

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

S.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Milwaukee, WI, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 08-848
Issued: January 26, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 29, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated November 6, 2007. Pursuant to 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 has employment-related permanent impairment of a scheduled member entitling her to a schedule award.

FACTUAL HISTORY

On December 10, 1992 appellant, then a 46-year-old bulk mail clerk, filed a claim alleging that she developed an incisional hernia due to lifting in the performance of duty. The Office accepted appellant's claim for ventral hernia repairs, incisional hernia without obstruction, depression and chronic abdominal wall pain.

Appellant requested a schedule award. In support of her claim, she submitted a series of reports from Dr. Jerry W. Goldberg, a Board-certified rheumatologist. He estimated that appellant had 15 percent impairment to the whole person due to herniation.

By decision dated November 6, 2007, the Office denied appellant's claim finding that her accepted employment injuries did not involve a scheduled member.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² 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 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.³ Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁴

A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the regulation provide for the payment of a schedule award for a hernia or to the whole person, a claimant is not entitled to such an award.⁵

ANALYSIS

Appellant submitted medical evidence from Dr. Goldberg, a Board-certified rheumatologist, supporting that she sustained permanent impairment to the whole person due to the accepted condition of ventral hernia.

However, a schedule award is not payable for any member, function or organ of the body not specified in the Act or in the implementing regulations.⁶ The Act identifies members such as the arm, leg, hand, foot, thumb and finger, functions such as loss of hearing and loss of vision and organs to include the eye. Section 8107(c)(22) of the Act provides for the payment of

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ *Id.*

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

⁵ *George E. Williams*, 44 ECAB 530, 533 (1993).

⁶ *Leroy M. Terska*, 53 ECAB 247 (2001).

compensation for permanent loss of any other important external or internal organ of the body as determined by the Secretary of Labor.⁷ The Secretary of Labor made such a determination and, pursuant to the authority granted under section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue to the schedule.⁸ The Act and its implementing regulations provide no basis for payment of a schedule award for a hernia. The terms of the Act are specific as to the method and amount of payment of compensation. Neither the Office nor the Board has the authority to enlarge the terms of the Act or to make an award of benefits under terms other than those specified in the statute. Unless a claimant's contentions are in keeping with the scope or intent of the Act, the Office's denial must be affirmed.⁹ The Office properly denied appellant's claim for a schedule award for her hernia condition.

CONCLUSION

The Board finds that appellant is not entitled to a schedule award for impairment to the whole person due to her accepted ventral hernia.

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 26, 2009
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

⁷ 5 U.S.C. § 8107(c)(22).

⁸ 20 C.F.R. § 10.404; *Henry B. Floyd*, 52 ECAB 220 (2001).

⁹ See *Richard Dale Kornas*, 44 ECAB 1009 (1993).