

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

T.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 10-1995
Issued: May 12, 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 29, 2010 appellant, through his attorney, filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated July 7, 2010. 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 this case.

ISSUE

The issue is whether appellant sustained any permanent impairment to a scheduled member causally related to his accepted lumbar strain, coccyx contusion and back contusion conditions.

FACTUAL HISTORY

Appellant, then a 47-year-old letter carrier, tripped and fell to the ground on October 27, 1998 while trying to avoid a menacing dog. He filed a claim for benefits under case File No.

¹ 5 U.S.C. § 8101 *et seq.*

xxxxxx059, which the Office accepted for lumbar strain and coccyx contusion. On September 10, 1999 appellant filed a Form CA-2 claim for benefits, alleging that he sustained a low back condition causally related to factors of his employment under case File No. xxxxxx669. The Office accepted this claim for lumbar sprain and back contusions. The cases were combined under case File No. xxxxxx669.

On February 12, 2009 appellant filed a Form CA-7 claim for a schedule award.

By letter dated June 30, 2009, the Office asked appellant to provide a medical report and impairment evaluation from his attending physician pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th edition). Appellant did not respond to this letter.

By decision dated January 27, 2010, the Office found that appellant had no ratable impairment causally related to the accepted low back conditions and was not entitled to a schedule award.

On February 2, 2010 counsel requested an oral hearing, which was held on May 11, 2010. Appellant did not submit any medical evidence in support of his request. At the hearing, he testified that one of the physicians who treated his back condition had died. Appellant also indicated that another treating physician told him that he did not perform impairment evaluations.

By decision dated July 7, 2010, an Office hearing representative affirmed the January 27, 2010 decision.

LEGAL PRECEDENT

The schedule award provision of the Act² and its implementing regulations³ 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 employees, 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* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, the Act authorizes schedule awards for only those members, organs and functions of the body that are specified in the Act and in the implementing regulations.⁵ A

² *Id.* at. § 8107.

³ 20 C.F.R. § 10.404. Effective May 1, 2009, the Office began using the A.M.A., *Guides* (6th ed. 2009).

⁴ *Id.*

⁵ *Thomas E. Montgomery*, 28 ECAB 294 (1977).

schedule award is not payable under the Act for injury to the spine. An employee may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originates in the spine⁶

The burden is upon the employee to submit evidence that he sustained permanent impairment to a member of the body covered by the schedule award provisions.⁷ The Board has held that a treating physician should provide a description of the impairment, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁸

ANALYSIS

The Office accepted a lumbar strain, coccyx contusion and back contusions. Appellant subsequently filed a claim for a schedule award. The Office asked him to submit a medical report and impairment evaluation from a treating physician in support of his claim; but he did not provide the medical evidence requested. Schedule awards are not granted for impairment to the spine or back. Appellant must submit evidence that he sustained permanent impairment of a scheduled member, causally related to the accepted employment conditions. He submitted no medical evidence to establish any permanent impairment of his legs arising from the accepted low back conditions.⁹

Appellant stated that he could not provide a medical report evaluating permanent impairment because one of his physicians died and the other did not perform permanent impairment evaluations. It is his burden of proof however to submit evidence of permanent impairment. Appellant did not meet his burden of proof to establish entitlement to a schedule award. The Board will affirm the July 7, 2010 decision.

CONCLUSION

The Board finds that appellant has not established any permanent impairment causally related to his accepted lumbar strain, coccyx contusion and back contusion conditions.

⁶ See *Tommy R. Martin*, 56 ECAB 273 (2005).

⁷ *D.H.*, 58 ECAB 358 (2007).

⁸ See *Peter C. Belkind*, 56 ECAB 580, 585 (2005).

⁹ *N.M.*, 58 ECAB 273 (2007).

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 12, 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