

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND E. BARLE, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Ionia, Mich.

*Docket No. 96-668; Submitted on the Record;
Issued January 13, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant is entitled to a schedule award for permanent partial impairment of his arms and legs caused by a weakened abdominal wall.

On March 21, 1989 appellant, then a 39-year-old letter carrier, filed a notice of traumatic injury, claiming that he slipped and fell down icy stairs on a porch while delivering mail. The Office of Workers' Compensation Programs accepted the condition of a perforated sigmoid colon and appellant underwent a colostomy on June 11, 1989. Appellant returned to light-duty work with a 10-pound lifting restriction, but subsequently underwent 5 more surgical procedures to repair a weakened abdominal wall and hernias resulting from the injury.¹

On June 23, 1993 appellant filed a Form CA-7 for a schedule award, but failed to specify the member of the body permanently impaired. In support of his claim, appellant submitted reports from Dr. James A. Surrell, a Board-certified surgeon specializing in colon and rectal surgery, and his treating physician, Dr. Donald J. Scholten, a Board-certified surgeon, who stated that as a result of his condition, appellant needed a "complete modification of his work and lifestyle" representing a 50 to 70 percent reduction in his work capacity in terms of physical stress and lifting abilities.

On September 22, 1993 the Office denied a schedule award on the grounds that the medical evidence failed to document any permanent impairment of a specific member of the body as specified under the Act. Appellant requested an oral hearing, which was held on June 24, 1994.

In a decision dated September 6, 1994, the hearing representative denied the claim on the grounds that the record contained no medical evidence showing "any actual functional damage

¹ The March 20, 1993 injury was accepted for a perforated sigmoid colon, ventral hernia, and surgeries on June 11, 1989, February 7, 1990, January 16 and May 6, 1991, February 12, 1992, and February 16, 1993.

or impairment to [appellant's] extremities sustained as a result of the accepted employment injury.”

Appellant requested reconsideration and submitted the April 6, 1995 report of Dr. Chester R. Hoyt, Board-certified in physical medicine and rehabilitation, who stated that, based on the combined values chart of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993),² appellant had a 43 percent permanent impairment of the whole person. Dr. Hoyt based this conclusion on appellant's class III hernia-related impairment, restriction of the spinal and lumbosacral range of motion, and limited flexion and extension.

On July 24, 1995 the Office denied modification of the September 6, 1994 decision. The Office noted that the accepted injuries were not specifically enumerated as compensable and no schedule award is payable for the loss or loss of use of a part of the body not so listed.

Appellant again requested reconsideration and submitted an October 18, 1995 letter from Dr. Jeffrey H. Kramer, Board-certified in physical medicine and rehabilitation, who stated that appellant cannot lift more than 10 pounds because in lifting stresses are transferred from the extremity doing the lifting to the abdominal wall, and appellant's abdominal wall has been severely weakened. Dr. Kramer added that, in isolation, appellant's arms and legs are intact but in effect they are rendered severely limited due to the functional impairment of appellant's abdominal wall, limiting appellant to sedentary work. Appellant also submitted a September 28, 1995 letter from Dr. Scholten who stated that appellant's unstable abdominal wall resulted in a 70 percent reduction in the use of his arms and legs.

On November 13, 1995 the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant review of the prior decision. The Office noted that the record was devoid of any evidence that appellant's arms and legs are actually impaired in any way -- there is no loss of function, sensation, or range of motion, or decreased strength, atrophy, or nerve damage.

The Board finds that no schedule award is payable under the Federal Employees' Compensation Act for appellant's work-related injury.

Under section 8107³ of the Act and section 10.304 of the implementing federal regulations,⁴ schedule awards are payable for the permanent impairment of specified bodily members, functions, and organs. No schedule award is payable for a member, function, or organ of the body not specified in the Act or in the regulations.⁵ This principle applies to body

² The A.M.A., *Guides* are the approved standard for evaluating permanent impairment. See *Hildred I. Lloyd*, 42 ECAB 944, 946 (1991) (finding that the Office properly followed the instructions in the A.M.A., *Guides* for evaluating the percentage of impairment of the right hand).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.304.

⁵ *William Edwin Muir*, 27 ECAB 579, 581 (1976); see *Terry E. Mills*, 47 ECAB ____ (Docket No. 94-837, issued

members that are not enumerated in the schedule award provision before the 1974 amendment⁶ as well as to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendment.⁷

As the hearing representative found, the colon and abdominal wall are not listed in the compensation schedule. Therefore, no award may be issued for permanent impairment of these organs.

In 1960, amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Thus, a claimant may be entitled to a schedule award for permanent impairment to an upper or lower extremity even though the cause of the impairment originated in the neck, shoulders, or spine.⁸

In this case, the accepted injury to the abdominal wall has resulted in disability so that appellant is limited to essentially sedentary work and may not lift more than 10 pounds. However, the latter restriction is preventive in nature; it is not a specific impairment of either arm. As Dr. Kramer stated, appellant's arms and legs are intact. Thus, the weakened abdominal wall has not caused any identifiable impairment of the extremities such as loss of sensation or range of motion.⁹

While Dr. Scholten concluded that appellant had a 50 to 70 percent reduction in his work capacity, the physical restrictions imposed on appellant are required by the weakened abdominal wall, which is not listed as a compensable body member or organ in the schedule award provisions.

Dr. Hoyt explained that appellant was restricted in normal activities because of the need to avoid intra-abdominal pressure, resulting in a 43 percent impairment of the whole man. While the A.M.A., *Guides* provides tables for calculating the percentage of impairment to the whole man, the Act provides schedule awards only for specific parts of the body, not for the body in total.¹⁰

January 30, 1996) (listing the members and organs of the body for which the loss or loss of use is compensable under the schedule award provisions).

⁶ The Act itself specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19).

⁷ *John F. Critz*, 44 ECAB 788, 792-93 (1993) (brain disorder); *Ted W. Dietderich*, 40 ECAB 963, 965 (1989) (gallbladder); *Thomas E. Stubbs*, 40 ECAB 647, 649 (1989) (spleen).

⁸ *Rozella L. Skinner*, 37 ECAB 398, 402 (1986).

⁹ See *James E. Jenkins*, 39 ECAB 860, 867 (1988) (finding that the medical evidence failed to describe impairment to appellant's upper extremity based on his cervical injury).

¹⁰ See *George E. Williams*, 44 ECAB 530, 533 (1993) (finding that the medical evidence was insufficient to support permanent impairment of appellant's lower extremities as a result of his spinal condition).

Thus, the Board finds that appellant has failed to meet his burden of proof in establishing entitlement to a schedule award. As there is no other medical evidence addressing whether appellant has a work-related permanent impairment of a schedule member, the Office properly found that appellant was not entitled to a schedule award for impairment of his extremities.

The July 24 and November 13, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
January 13, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member