

On July 30, 2003 appellant filed a claim for a schedule award.

In a September 22, 2003 report, Dr. Ethel P. Larosa, a Board-certified physiatrist, treated appellant for pain following surgery for a right ventral hernia repair. In a report dated October 23, 2003, Dr. Larosa stated that appellant had a five percent impairment of the whole person according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*).

In a memorandum dated January 2, 2004, an Office medical adviser noted that the Federal Employees' Compensation Act¹ made no provision for a schedule award for a hernia condition.

By decision dated April 9, 2004, the Office denied appellant's claim on the grounds that a hernia was not a scheduled member or function.

Appellant requested a review of the written record.

By decision dated September 28, 2004, an Office hearing representative affirmed the Office's April 9, 2004 decision.

LEGAL PRECEDENT

The schedule award provision of the Act² and its implementing regulation³ 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

No schedule award is payable for a member, function or organ of the body not specified under section 8107(c) of the Act or section 10.404(a) of the implementing federal regulations.⁵ The Board has noted that there is no provision entitling a claimant to a schedule award for an accepted hernia condition.⁶

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.*

⁵ See *Robert Romano*, 53 ECAB 649 (2002).

⁶ See *Billy D. Alkire*, 32 ECAB 1389 (1981).

ANALYSIS

In a September 22, 2003 report, Dr. Larosa treated appellant for pain following surgery for a right ventral hernia repair. On October 23, 2003 he opined that appellant had a five percent impairment of the whole person⁷ according to the A.M.A., *Guides*.

As noted, a schedule award is not payable for any member, function or organ of the body not specified in the Act or in the implementing regulation.⁸ 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 compensation for permanent loss of “any other important external or internal organ of the body as determined by the Secretary [of Labor].”⁹ 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.¹⁰ The Act and its implementing regulation provide no basis for payment of a schedule award for a hernia condition.¹¹ Therefore, the Office properly denied appellant’s claim for a schedule award for her hernia condition.

CONCLUSION

The Board finds that the Office properly determined that appellant is not entitled to a schedule award for her hernia condition under the Act.

⁷ A schedule award is not payable under section 8107 of the Act for an impairment of the whole person. See *Gordon G. McNeill*, 42 ECAB 140 (1990).

⁸ *Leroy M. Terska*, 53 ECAB 247 (2001).

⁹ 5 U.S.C. § 8107(c)(22).

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

¹¹ See *Billy D. Alkire*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 28 and April 9, 2004 are affirmed.

Issued: May 13, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member