

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDITH R. CAMPBELL and U.S. POSTAL SERVICE,
POST OFFICE, Tuscon, AZ

*Docket No. 98-2003; Submitted on the Record;
Issued July 3, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant is entitled to a schedule award based upon her permanent impairment of her cognitive abilities due to her March 15, 1993 employment injury.

On March 20, 1993 appellant, then a 46-year-old letter carrier filed a traumatic injury claim for injuries sustained as a result of an automobile accident on March 15, 1993 when her vehicle was struck by another vehicle running a red light. The Office of Workers' Compensation Programs accepted the claim for post-traumatic brain injury, temporomandibular joint-pain dysfunction syndrome, and contusion and fracture of the right fourth finger. The Office authorized bilateral arthroplasties of the temporomandibular joints including inpatient surgery.

Appellant filed a claim for a schedule award on May 3, 1995.

On August 29, 1996 the Office issued a schedule award for a two percent permanent impairment of her right hand.

On August 22, 1996 appellant filed a claim for a schedule award for mood and cognitive disorders due to her head injury.

By decision dated October 10, 1996, the Office rejected appellant's August 22, 1996 schedule award claim. The Office found that the Federal Employees' Compensation Act contained no provision for payment on account of a psychological condition. Thus, the Office found that the evidence of record did not establish that the claimed schedule award was for permanent impairment of a scheduled body member as determined in 5 U.S.C. § 8107(c).

In a letter dated October 21, 1996, appellant's counsel requested a hearing before an Office hearing representative which was held on August 12, 1997.

By decision dated September 16, 1997, the hearing representative affirmed the October 10, 1996 decision rejecting appellant's request for a schedule award on the basis that the

brain was not recognized as a compensable member for a schedule award.¹ The hearing representative also noted that, if appellant felt that her accepted condition caused an impairment in her arm, she could submit additional evidence and file an appropriate claim.

The Board finds that appellant is not entitled to a schedule award based upon her permanent impairment of her cognitive abilities due to her March 15, 1993 employment injury.

The schedule award provisions of the Act² and its implementing federal regulations³ provide for payment of compensation for the permanent loss or loss of use of specified members, functions and organs of the body. No schedule award is payable for a member, function or organ of the body that is not specified in the Act or in the implementing regulations.⁴ The Act identifies members as the arm, leg, hand, foot, thumb and finger; functions 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.”⁵ On April 1, 1987 the Secretary of Labor made a determination and, pursuant to the authority granted in section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, tongue, ovary and uterus to the schedule.⁶ As the brain is not identified as a schedule member, appellant is not entitled to a schedule award for mood and cognitive disorders due to her head injury.⁷ In addition, the Office has not accepted that appellant sustained a mood or cognitive disorder due to her accepted employment injury. Therefore, appellant is not entitled to a schedule award.

¹ The Board notes that appellant had been referred on April 23, 1998 for a second opinion to determine if there was a causal relationship between appellant’s continuing headaches as well as her memory and attention problems and her accepted employment injury. This issue is not before the Board on the present appeal as the Office did not issue a decision on this matter prior to the filing of the instant appeal on June 11, 1998; *see* 20 C.F.R. § 501.2(c).

² 5 U.S.C. § 8107(a).

³ 20 C.F.R. § 10.304.

⁴ *See Donald A. Larson*, 41 ECAB 947 (1990); *Ted W. Dietderich*, 40 ECAB 963 (1989); *Thomas E. Stubbs*, 40 ECAB 647 (1989).

⁵ 5 U.S.C. § 8107(c)(22).

⁶ 20 C.F.R. § 10.304. The Board notes that it has awarded schedule awards for conditions which are not covered under the compensation schedule if the condition is shown to have contributed to impairment of a schedule member. *Donald A. Larson*, *supra* note 4.

⁷ There is no provision in the Act for adding organs to the compensation schedule on a case-by-case basis. *John F. Critz*, 44 ECAB 788 (1993).

The decision of the Office of Workers' Compensation Programs dated September 16, 1997 is hereby affirmed.⁸

Dated, Washington, D.C.
July 3, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁸ Subsequent to the hearing representative's decision, the Office received additional evidence as well as a May 28, 1998 letter requesting reconsideration of the denial of her claim for a schedule award for her 15 percent permanent impairment to her brain. By letters dated June 9 and 18, 1998, the Office informed appellant that the brain or cognitive function is not a compensable member under the Act for a schedule award. The Board may not consider additional evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).