

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ARTHUR D. PERKINS and DEPARTMENT OF THE AIR FORCE,  
KELLY AIR FORCE BASE, San Antonio, TX

*Docket No. 00-1940; Submitted on the Record;  
Issued May 2, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to a schedule award for permanent impairment, causally related to his accepted employment-related injury.

The Office of Workers' Compensation Programs accepted that on April 6, 1982 appellant, then a 53-year-old copier operator, sustained lumbosacral muscular strain after placing a paper tray into the copy machine. Appellant stopped work on April 13, 1982 and returned to work on May 3, 1982. The Office determined that appellant's lumbosacral strain resolved as of May 6, 1982. Appellant retired on November 30, 1990.

On March 14, 1999 appellant filed a claim for a schedule award.

In an April 6, 1999 report, Dr. Richard Hernandez, Jr., a Board-certified family practitioner, noted findings of "strain/sprain, right knee with chronic arthritis" and checked "yes" to the question of whether the condition found was caused or aggravated by an employment activity. History of injury was stated as "[r]ight knee 20 [percent] arthritis" and Dr. Hernandez noted "[l]ifting [and] bending over to pick up copies on floor. Injured right knee with complications of chronic arthritis."

By letter dated November 2, 1999, the Office advised appellant that medical evidence of permanent injury-related disability was necessary to establish his claim.

By report dated December 22, 1999, Dr. Hernandez reviewed appellant's history of employment-related accidents on December 5, 1975,<sup>1</sup> June 22, 1997<sup>2</sup> and October 8, 1981.<sup>3</sup> The

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<sup>1</sup> Back pain and left shoulder pain after picking up a cowling.

<sup>2</sup> Fell off B-52 wing injuring back and left leg; lumbosacral radiculopathy diagnosed.

<sup>3</sup> Hurt lower back when lifting 50-pound door.

March 8, 1995 lumbar spine x-rays demonstrated anterior wedging of L1 with degenerative changes and intervertebral space narrowing at L4-S1 and indicated that computerized tomography (CT) scanning on December 27, 1995 showed degenerative disc disease at L3-4 with bulging at L4-5 and L5-S1 plus facet hypertrophy of L4 and 5.

A September 24, 1996 lumbar spine x-ray showed diffuse degenerative disc disease at all levels. Dr. Hernandez noted that appellant's problems with his legs were due to arthritis and age rather than to a peripheral nerve disorder. He diagnosed chronic lumbosacral strain with aggravation of lumbosacral arthritis, a compression fracture of L1, proctitis and aggravation of hemorrhoids. Dr. Hernandez opined that appellant had a 20 percent impairment for loss of lumbar range of motion, a 15 percent impairment of the whole person for continued daily rectal pain and a combined total impairment of 24 percent. The date of appellant's maximum medical improvement was January 4, 1990.

On January 14, 2000 the Office medical adviser reviewed Dr. Hernandez's report and opined that appellant had no impairment of the lower extremities due to an April 6, 1982 lumbosacral strain. The Office medical adviser noted that no impairment was considered for appellant's limited range of lumbar motion or rectal pain because these were not schedule members under the Federal Employees' Compensation Act,<sup>4</sup> or its implementing regulations.

By decision dated February 23, 2000, the Office rejected appellant's claim for a schedule award, finding that the medical evidence or record failed to establish any compensable permanent impairment. The Office noted that if the condition accepted by the Office does not produce impairment to a member or function of the body enumerated by 5 U.S.C. § 8107, then no schedule award is payable.

Thereafter, appellant submitted further medical evidence regarding various conditions. As this evidence was not before the Office at the time of its most recent merit decision, it is not now before the Board on this appeal.<sup>5</sup>

The Board finds that appellant has failed to establish that he is entitled to a schedule award for permanent impairment causally related to his accepted employment-related injury.

The schedule award provisions of the Act<sup>6</sup> and its implementing federal regulations<sup>7</sup> 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 not specified in the Act or in the regulations.<sup>8</sup> Because neither the Act nor the

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<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> *See* 20 C.F.R. § 501.2(c).

