

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT R. ARMSTRONG, JR. and DEPARTMENT OF THE NAVY,
MARINE CORPS, Camp Pendleton, CA

*Docket No. 01-1579; Submitted on the Record;
Issued January 25, 2002*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

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

On December 3, 1998 appellant, then a 50-year-old maintenance worker, filed a notice of occupational disease claiming that he sustained a hernia condition as a result of heavy lifting required in the performance of duty. The Office accepted the claim for an umbilical hernia with surgical repair. Appellant was off work from December 30, 1998 until February 18, 1999, when he returned to light duty.

On March 27, 2000 appellant's treating physician, Dr. Bradford Stiles, a Board-certified physician in physical medicine, placed permanent work restrictions on appellant to avoid any lifting over 15 pounds and other designated repetitive activities. Dr. Stiles opined that appellant could not return to his date-of-injury position and the employing establishment provided light duty within the restrictions imposed by him.

Appellant was eventually reassigned to a new position as maintenance worker, consistent with his medical limitations, effective May 5, 1999. On November 2, 2000 the Office terminated appellant's wage-loss compensation because he no longer had any loss of wage-earning capacity based on the new position.

On May 15, 2000 appellant filed a Form CA-7 claim for a schedule award.

In a letter dated October 20, 2000, the Office requested that Dr. Stiles determine the extent of appellant's permanent impairment related to the hernia in accordance with the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

On November 9, 2000 the Office received an October 19, 2000 report prepared by Dr. Stiles, indicating that appellant was seen on September 19, 2000 for the possibility of a nerve entrapment from his hernia repair. Dr. Stiles imposed work restrictions.

In a surgical consultative report dated December 1, 2000, it was noted that there was no evidence of a recurrence at the site of the umbilical hernia repair.

In a report dated February 13, 2001, Dr. Stiles discussed appellant's history of injury and stated that he had no evidence of a recurrence of his hernia condition. He related that while appellant continued to complain of pain, there did not appear to be any anatomical explanation for his symptoms. Dr. Stiles stated that appellant needed no further medical treatment.

In a decision dated February 7, 2001, the Office denied appellant's claim for a schedule award based on a work-related hernia.

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

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing federal regulation,² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ However, the Act does not specify the manner in which the percentage of loss shall be 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

In this case, the Board finds that the medical evidence fails to establish that appellant has any permanent impairment which would entitle him to a schedule award. Section 8107 of the Act does not provide for a schedule award for a hernia condition.⁵ The regulations similarly provide no entitlement for a schedule award for a hernia.⁶ Appellant is only entitled to receive a schedule award if he establishes that his hernia caused impairment to a scheduled member of his body, such as the lower extremities. The medical evidence of record, however, does not establish that appellant has any permanent impairment to his lower extremities because of his hernia condition. Consequently, appellant is not entitled to a schedule award for his work injury.

¹ 5 U.C.S. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ 5 U.S.C. § 8107(c)(19).

⁴ See 20 C.F.R. § 10.404 (1999).

⁵ *Billy D. Alkire*, 32 ECAB 1389 (1981).

⁶ 20 C.F.R. § 10.404 (1999).

The February 7, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 25, 2002

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member