

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

R.C., Appellant)

and)

SOCIAL SECURITY ADMINISTRATION,)
OFFICE OF THE DEPUTY COMMISSIONER,)
Savannah, GA, Employer)

Docket No. 10-1904
Issued: May 5, 2011

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 13, 2010 appellant's representative filed a timely appeal from a June 9, 2010 Office of Workers' Compensation Programs' schedule award decision. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim for a schedule award.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has an impairment caused by his accepted employment injuries that would entitle him to a schedule award.

FACTUAL HISTORY

On July 31, 2003 appellant, then a 49-year-old claims representative, filed a traumatic injury claim alleging that on June 26, 2003, he sustained a back injury in the performance of

¹ 5 U.S.C. § 8101 *et seq.*

duty. He stopped work on July 28, 2003. On September 30, 2003 the Office accepted the claim for lumbar radiculitis, unspecified thoracic/lumbar neuritis and displaced lumbar disc. It authorized surgery that appellant underwent on March 31, 2006, which included the removal of spinal lamina at L4-5 and lumbar spine fusion at L4-5. The Office paid wage-loss benefits.

On October 21, 2009 appellant's representative filed a claim for a schedule award.²

By letter dated November 4, 2009, the Office requested that appellant obtain a report from his treating physician, and provide an evaluation of permanent impairment. It advised him that he should submit a report utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6th ed. 2008) (A.M.A., *Guides*). No further medical evidence was submitted.

On December 21, 2009 the Office denied appellant's claim for a schedule award. It found that the medical evidence of record did not establish any permanent impairment to a scheduled member or function of the body.

On December 28, 2009 appellant's attorney requested a telephonic hearing, which was held on March 19, 2010. Counsel requested that the matter be held open for 30 days to obtain a medical report addressing permanent impairment. No additional medical evidence was submitted.

In a June 9, 2010 decision, an Office hearing representative affirmed the December 21, 2009 decision.

LEGAL PRECEDENT

A schedule award can be paid only for a condition 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.³

Section 8107 of the Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁴ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁵ The A.M.A., *Guides* has been adopted by the implementing regulations as the

² The record reflects that the Office denied an earlier claim for a schedule award in an August 18, 2005 decision.

³ *Veronica Williams*, 56 ECAB 367 (2005).

⁴ 5 U.S.C. § 8107.

⁵ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

appropriate standard for evaluating schedule losses.⁶ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.⁷

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.⁸ In 1960, 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. 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.⁹

ANALYSIS

The evidence of record is insufficient to establish that appellant is entitled to a schedule award. Appellant failed to establish any permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*.

The Office accepted appellant's claim for lumbar radiculitis, unspecified thoracic/lumbar neuritis and displaced lumbar disc. It approved his March 31, 2006 low back surgery.

Appellant claimed a schedule award on October 21, 2009; however, he did not submit any medical evidence from a physician finding that he sustained permanent impairment of a scheduled body member, caused or aggravated by his accepted conditions. The Office requested that he obtain such information from his physician in a letter dated November 4, 2009. Appellant was allowed the opportunity following the March 19, 2010 hearing to provide medical evidence, but no medical evidence was received. Appellant did not submit any other medical evidence to support that he was entitled to a schedule award, under the sixth edition of the A.M.A., *Guides*, for a scheduled member of the body under the Act. Accordingly, the Board finds that appellant has not established entitlement to a schedule award.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he was entitled to a schedule award.

⁶ 20 C.F.R. § 10.404.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010); *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

⁸ *Pamela J. Darling*, 49 ECAB 286 (1998).

⁹ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 9, 2010 is affirmed.

Issued: May 5, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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