

neuritis/radiculitis, lumbar spinal stenosis and lumbar disc degeneration.¹ Appellant underwent an anterior lumbar interbody fusion surgery on May 16, 2006.

In a report dated January 8, 2008, Dr. David H. McCord, an attending orthopedic surgeon, reported that appellant still had pain-related complaints. He provided brief examination results, stating that twisting was 15 degrees right and left, forward flexion limited with fingertips to about the knees, with full motor strength in both legs and intact sensation to light touch. On December 16, 2008 appellant filed a claim for a schedule award. By report dated February 25, 2009, an Office medical adviser opined that the evidence did not establish any permanent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

By decision dated February 26, 2009, the Office found that appellant did not establish that he had sustained permanent impairment to a scheduled member or function of the body.

Appellant requested a review of the written record by an Office hearing representative. He submitted additional notes from Dr. McCord dated February 17 to April 7, 2009. Dr. McCord stated the interbody at L5-S1 had not fully healed and the disc at L3-4 had become significantly worse. He indicated that surgical options had been discussed.

By decision dated June 9, 2009, the hearing representative affirmed the February 26, 2009 Office decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving 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.² Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³

The medical evidence necessary to support a schedule award includes a physician's report that provides a detailed description of the impairment.⁴ Neither the Act nor its regulations

¹ The Board notes that the merit decisions dated February 26 and June 9, 2009 report as accepted the underlying lumbar conditions noted, with no mention of aggravation, and also reported abdominal pain as an accepted condition. No additional explanation was provided. A June 3, 2009 statement of accepted facts limits the accepted conditions to aggravations as stated in the April 3, 2006 letter.

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

³ A. George Lampo, 45 ECAB 441 (1994).

⁴ See James E. Jenkins, 39 ECAB 860 (1988); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (August 2002).

provide for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of “organ” under the Act.⁵

ANALYSIS

As noted above, to support a schedule award there must be a detailed description of the impairment, and how it impacts a scheduled member. Dr. McCord provided only brief examination results and he reported that appellant’s motor and sensory examination was normal. He did not provide any opinion that appellant had sustained permanent impairment under the A.M.A., *Guides* or a detailed description of an impairment to a scheduled member or function of the body sufficient to establish entitlement to a schedule award. An Office medical adviser found no impairment based on the evidence of record in a February 25, 2009 report. Therefore, appellant did not submit any additional probative evidence.⁶

Since appellant sustained back injuries, the Board will reiterate that a schedule award is not payable for loss of use of impairment to the back. The scheduled members or functions of the body are enumerated in 5 U.S.C. § 8107 and 20 C.F.R. § 10.404(a). The Board finds that appellant did not submit sufficient medical evidence to establish permanent impairment to her legs related to her accepted lumbar conditions.

CONCLUSION

The Board finds that the medical evidence of record does not establish permanent impairment to a scheduled member or function of the body under 5 U.S.C. § 8107.

⁵ See *James E. Jenkins, supra* note 4; 5 U.S.C. § 8101(20).

⁶ The Board’s review of a case is limited to evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 9 and February 26, 2009 are affirmed.

Issued: March 16, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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