The Board notes that neither the Act nor its regulations provide for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of "organ" under the Act.⁵

The medical evidence from Dr. Weisz is not sufficient to establish entitlement to a schedule award under the Act. As noted above, any permanent impairment must be causally related to the accepted employment injuries. Dr. Weisz refers to continuing lumbar and cervical symptoms, without discussing how any findings are related to the July 21, 2001 employment injury. Moreover, the medical evidence necessary to support a schedule award requires a physician's report that provides a detailed description of the impairment.⁶ The Office medical adviser noted that Dr. Weisz did not provide a detailed description of an impairment to a scheduled member. Dr. Weisz refers to an essentially unchanged neurological examination with cervical and lumbar pain, without providing an opinion as to a permanent impairment or providing a detailed description of impairment that would allow an Office medical adviser to apply the A.M.A., *Guides*. The Board accordingly finds that the Office properly determined appellant was not entitled to a schedule award in this case.

CONCLUSION

The evidence of record is not sufficient to establish entitlement to a schedule award under 5 U.S.C. § 8107.

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

³ *Rosa Whitfield Swain*, 38 ECAB 368 (1987).

⁴ *A. George Lampo*, 45 ECAB 441 (1994).

⁵ *See James E. Jenkins*, 39 ECAB 860 (1988); 5 U.S.C. § 8101(20).

⁶ *James E. Jenkins*, *supra* note 5; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (August 2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 4, 2007 is affirmed.

Issued: April 2, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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