

that in order to take further action on any schedule award claim, her physician needed to assess any impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).¹ A letter with specific instructions for the physician was enclosed.

By decision dated July 16, 2007, the Office denied appellant's claim for a schedule award, noting that she did not provide the necessary medical evidence.²

On August 8, 2007 appellant requested a review of the written record. She submitted a June 20, 2007 report from Dr. Timothy R. Deer, a Board-certified anesthesiologist, who noted appellant's complaint of pain and physical findings of decreased cervical spine range of motion, decreased reflexes, and decreased upper extremity sensation. Dr. Deer advised that she was at maximum medical improvement and recommended that she see his partner, Dr. Bowman, for an impairment rating. By letter dated August 15, 2007, the Office requested that Dr. Bowman provide an impairment rating in accordance with the A.M.A., *Guides*. On October 11, 2007 appellant requested an extension to schedule an impairment rating.

In a decision dated November 21, 2007, an Office hearing representative affirmed the July 16, 2007 decision.

LEGAL PRECEDENT

Pursuant to section 8107 of the Federal Employees' Compensation Act³ and section 10.404 of the implementing federal regulation,⁴ 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 all claimants. The A.M.A., *Guides*⁵ has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁶

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under the Act for injury to the spine.⁷ In 1960, amendments to the Act modified the schedule award provisions to provide for an award for

¹ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

² The Office also indicated that her claim was accepted for cervicalgia.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ A.M.A., *Guides*, *supra* note 1.

⁶ See *Joseph Lawrence, Jr.*, *supra* note 1; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁷ *Pamela J. Darling*, 49 ECAB 286 (1998).

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. Therefore, 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.⁸

ANALYSIS

The Board finds that appellant has not established that she has any permanent impairment due to her accepted cervical condition. Therefore she is not entitled to a schedule award. A schedule award can be paid only for permanent impairment related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁹ Before applying the A.M.A., *Guides*, the Office must determine whether the claimed impairment of a scheduled member is causally related to the accepted work injury.¹⁰ The accepted conditions in this case are cervical strain and cervicgia. In order to establish entitlement to a schedule award for her accepted conditions, appellant would have to submit rationalized medical evidence demonstrating that the accepted conditions caused impairment to her upper extremities.¹¹ Appellant has submitted no such evidence in this case. In a June 20, 2007 report, Dr. Deer merely reported appellant's complaints and physical findings. He deferred any impairment rating. The record before the Board contains no medical evidence supporting impairment due to the accepted conditions.¹²

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she is entitled to a schedule award for her accepted cervical conditions.¹³

⁸ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

⁹ *Veronica Williams*, 56 ECAB 367 (2005).

¹⁰ *Michael S. Mina*, 57 ECAB 379 (2006).

¹¹ A.M.A., *Guides*, *supra* note 1 at 423; *see generally James R. Hentz*, 56 ECAB 573 (2005).

¹² Regarding appellant's argument that on October 11, 2007 she requested an extension of time to submit a medical report, she did not inform the Office of the date of any scheduled appointment. The decision of the Office hearing representative was issued on November 21, 2007, more than 30 days after her request. Section 10.618(a) of Office regulations provides that new evidence should be submitted as soon as possible to avoid delay. 20 C.F.R. § 10.618.

¹³ The Board notes that appellant submitted evidence to the Office subsequent to the November 21, 2007 decision and with her appeal to the Board. The Board cannot review this evidence, however, as its review of the case is limited to the evidence of record that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *see Sandra D. Pruitt*, 57 ECAB 126 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 21, 2007 be affirmed.

Issued: September 4, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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