

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLY R. FETTERHOFF and U.S. POSTAL SERVICE,
POST OFFICE, Spokane, WA

*Docket No. 02-929; Submitted on the Record;
Issued October 29, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant is entitled to a schedule award for the loss of use of an intestine.

On November 11, 1998 appellant, then a 21-year-old postal clerk, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that work factors contributed to or aggravated his ulcerative colitis.

In support of his claim, appellant submitted a report from Dr. G.C. Kutteruf, a Board-certified gastroenterologist, that said:

“During the period of time [appellant] was serving his probational period with the [employing establishment], he was suffering from uncontrolled ulcerative colitis with frequent episodes of diarrhea. He tried to limit his diarrhea so he would be able to perform his duties a[t] the [employing establishment] by not eating before and during work. The resulting nutritional deficits complicated the treatment of [appellant’s] ulcerative colitis. I do [not] think the delivering mail by itself caused the problem. However, [appellant’s] need to avoid bowel movements during the periods when toilets were unavailable to him caused him to decrease his food intake, which subsequently caused increased weight loss and nutritional depletion.”

In June 1998, appellant underwent a subtotal colectomy and end ileostomy.

Appellant’s claim was accepted for an aggravation of ulcerative colitis and inflammatory bowel disease. The corrective surgeries were also accepted as work related.

On August 30, 2001 appellant requested a schedule award for the loss of use of an intestine.

In a December 12, 2001 decision, the Office of Workers' Compensation Programs denied the schedule award.

The Board finds that appellant is not entitled to a schedule award for his accepted conditions under section 8107(c)(22) of the Federal Employees' Compensation Act .

The schedule award provision of the Act¹ and its implementing regulations² provide for payment of schedule awards for permanent loss or loss of use, of specified anatomical members or functions of the body. A schedule award is not payable for the loss or loss of use, of a member, function or organ of the body not specifically enumerated in the Act or its regulations.³

Section 8107(c)(22) of the Act provides for payment of compensation for permanent loss of use of "any other important external or internal organ of the body as determined by the Secretary of Labor." The Act, however, contemplates that the Office's authority to add other important internal or external organs to the compensation schedule will be exercised through properly promulgated regulations. The Act does not provide for the Office to add organs to the compensation schedule on a case-by-case basis.⁴ On April 1, 1987 the Secretary of Labor made such a determination and, pursuant to the authority granted in section 8107(c)(22), added the following organs to the compensation schedule: breast, kidney, larynx, lung, penis, testicle and tongue.⁵ As the Secretary has not determined, pursuant to the discretionary authority granted in section 8107(c)(22) of the Act, that an intestine constitutes "any other important external or internal organ of the body," section 8107(c)(22) provides no statutory basis for the payment of a schedule award for its loss.⁶

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Thomas E. Stubbs*, 40 ECAB 647 (1989).

⁴ *Ted W. Dieterich*, 40 ECAB 963 (1989).

⁵ 20 C.F.R. § 10.304(b). Effective May 25, 1992, the female reproductive organs were added to the compensation schedule.

⁶ See *Donald A. Larson*, 41 ECAB 947 (1990) (no statutory authority for payment of a schedule award for loss of use of the cochlea).

The decision of the Office of Workers' Compensation Programs dated December 12, 2001 is affirmed.

Dated, Washington, DC
October 29, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member