

**United States Department of Labor
Employees' Compensation Appeals Board**

P.R., Appellant)	
)	
and)	Docket No. 08-2558
)	Issued: May 20, 2009
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Chicago, IL, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 22, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 21, 2008, finding he was not entitled to a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established a ratable permanent impairment to a scheduled member or function of the body entitling him to a schedule award under 5 U.S.C. § 8107.

FACTUAL HISTORY

Appellant filed a traumatic injury claim (Form CA-1) alleging that on February 8, 2006 he sustained a lower back injury in the performance of duty while bending over to pat down an airline passenger. The Office accepted the claim for lumbar sprain/strain and L1-2 displaced intervertebral disc. On March 10, 2006 appellant underwent L1-2 laminectomy surgery by Dr. Anis Mekhail, an orthopedic surgeon.

In a report dated February 12, 2007, Dr. Mekhail indicated that appellant had some residual back pain, with good range of motion for the back. He reported appellant had reached maximum medical improvement and would be seen on an as-needed basis. On October 15, 2007 appellant submitted a claim for compensation (Form CA-7) indicating he was claiming a schedule award.

In a letter dated October 30, 2007, the Office provided questions for the attending physician regarding lower extremity permanent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. On November 19, 2007 Dr. Mekhail responded, indicating that appellant did not have atrophy or weakness, with moderate pain that was not a nerve root pain. He stated that appellant had back tenderness and pain with range of motion of the back. In response to a question as to the percentage of impairment under the A.M.A., *Guides*, Dr. Mekhail stated “none.” He also submitted a narrative report dated November 19, 2007 indicating appellant took pain medication on an as-needed basis.

On July 30, 2008 the Office referred the medical evidence to an Office medical adviser for review. In a report dated August 4, 2008, the medical adviser indicated that, while appellant had tenderness to palpation in the lower back, there was no mention of weakness or sensory changes in the leg.¹ The medical adviser opined that there was no objective basis for finding a permanent impairment to the legs at this time.

By decision dated August 21, 2008, the Office determined that the medical evidence was insufficient to establish a permanent impairment to a scheduled member or function of the body.

LEGAL PRECEDENT

Section 8107 of the Federal Employees’ Compensation Act 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 permanent impairment of the scheduled member or function.² Neither the 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 A.M.A., *Guides* as the uniform standard applicable to all claimants.³ As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.⁴ To support a schedule award, the attending physician

¹ The medical adviser stated that Dr. Mekhail’s impairment rating was dated June 27, 2008. The July 30, 2008 Office letter did not identify a report of that date, nor does the record contain a report dated June 27, 2008. It appears that the medical adviser was referring to the November 19, 2007 reports.

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

⁴ FECA Bulletin No. 01-05 (issued January 29, 2001). As of May 1, 2009, the sixth edition will be used. FECA Bulletin No. 09-03 (issued March 15, 2008).

must include a detailed description of the impairment.⁵ The permanent impairment must be causally related to an accepted employment injury.⁶

ANALYSIS

The medical evidence of record is not sufficient to establish a permanent impairment to a scheduled member or function of the body causally related to the February 8, 2006 employment injury. Dr. Mekhail reported that appellant did not have atrophy or muscle weakness and did not have nerve root pain. Moreover, in response to a question as to the percentage of a permanent impairment under the A.M.A., *Guides*, Dr. Mekhail indicated that appellant did not have a permanent impairment. The Office medical adviser also opined that there was no objective basis for finding a permanent impairment to the legs. In the absence of probative medical evidence supporting an employment-related permanent impairment under the A.M.A., *Guides*, the Board finds that the Office properly determined that appellant was not entitled to a schedule award pursuant to 5 U.S.C. § 8107.

CONCLUSION

The medical evidence is not sufficient to establish a permanent impairment involving a scheduled member or function of the body under 5 U.S.C. § 8107.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 21, 2008 is affirmed.

Issued: May 20, 2009
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

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995).

⁶ *Rosa Whitfield Swain*, 38 ECAB 368 (1987).