

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUBY L. JOHNSON and U.S. POSTAL SERVICE,
CHICAGO POST OFFICE, Chicago, Ill.

*Docket No. 96-1481; Submitted on the Record;
Issued August 21, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that she is entitled to a schedule award under the Federal Employees' Compensation Act.

The Board finds that appellant does not have a permanent impairment entitling her to a schedule award pursuant to the Act.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a contusion to the lumbar spine and chronic lumbar sprain on or about February 1, 1984, while performing her federal employment. Appellant lost work intermittently from February 1, 1984 through September 22, 1992 and the Office paid appropriate wage-loss benefits upon appellant's filing of forms CA-8. Appellant retired on October 1, 1992, the record does not reflect that appellant filed claim for any period of disability after October 1, 1992. In June 1995 appellant filed claim for a schedule award.

Section 8107 of the Act,¹ provides that if there is a permanent impairment resulting in 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.

No schedule award is payable for a member, function, or organ of the body not specified in the Act or in the implementing regulations.² As neither the Act nor the regulations provide for

¹ 5 U.S.C. § 8107.

² *George E. Williams*, 44 ECAB 530 (1993).

the payment of a schedule award for the permanent loss of use of the back, no claimant is entitled to such an award.³

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. As the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to a lower extremity even though the cause of the impairment originated in the spine.⁴

The medical evidence, in this case, however, does not support that appellant sustained a permanent impairment to any scheduled member. Appellant's treating physician, Dr. Michael R. Treister reported on July 7, 1995 that during an evaluation on that day appellant had complained of pain radiating into both lower extremities, particularly the knee on the left side. Dr. Treister noted that appellant had chronic back strain for many years and that her subjective complaints had not varied from visit to visit. Regarding appellant's physical examination, Dr. Treister stated that appellant had full range of motion of the lumbar spine, with no palpable spasm, and no sciatic nerve tenderness. Dr. Treister stated that appellant's straight-leg raising tests were negative, her knee jerks and ankle jerks were depressed but symmetrical; and that motor and sensory function of both lower extremities were within normal limits. Dr. Treister concluded that appellant did have subjective back complaints, but that he could not make a determination of permanent impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

The Act's schedule award provisions⁵ set forth the number of weeks of compensation that are to be paid for permanent loss of use of the members of the body listed in the schedule. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. However, as a matter of administrative practice the Board has stated: "For consistent results and to insure 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 Office has adopted and the Board has approved of the A.M.A., *Guides* as the standard for evaluating schedule losses. The Board has concurred in such adoption.⁶

As appellant's treating physician, Dr. Treister reported that appellant's back condition had not caused a permanent impairment of the extremities which was ratable pursuant to the Act. The Board finds that there is no medical evidence of record that appellant had a permanent loss

³ The Act at 5 U.S.C. § 8101(19) specifically excludes the back from the definition of "organ."

⁴ *Rozella L. Skinner*, 37 ECAB 398 (1982).

⁵ 5 U.S.C. § 8107.

⁶ *James Kennedy, Jr.*, 40 ECAB 620 (1989).

of, or loss of use of the extremities arising from her accepted back condition. The Office thus properly denied appellant's claim for a schedule award.

The decision of the Office of Workers' Compensation Programs dated October 19, 1995 is hereby affirmed.

Dated, Washington, D.C.
August 21, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member