

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

TROY ALLEN, Appellant)	
)	
and)	
)	Docket No. 03-2290
)	Issued: June 28, 2004
U.S. POSTAL SERVICE, POST OFFICE, Waco, TX, Employer)	
)	
)	

Appearances:
Troy Allen, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 25, 2003 appellant filed a timely appeal from a schedule award decision of the Office of Workers' Compensation Programs dated June 9, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue in this case.

ISSUE

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

FACTUAL HISTORY

On September 21, 1999 appellant, then a 47-year-old mail handler, filed a claim alleging that on September 19, 1999, he injured his right shoulder in the performance of duty. The Office accepted a right shoulder strain and subsequently accepted his June 21, 2001 injuries to his shoulder neck and back. On July 26, 2001 the Office doubled the claims. The Office authorized anterior cervical surgery which was performed on May 23, 2002. Appellant was released to restricted duty on July 15, 2002.

On February 13, 2003 appellant filed a claim for a schedule award. On March 14, 2003 the Office requested an impairment rating from Dr. H. Bruce Hamilton, appellant's treating physician and Board-certified neurological surgeon. The Office requested that Dr. Hamilton determine whether appellant had an impairment of the upper extremities as a result of his work-related injuries. Dr. Hamilton did not respond to the Office's request. On April 3, 2003 the Office requested a second opinion evaluation by Dr. David J. Schickner, a Board-certified neurological surgeon, regarding any permanent impairment.

In a report dated April 7, 2003, Dr. Schickner reviewed appellant's history of injury, noting that he had two abnormal discs on radiographic evaluation, that appellant underwent spinal surgery and entered a rehabilitation period. He noted that appellant had a 10 percent cervical spine impairment and an 8 percent impairment based on loss of cervical range of motion for a total of 17 percent whole person impairment. Dr. Schickner stated that appellant had reached maximum medical improvement on that date. On May 29, 2003 an Office medical adviser rated appellant with a zero percent impairment rating based on Dr. Schickner's examination.

In a decision dated June 9, 2003, the Office denied appellant's claim for a schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the top the percentage of loss.³ However, neither the Act nor its regulations specify the manner in which the percentage of loss of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁴

No schedule award is payable for a member, organ or function of the body that is not specified in the Act or in the implementing regulation.⁵ Because neither the Act nor the

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19).

⁴ *James R. Doty*, 52 ECAB 163 (2000).

⁵ *William Edwin Muir*, 27 ECAB 579 (1976) (this principle applies equally to body members that are not enumerated in the schedule provision as it read before the 1974 amendment, and to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendment).

regulation provide for the payment of a schedule award for permanent loss of use of the back,⁶ no claimant is entitled to such an award.⁷

ANALYSIS

In this case, the Office requested an impairment evaluation of appellant's upper extremities based on his shoulder, neck and back injuries. Dr. Schickner provided a report finding a 17 percent whole person impairment based on a cervical spine disorder and a loss of cervical range of motion. However, the physician did not find any upper extremity impairment. The Act does not provide for a schedule award for cervical or spinal conditions. The Office medical adviser, relying on Dr. Schickner's evaluation, stated that there was sufficient information to find that appellant had any upper extremity impairment.

CONCLUSION

The Board finds that appellant failed to establish entitlement to a schedule award in this case.

⁶ The Act itself specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19).

⁷ *Timothy J. McGuire*, 34 ECAB 189 (1982).

ORDER

IT IS HEREBY ORDERED THAT the June 9, 2003 decision of the Office of Workers' Compensation Programs be affirmed.⁸

Issued: June 28, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ The Board notes that appellant submitted new evidence to the Board. However, the Board cannot consider evidence that was not before the Office at the time of the final decision; 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).