<sup>6</sup> 5 U.S.C. § 8107(a).

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *William Edwin Muir*, 27 ECAB 579 (1976) (this principle applies equally to body members that are not enumerated in the schedule provision as it read before the 1974 amendment and to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendment); *see also Ted W. Dietderich*, 40 ECAB 963 (1989); *Thomas E. Stubbs*, 40 ECAB 647 (1989); *Thomas E. Montgomery*, 28 ECAB 294 (1977).

regulations provide for the payment of a schedule award for the permanent loss of use of the back,<sup>9</sup> no claimant is entitled to such an award.<sup>10</sup> Although the medical evidence in this case supports appellant's claim that he has a permanent impairment of the lumbar spine, no evidence can establish entitlement to an award not authorized under the Act.

In 1966, 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. As the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to a lower extremity even though the cause of the impairment originated in the spine.<sup>11</sup>

The medical evidence in this case, however, does not establish that appellant sustained a permanent loss of use of his lower extremities due to his 1982 injury.<sup>12</sup> Dr. Hernandez reported that the problems with appellant's legs were due to arthritis and age rather than to a peripheral nerve disorder. He concluded that there was no permanent impairment of the lower extremities due to sensory deficit or loss of strength. Because the medical evidence fails to support a work-related permanent impairment of appellant's lower extremities, the Board finds that appellant has not established entitlement to a schedule award.

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.<sup>13</sup> The Act itself specifies the following schedule members: Arm, leg, hand and foot, thumb and finger. The Act also specifies loss of hearing and loss of vision and provides compensation for the loss of an eye. The Act does not specify the rectum.

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."<sup>14</sup> On April 1, 1987 the Secretary of Labor made such a determination and pursuant to section 8107(c)(22) of the Act, added the following organs to the compensation schedule: Breast, kidney, larynx, lung, penis, testicle and tongue.<sup>15</sup> The Secretary made no provision in the implementing regulations for the rectum.

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<sup>9</sup> The Act itself specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19).

<sup>10</sup> *E.g., Timothy J. McGuire*, 34 ECAB 189 (1982).

<sup>11</sup> *Rozella L. Skinner*, 37 ECAB 398 (1986).

<sup>12</sup> The medical reports from Dr. Hernandez do not even mention an April 6, 1982 injury.

<sup>13</sup> *See supra* note 7.

<sup>14</sup> 5 U.S.C. § 8107(c)(22).

<sup>15</sup> 20 C.F.R. § 10.304(b).

Appellant contends that the rectum is an important organ of the body. However, the Secretary has not made such a determination pursuant to 5 U.S.C. § 8107(c)(22).<sup>16</sup> Consequently, there is no statutory basis for the payment of compensation for the loss or loss of use of the rectum. Therefore, the Board finds that the Office properly denied appellant's claim for a schedule award on that basis.

Appellant argues that he has right knee pain and problems, including tricompartmental degenerative joint disease of the right knee. Further, he notes that Dr. Hernandez reported that the problems with his legs were due to arthritis and age. However, the Act provides that a schedule award will be payable only for a permanent impairment resulting from an accepted employment injury.<sup>17</sup> Appellant's right knee injury was not accepted as an employment-related condition. Therefore, no schedule award is payable.<sup>18</sup>

The February 23, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
May 2, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member

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<sup>16</sup> The Act does not provide for the addition of other important organs on a case-by-case basis. The organs that have been added to the compensation schedule are set forth in implementing regulations. *See Dieterich supra* note 8.

<sup>17</sup> *See Philip N.G. Barr*, 33 ECAB 948 (1982).

<sup>18</sup> Included in the case record for Claim No. A16-0056876 is part of a motion to dismiss ECAB Docket No. 93-922 regarding appellant's claims A16-81876 and A7-140393. As neither of these is before the Board on this appeal, such claims have not been addressed.