

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

M.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chino, CA, Employer**

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**Docket No. 09-2045
Issued: May 7, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 11, 2009 appellant filed a timely appeal from the March 25, 2009 merit decision of the Office of Workers' Compensation Programs, which denied a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant is entitled to a schedule award.

FACTUAL HISTORY

On November 4, 1999 appellant, then a 39-year-old part-time flexible letter carrier, filed a claim alleging that his disc degeneration, herniated disc and possible bone spur were a result of the duties of his federal employment, including constant lifting, twisting, bending, stretching, pushing, pulling and carrying 30 pounds of mail. The Office accepted his claim for a temporary aggravation of a preexisting, nonindustrial osteophyte at C5-6 and cervical degenerative disc disease. The record indicates the Office also accepted cervical radiculopathy.

On January 5, 2007 appellant filed a claim for a schedule award. On January 24, 2007 his attending physiatrist, Dr. Jonathan K. Lee, completed a form indicating an 80 percent impairment of the left upper extremity due to weakness, atrophy, pain or loss of sensation, but, in periodic progress reports, he found bilateral upper extremity ranges of motion to be 100 percent of normal with full motor strength and no sensory hypesthesia. Dr. Lee diagnosed cervical spondylosis, cervical radiculopathy and cervicalgia.

On April 22, 2008 Dr. Bunsri T. Sophon, an orthopedic surgeon and Office referral physician, provided a second opinion. He reviewed appellant's history, a statement of accepted facts and described his findings on physical examination. Dr. Sophon diagnosed cervical disc disease and status post C5-7 fusion. He noted that appellant complained of constant, sharp, throbbing and aching pain in his neck and his examination showed restricted range of motion of the cervical spine. In the upper extremities; however, Dr. Sophon found no neurological involvement: no pain or discomfort, no weakness and no atrophy.

On March 18, 2009 an Office medical adviser reviewed appellant's file and noted no actual upper extremity findings. He found that appellant had no impairment of the left or right upper extremity.

In a decision dated March 25, 2009, the Office denied appellant's claim for a schedule award. Appellant seeks the Board's review of this decision but expresses no particular disagreement with it.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.²

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the regulations.³ Because neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back,⁴ no claimant is entitled to such an award.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

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ *William Edwin Muir*, 27 ECAB 579 (1976).

⁴ The Act itself specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19).

⁵ *E.g., Timothy J. McGuire*, 34 ECAB 189 (1982).

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.⁶

ANALYSIS

To support his claim for a schedule award, appellant submitted a January 24, 2007 report from Dr. Lee, who noted 80 percent impairment of the left upper extremity due to weakness, atrophy, pain or loss of sensation. Dr. Lee did not explain the basis for this rating. He did not support this rating with objective findings on examination and he did not show how he calculated this rating using specific tables or figures in the A.M.A., *Guides*. Therefore, Dr. Lee's impairment rating carries little probative value. Moreover, he thereafter consistently reported that bilateral upper extremity ranges of motion were 100 percent of normal with full motor strength and no sensory hypesthesia. Dr. Lee's reports are not consistent with his prior description of impairment. Such findings support no impairment of the upper extremities.

Dr. Sophon, the second opinion orthopedic surgeon, confirmed this on April 22, 2008. His examination revealed no neurological involvement in the upper extremities. Appellant complained of constant, sharp, throbbing and aching pain in his neck and his examination showed restricted range of motion of the cervical spine, but no employee may receive a schedule award for the back or neck or cervical spine. There is no provision for such an award.

The weight of the medical evidence shows no impairment of the upper extremities resulting from the accepted cervical conditions. The Board finds that appellant is not entitled to a schedule award, as he has not established permanent impairment. The Board will affirm the Office's March 25, 2009 decision denying his schedule award claim.

CONCLUSION

The Board finds that the medical evidence is insufficient to establish that appellant sustained permanent impairment to his left arm.

⁶ *Rozella L. Skinner*, 37 ECAB 398 (1986).

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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