

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WENDELL P. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, North Little Rock, AR

*Docket No. 99-521; Submitted on the Record;
Issued May 25, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a schedule award for the effects of heat exhaustion.

On July 24, 1996 appellant, then a 44-year-old letter carrier, filed a claim for heat exhaustion and heat cramps which he related to delivering mail on July 22, 1996. He stated that he had dizziness, cramps, profuse sweating and bouts of vomiting while delivering mail. In a September 12, 1996 decision, the Office rejected appellant's claim on the grounds that the evidence of record failed to demonstrate a causal relationship between the work incident and the claimed condition or disability. In a September 24, 1996 letter, appellant requested reconsideration. In a November 20, 1996 merit decision, the Office denied appellant's request for modification of the prior decision. On November 22, 1996 appellant filed a claim for an occupational injury of heat intolerance which he related to incidents dating back to 1995. In a March 13, 1997 letter, appellant again requested reconsideration. In a March 27, 1997 decision, the Office denied appellant's request for reconsideration on the grounds that the request did not raise substantive legal questions nor included new and relevant evidence. In a June 10, 1997 letter, appellant, through his attorney, again requested reconsideration. In a September 5, 1997 decision, the Office vacated its September 12, 1996 decision. The Office accepted appellant's claim for heat exhaustion and mild renal insufficiency.

On May 10, 1998 appellant filed a claim for a schedule award. In a June 3, 1998 decision, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence of record did not refer to any impairment of a scheduled member of the body as specified by the Federal Employees' Compensation Act. In a July 28, 1998 letter, appellant requested reconsideration. In a September 1, 1998 merit decision, the Office denied appellant's request for modification of the prior decision.

The Board finds that appellant is not entitled to a schedule award for the effects of heat exhaustion.

The schedule award provisions of the Act¹ and its implementing federal regulations² 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.³ The Act identifies members as the arm, leg, hand, foot, thumb and fingers; functions such as 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.”⁴ The Secretary of Labor has made such a determination and, pursuant to the authority granted in section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue to the schedule.

The schedule award provision of the Act⁵ and its implementing regulation⁶ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office a standard for evaluating schedule losses and the Board has concurred in such adoption.⁷

In a July 25, 1996 report, Dr. David Young, a family practitioner, indicated that appellant had been seen for heat cramps. He diagnosed mild renal failure and dehydration. In an August 8, 1996 report, Dr. Young diagnosed gastritis, colitis and proteinuria with some renal insufficiency. In a September 3, 1996 report, Dr. Judith McGhee, Board-certified in preventive medicine, diagnosed heat intolerance and mild renal insufficiency with proteinuria. In a September 11, 1996 report, Dr. Young indicated that appellant had some gastritis, colitis, epididymitis, and a mild reversible renal insufficiency secondary to hypovolemia. Dr. Young concluded that appellant had repeated insults of heat cramps and heat exhaustion that could have possibly offset appellant’s hypothalamus, the thermoregulatory center of the body, and rendered him heat intolerant. He stated that appellant was not permanently disabled but had to work in a controlled environment.

¹ 5 U.S.C. § 8107(a).

² 20 C.F.R. § 10.304.

³ *John Year*, 48 ECAB 243 (1996).

⁴ 5 U.S.C. § 8107(c)(22).

⁵ 5 U.S.C. § 8107(c).

⁶ 20 C.F.R. § 10.304.

⁷ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

In support of his request for a schedule award, appellant submitted a May 6, 1998 report from Dr. Derek Lewis, a Board-certified family practitioner, who stated that appellant had a class two percent permanent impairment of the skin. He concluded that appellant had a 17 percent permanent impairment due to heat intolerance because appellant could not be in heat for a prolonged period of time without developing some type of rash, headache or body ache.

In a June 2, 1998 memorandum, an Office medical adviser indicated that heat exhaustion occurred either due to water depletion or salt depletion. He commented that episodes of heat exhaustion are usually temporary, reversible and do not necessarily permanently impair an individual unless an underlying condition is permanently aggravated. The Office medical adviser stated that, although appellant had transient elevation of renal function tests, there was no clear evidence in the record of any permanent impairment of any organ or body part of appellant. He noted that the impairment rating was classified under the A.M.A., *Guides* as a skin disorder. The medical adviser stated that there was no medical evidence that appellant had a significant skin disease. He also noted that the skin was not a scheduled member and therefore not eligible for a schedule award. He concluded that appellant had no permanent impairment.

As the Office medical adviser correctly pointed out, Dr. Lewis' schedule award calculation was based on a permanent impairment of the skin. However, the skin is not a part of the body for which a schedule award is payable either under the Act or the applicable regulations. Appellant, therefore, is not entitled to a schedule award on this basis.

In the request for reconsideration, appellant's attorney submitted a revised report from Dr. Lewis who related his estimate of appellant's permanent impairment to a previously diagnosed malfunction of the hypothalamic gland. The hypothalamic gland also is not a part of the body listed under the Act or the applicable regulations. A schedule award would be payable if an employment-related injury to the hypothalamic gland caused a permanent impairment of a scheduled member of the body. However, there is no medical evidence of record showing a permanent impairment of a scheduled member of the body, such as the kidney, due to an employment-related malfunction of the hypothalamic gland. The medical evidence relating to appellant's kidney function showed only that he had a reversible renal insufficiency. There is no evidence of permanent impairment to the kidney arising from appellant's employment injury.

The decisions of the Office of Workers' Compensation Programs, dated September 1 and June 3, 1998, are hereby affirmed.

Dated, Washington, D.C.
May 25, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member