

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

L.D., Appellant

and

**U.S. POSTAL SERVICE, FORT LAUDERDALE
PROCESSING & DISTRIBUTION CENTER,
Fort Lauderdale, FL, Employer**

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**Docket No. 10-219
Issued: September 3, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 29, 2009 appellant filed a timely appeal from a June 9, 2009 decision of the Office of Workers' Compensation Programs denying a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.¹

ISSUE

The issue is whether appellant sustained a ratable impairment of the upper extremities related to accepted right shoulder and cervical sprains.

¹ Appellant submitted new medical evidence following issuance of the June 9, 2009 decision. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final merit decision in the case. 20 C.F.R. § 501.2(c). Appellant may submit this evidence to the Office accompanying a valid request for reconsideration.

FACTUAL HISTORY

The Office accepted that on June 9, 1997 appellant, then a 39-year-old distribution clerk, sustained a right shoulder strain while processing mail. It later expanded the claim to include cervical and lumbar sprains.

Appellant sought treatment for neck and low back pain beginning in August 1997. On July 10, 2000 Dr. Michael P. Feanny, an attending Board-certified orthopedic surgeon, performed C4-5 and C5-6 anterior discectomies and fusions. Dr. David B. Ross, an attending Board-certified neurologist, submitted reports from December 4, 2007 to September 29, 2008 diagnosing herniated cervical and lumbar discs, tenosynovitis of the right shoulder, headaches and vertigo.

On June 2, 2009 appellant claimed a schedule award. She submitted a May 13, 2009 report from Dr. Ross diagnosing tenosynovitis of the right shoulder and cervical postfusion syndrome. Dr. Ross found normal strength, tone, sensation and reflexes in both upper extremities.² On June 4, 2009 an Office medical adviser reviewed Dr. Ross' May 13, 2009 report and found appellant had reached maximum medical improvement. He opined that appellant had no permanent impairment of either upper extremity as Dr. Ross observed normal strength, tone, reflexes and sensation.

By decision dated June 9, 2009, the Office denied appellant's schedule award claim on the grounds that the medical evidence did not demonstrate any ratable impairment of a scheduled member of the body.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵

² The Office noted that appellant did not specify the member of the body for which she claimed the schedule award. As appellant submitted medical evidence discussing the upper extremities, it developed the schedule award claim as one for upper extremity impairment.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

No schedule award is payable for a member, function, or organ of the body not specified in the Act or in the regulations.⁶ As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back,⁷ no claimant is entitled to such an award.⁸ However, in 1966, amendments to the Act modified the schedule award provision 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 provision of the Act includes 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.⁹

ANALYSIS

The Office accepted that appellant sustained a right shoulder strain and cervical and lumbar sprains. Appellant claimed a schedule award for upper extremity impairment, based on the May 13, 2009 opinion of Dr. Ross, an attending Board-certified neurologist, who found normal strength, sensation, tone and reflexes in both arms and diagnosed tenosynovitis of the right shoulder. An Office medical adviser found that Dr. Ross' opinion did not support a ratable impairment of either arm. The Office therefore denied appellant's schedule award claim.

The Board finds that the medical evidence does not establish a ratable impairment of either upper extremity. Dr. Ross found no objective neurologic abnormalities of either arm. Although he diagnosed tenosynovitis of the right shoulder, he did not opine that this was a work-related condition or that it caused a permanent impairment of the right upper extremity. There is no other medical evidence of record supporting a ratable impairment of upper extremity. Therefore, the Office's June 9, 2009 decision denying appellant's schedule award claim was proper under the facts and circumstances of this case.

CONCLUSION

The Board finds that appellant has not established that she sustained a ratable impairment of the upper extremities related to accepted cervical and lumbar strains and a right shoulder sprain.

⁶ *Henry B. Floyd, III*, 52 ECAB 220 (2001).

⁷ The Act itself specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19).

⁸ *Thomas Martinez*, 54 ECAB 623 (2003).

⁹ *N.M.*, 58 ECAB 273 (2007).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 9, 2009 is affirmed.

Issued: September 3, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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