

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL D. BOWMAN and U.S. POSTAL SERVICE,
BEVERLY HILLS STATION, Dallas, TX

*Docket No. 98-380; Submitted on the Record;
Issued August 13, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established his entitlement to a schedule award.

The Board has carefully reviewed the record evidence and finds that appellant has failed to meet his burden of proof in establishing that he is entitled to a schedule award for permanent partial impairment of his left upper extremity.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for the permanent impairment of specified bodily members, functions and organs. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³

However, no schedule award is payable for a member, function, or organ of the body not specified in the Act or in the regulations.⁴ This principle applies to body members that are not enumerated in the schedule award provision before the 1974 amendment⁵ as well as to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendment.⁶ Thus,

¹ 5 U.S.C. §§ 8101-8193; 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19).

⁴ *William Edwin Muir*, 27 ECAB 579, 581 (1976).

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

⁶ *John F. Critz*, 44 ECAB 788, 792-93 (1993) (brain disorder); *Ted W. Dietderich*, 40 ECAB 963, 965 (1989) (gallbladder); *Thomas E. Stubbs*, 40 ECAB 647, 649 (1989) (spleen).

because spinal injuries are not listed in the compensation schedule, no award may be issued for permanent impairment of the back.

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. Thus, a claimant may be entitled to a schedule award for permanent impairment to an upper or lower extremity even though the cause of the impairment originated in the neck, shoulders, or spine.⁷

However, neither the Act nor the regulations specify the method by which the percentage of impairment shall be determined.⁸ The method used in making such determinations rests in the sound discretion of the Office.⁹ For consistent results and to ensure equal justice for all claimants, the Office has adopted, and the Board has approved, the use of the appropriate edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the uniform standard applicable to all claimants for determining the percentage of permanent impairment.¹⁰

In this case, appellant's notice of occupational disease, filed on October 7, 1996 after he experienced increasing pain in his left shoulder while carrying the mail, was accepted by the Office for cervical disc displacement, based on the reports of Dr. Terrence J. Wilson, Board-certified in physical medicine and rehabilitation. Appellant returned to regular full-time duty on December 18, 1996 following an anterior cervical discectomy and fusion operation on October 21, 1996.

On September 19, 1997 the Office denied appellant's claim for a schedule award on the grounds that his accepted condition did not result in impairment of a member or function of the body enumerated by section 8107 of the Act.

The Board finds that the impairment rating provided by Dr. Wilson is insufficient to establish any permanent impairment of appellant's left upper extremity. He noted a maximum medical improvement date of December 18, 1996 and determined that appellant had a 15 percent physical impairment of the whole person, based on the A.M.A., *Guides*, fourth edition. Inasmuch as the Act does not provide schedule awards for the whole person, this impairment rating does not entitle appellant to a schedule award.¹¹

Dr. Wilson also found that, because of his cervical operation, appellant's left triceps reflex remained diminished and his extension/strength remained impaired. However, he

⁷ *Rozella L. Skinner*, 37 ECAB 398, 402 (1986).

⁸ *A. George Lampo*, 45 ECAB 441, 443 (1994).

⁹ *George E. Williams*, 44 ECAB 530, 532 (1993).

¹⁰ *James J. Hjort*, 45 ECAB 595, 599 (1994).

¹¹ See *Terry E. Mills*, 47 ECAB 309, 312 (1996) (finding that the Act does not provide for a schedule award for impairment to the body as a whole because that type of impairment is not specifically enumerated).

provided no impairment measurements, such as loss of range of motion, for appellant's left extremity, based on the accepted cervical condition. Thus, nothing in the record supports any permanent partial impairment of appellant's left upper extremity.¹² Therefore, appellant has failed to establish entitlement to a schedule award as defined by the Act.

The September 19, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
August 13, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

¹² See *James E. Jenkins*, 39 ECAB 860, 867 (1988) (finding that the medical evidence failed to describe impairment to appellant's upper extremity based on his cervical injury).