

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

J.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chicago, IL, Employer**

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Docket No. 06-1924

Issued: January 5, 2007

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 August 15, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 18, 2006, which denied her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office properly denied appellant's claim for a schedule award for the accepted conditions of abdominal wall strain/hernia.

FACTUAL HISTORY

On December 8, 2004 appellant, then a 47-year-old mail processing clerk, filed a traumatic injury claim alleging that she sustained a hernia on December 8, 2004 while lifting trays of bulk mail. The Office accepted her claim for abdominal wall strain/hernia and paid appropriate compensation. Appellant stopped work on January 5, 2005 and worked intermittently until May 11, 2005 when she returned to work full time without restrictions.

Appellant submitted treatment notes from December 8 to 20, 2004, which diagnosed an abdominal wall strain on December 8, 2004 while lifting mail at work. She came under the care of Dr. Alexander P. Nagle, a Board-certified general surgeon. In reports dated February 2 to April 6, 2005, Dr. Nagle noted a history of injury and indicated that appellant's medical history was significant for a prior hernia repair in July 2004. On March 4, 2005 he performed a laparoscopic repair of an incisional hernia with mesh and diagnosed incisional hernia. In a report dated March 17, 2005, Dr. Nagle noted that appellant was progressing well postoperatively. On April 27, 2005 he released appellant to work on May 11, 2005 without restrictions.

On June 22, 2005 appellant filed a claim for a schedule award. She submitted emergency room notes dated January 20, 2005, indicating that she was treated for a persistent cough. Reports from Dr. Samuel Chmell, a Board-certified orthopedic surgeon, dated April 19 and May 17, 2005, noted neck and low back pain. He diagnosed right wrist strain/tendinitis, entrapment neuropathy of the right upper extremity, cervical disc derangement with radiculopathy, lumbar disc derangement and right shoulder derangement. A computerized tomography scan of the abdomen and pelvis dated September 28, 2005 revealed a supraumbilical wide neck hernia with no bowel obstruction. In an October 21, 2005 attending physician's report, Dr. Don C. Arnold, a Board-certified internist, diagnosed left recurrent inguinal hernia. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity and that lifting heavy objects caused appellant's small hernia to become a large hernia.

On November 9, 2005 appellant filed a Form CA-2a, notice of recurrence of disability, indicating that she developed a recurrent hernia causally related to her accepted condition of December 8, 2004. She submitted emergency room notes dated February 10, 1999 to May 24, 2004, related to treatment for a sore throat, body itching, neck pain and headaches. A report from Dr. Nagle dated February 14, 2005 noted that appellant presented on February 2, 2005 for evaluation of a recurrent incisional hernia and underwent a laparoscopic hernia repair. A polysomnogram dated April 25, 2005 revealed morbid obesity, insomnia and excessive sleepiness during the daytime.

On May 18, 2006 the Office accepted appellant's claim for a recurrence of disability and subsequent surgery to repair the recurrent hernia.

In a decision dated May 18, 2006, 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 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

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

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 regulation as the appropriate standard for evaluating schedule losses.³ No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.⁴

Section 8107(c)(22) of the Act provides for payment of compensation for permanent loss or loss of use of “any other important external or internal organ of the body as determined by the Secretary” of Labor.⁵ On April 1, 1987 the Secretary of Labor added the following organs to the compensation schedule: breast, kidney, larynx, lung, penis, testicle and tongue.⁶ The Secretary made no provision in the implementing regulations for a hernia, repair of a hernia or residual abdominal symptomology. The current implementing regulations at 20 C.F.R. § 10.404(a) include the following members only: breast, kidney, larynx, lung, penis, testicle, tongue, ovary and uterus and vulva/vagina.⁷

ANALYSIS

On appeal, appellant alleges that she is entitled to a schedule award for her accepted condition of abdominal wall strain/hernia because the injury was caused by the heavy lifting at work. The Office accepted appellant’s claim for abdominal wall strain/hernia. However, the Act does not provide for a schedule award for a hernia.

The Board finds that the medical evidence fails to establish that appellant sustained any permanent impairment to a schedule member of the body. Section 8107 of the Act does not provide for a schedule award for a hernia condition.⁸ The regulations similarly provide no entitlement for a schedule award for a hernia.⁹ Appellant is only entitled to receive a schedule award if she establishes that her hernia caused impairment to a scheduled member of her body. The medical evidence of record, however, does not establish that she has any permanent impairment to a scheduled member due to her hernia condition. Appellant submitted reports from Dr. Nagle, dated February 2 to April 6, 2005, who diagnosed recurrent incisional hernia which was due to repetitive trauma caused by heavy lifting at work. On March 4, 2005 Dr. Nagle performed a laparoscopic repair of an incisional hernia with mesh and diagnosed incisional hernia. However, he did not find any permanent impairment to a scheduled member

³ See *id.*; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁴ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

⁵ 5 U.S.C. § 8107(c)(22).

⁶ 20 C.F.R. § 10.304(b) (1987).

⁷ 20 C.F.R. § 10.404(a).

⁸ *Billy D. Alkire*, 32 ECAB 1389 (1981).

⁹ See *supra* note 2.

related to her hernia condition or accepted surgery. Dr. Arnold diagnosed left recurrent inguinal hernia and Dr. Chmell diagnosed wrist strain/tendinitis, entrapment neuropathy of the right upper extremity, cervical disc derangement with radiculopathy, lumbar disc and right shoulder derangement. These reports do not provide any opinion that appellant sustained impairment to a scheduled member due to her accepted injury.

Neither the Office nor the Board has the authority to enlarge the terms of the Act or to make an award of benefits under any terms other than those specified in the statute.¹⁰ The Board finds that appellant is not entitled to a schedule award for injuries sustained to her abdominal wall (hernia).¹¹ Consequently, appellant has not established a basis for a schedule award for permanent impairment of a schedule member of the body due to her work injury.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the May 18, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2007
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

¹⁰ *Richard T. DeVito*, 39 ECAB 668 (1988).

¹¹ The Board notes that its decision on appellant's entitlement to a schedule award for the condition of hernia does not affect her entitlement, if any, to monetary compensation for wage loss or her entitlement, if any, to medical benefits for the residuals of her accepted employment injury.