United States Department of Labor Employees' Compensation Appeals Board

DOLORES A. KING, Appellant	-))
and) Docket No. 05-555 Learner de Mary 12, 2005
U.S. POSTAL SERVICE, POST OFFICE, Bardstown, KY, Employer) Issued: May 13, 2005)
Appearances: Dolores A. King, pro se Office of Solicitor, for the Director	Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member

MICHAEL E. GROOM, Alternate Member

JURISDICTION

On January 5, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated September 28, 2004, denying her claim for a schedule award for her hernia condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the September 28, 2004 decision and also an April 9, 2004 decision, denying appellant's schedule award claim.

ISSUE

The issue is whether appellant is entitled to a schedule award for her hernia condition.

FACTUAL HISTORY

On October 17, 2001 appellant, then a 53-year-old rural mail carrier, filed a traumatic injury claim alleging that, on October 11, 2001, she felt pain on her right side after lifting a tray of mail from the back of her delivery vehicle. The Office accepted her claim for an abdominal wall strain on the right side, a hernia and a hernia repair. Appellant was placed on the periodic compensation rolls to receive compensation for temporary disability effective December 2, 2001.

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. 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]." 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. The Act and its implementing regulation provide no basis for payment of a schedule award for a hernia condition. 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