

FACTUAL HISTORY

On February 18, 2004 appellant, then a 59-year-old tools and parts clerk, filed a traumatic injury claim alleging that, on February 12, 2004, while pulling a heavy load on a pallet jack, he sustained a lower back condition. On November 21, 2005 the Office accepted the claim for a closed lumbar vertebrae dislocation and paid appropriate compensation benefits. The record reflects that appellant stopped work on February 13, 2004 and accepted a modified maintenance clerk position effective May 14, 2007.

On March 5, 2007 appellant filed a claim for a schedule award. In an April 5, 2007 letter, the Office informed him of the information necessary to render an impairment rating under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In an April 10, 2007 report, Dr. Adam Shapkin, a chiropractor, noted that appellant was symptom free at the time of the February 12, 2004 work incident but currently had complaints of sharp, shooting, spastic and burning pain in the low back bilaterally. He provided findings on examination which included: normal deep tendon reflexes of the upper and lower extremities in relation to the cervical and lumbar nerve roots; restricted lumbar range of motion in all planes; a weak or Grade 4 motor examination for strength of the left and right hip; normal sensation of all lower extremity dermatomes; a positive bilateral straight leg test for sciatic nerve lesion; and positive bilateral tests for intervertebral disc syndromes. Dr. Shapkin diagnosed lumbago and lumbar myofasciitis conditions. He opined that appellant reached maximum medical improvement and that he had three to four percent permanent impairment of the whole person as a result of the residuals sustained from his February 12, 2004 work injury. Copies of progress notes from the Mandell Chiropractic Center, dated March 26 to April 16, 2007, were submitted.

In a May 17, 2007 report, an Office medical adviser reviewed the medical evidence of record to determine whether appellant sustained a permanent functional loss to a scheduled member. Based on Dr. Shapkin's April 10, 2007 report, the Office medical adviser found that maximum medical improvement was reached April 10, 2007. He found, however, no reliable medical evidence of a dislocated lumbar vertebra. Although Dr. Shapkin rated appellant's lumbago or low back pain with myofasciitis and spasm in the axial lumbar spine as a four percent permanent impairment Category II lumbar diagnosis-related estimate (DRE) under Table 15-3, page 384 of the A.M.A., *Guides*, there was no provision under the Federal Employees' Compensation Act to grant schedule awards for impairment of the spine or whole person impairment. The Office medical adviser further found that there were no sensory or motor deficits to either lower extremity in Dr. Shapkin's report to suggest nerve impairment affecting the extremities. Therefore, he found that appellant had no impairment of the lower extremities.

On May 21 and July 2, 2007 the Office forwarded a copy of the Office medical adviser's May 17, 2007 report to Dr. Shapkin. The Office requested that the chiropractor complete an enclosed impairment worksheet and explain his findings with objective evidence if he did not agree with the Office medical adviser's opinion. The Office received a June 1, 2007 magnetic resonance imaging (MRI) scan report, an April 24, 2007 progress report from the Mandell Chiropractic Center and a June 11, 2007 letter from Dr. Shapkin, who indicated that the MRI

scan showed mild disc bulging at L5-S1, a left foraminal disc protrusion at L2-3, L4-5, with disc desiccation and bulging. He opined that such injuries were the direct result of the work-related accident of February 2004.

In a report dated July 12, 2007, the Office medical adviser stated that the MRI scan findings did not represent ratable impairments under the Act. The Office medical adviser reiterated his opinion that appellant had no impairment to the lower extremities.

By decision dated July 19, 2007, the Office denied appellant's claim for a schedule award.

LEGAL PRECEDENT

The schedule award provision of the Act¹ and its implementing regulations² set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.³

No schedule award is payable for a member, organ or function of the body that is not specified in the Act or in the implementing regulations.⁴ Neither the Act nor the implementing regulations provide for the payment of a schedule award for permanent loss of use of the back.⁵

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 originates in the spine.⁶

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.404.

³ *See Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

⁴ *Tania R. Keka*, 55 ECAB 354 (2004). *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).

⁵ *Tania R. Keka*, *supra* note 4. The Act itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

⁶ *George E. Williams*, 44 ECAB 530 (1993).

Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.⁷

ANALYSIS

The Office accepted appellant's claim for a closed lumbar vertebrae dislocation. Although he may not receive a schedule award for permanent impairment to his back, he may be entitled to a schedule award for any permanent impairment to his lower extremities, provided the medical evidence establishes such impairment.

The Board finds that the medical evidence fails to establish that appellant sustained any permanent impairment to a scheduled member of the body. As noted, a schedule award is not payable for the loss or loss of use, of a part of the body that is not specifically enumerated. In this case, appellant is not entitled to a schedule award for any impairment to his back or spine. The back is specifically excluded from the definition of organ.⁸ Appellant is only entitled to receive a schedule award if he establishes that his injury caused impairment to a scheduled member of his body. The medical evidence of record, however, does not establish that he has any permanent impairment to his legs due to the accepted condition.

Dr. Shapkin, a chiropractor, found that appellant had three to four percent permanent impairment of the spine or whole person. The opinion from a chiropractor with respect to permanent impairment of a scheduled extremity or other member of the body is beyond the scope of the statutory limitation of a chiropractor's services.⁹ Dr. Shapkin's reports are of no probative value with regard to appellant's permanent impairment.

The Office medical adviser properly reviewed the medical record and found no basis for rating impairment to a scheduled member of the body.¹⁰ The medical adviser noted that Dr. Shapkin's rating of whole person impairment based on lumbar range of motion was not in reference to a scheduled member of the body. The medical adviser explained that there was no medical evidence of impingement or impairment to either lower extremity resulting from the accepted injury. The medical adviser properly concluded that appellant had no impairment to his lower extremities.

⁷ See *Thomas J. Fragale*, 55 ECAB 619 (2004); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

⁸ 5 U.S.C. § 8101(19); *James E. Mills*, 43 ECAB 215 (1991).

⁹ See *George E. Williams*, *supra* note 6; see also *Pamela K. Guesford*, 53 ECAB 726 (2002) (A chiropractor may only qualify as a physician in the diagnosis and treatment of spinal subluxation, his or her opinion is not considered competent medical evidence in evaluation of other disorders, including those of the extremities, although these disorders may originate in the spine).

¹⁰ The Board notes that it is appropriate for an Office medical adviser to review the clinical findings of the treating physician to determine the permanent impairment. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.5(c) (March 1994); *Richard R. LeMay*, 56 ECAB 341 (2006).

Appellant did not submit any medical evidence to establish that he sustained a permanent impairment to a specified member, organ or function of the body listed in the Act or implementing regulations. The only medical evidence addressing permanent impairment are the reports of the Office medical adviser, who determined that appellant did not sustain any permanent impairment to a scheduled member of the body.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 19, 2007 is affirmed.

Issued: February 19, 2008
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