

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DORIS G. BATES and DEPARTMENT OF THE TREASURY,
OFFICE OF COMPTROLLER OF CURRENCY, Charleston, WV

*Docket No. 03-229; Submitted on the Record;
Issued April 8, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant is entitled to a schedule award for impairment of her bladder resulting from a 1999 work injury.

On May 15, 2000 appellant, then a 43-year-old national bank examiner, filed a claim for occupational disease, Form CA-2, alleging that she suffered a stroke as a result of stress in her federal employment. In a decision dated January 23, 2002, the Office of Workers' Compensation Programs accepted appellant's claim for cerebral vascular accident (stroke), hypertension, migraine headaches and irritable bowel syndrome.

In March 2002, appellant requested a schedule award for her employment-related impairments, including left arm and left leg weakness, loss of vaginal and vulvar sensation and loss of bladder function and sensation. Following correspondence between the Office and appellant's physicians, on July 18, 2002 the Office issued a schedule award for a 65 percent loss of use of appellant's left lower extremity and a 65 percent loss of use of her left upper extremity. On August 8, 2002 the Office referred appellant for additional medical evaluations concerning her claims for vaginal and vulvar impairment, and informed the physician that as the Federal Employees' Compensation Act does not contain any provision allowing for payment of compensation for any permanent partial impairment of the bladder, any impairment of the bladder would not be considered by the Office.

By letter dated August 11, 2002, appellant contested the Office's determination that no compensation is payable for loss of function of the bladder and submitted additional evidence in support of her claim.

In a decision dated August 26, 2002, the Office formally denied appellant's claim for a schedule award for impairment of her bladder because this was not specified as a compensable member of the body in either the Act or its implementing regulations.

The Board finds that no schedule award is payable for impairment of appellant's bladder.

The schedule award provisions of the Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

However, no schedule award is payable for a member, function or organ of the body not specified in the Act or in the regulations.³ This principle applies to body members that are not enumerated in the schedule award provision before the 1974 amendments⁴ as well as to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendments.⁵

In 1960, 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. Thus, a claimant may be entitled to a schedule award for permanent impairment to an upper or lower extremity even though the cause of the impairment originated in the neck, shoulders or spine.⁶

In 1987, the Secretary of Labor exercised her authority, pursuant to section 8107(c)(22), to add to the compensation schedule “any other important” internal or external organs and listed the following: breast; kidney; larynx; lung; penis; testicle; and tongue.⁷ In addition, effective May 25, 1992, the uterus/cervix and vulva/vagina were added to the compensation schedule.⁸

In this case, appellant received a schedule award for the impairment to her left upper and lower extremities, caused by her work-related stroke and her claim for permanent impairment of her vulva and vagina is pending before the Office.⁹ However, the bladder is not a specified

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *William Edwin Muir*, 27 ECAB 579, 581 (1976); *see also Terry E. Mills*, 47 ECAB 309, 313 (1996) (listing the members and organs of the body for which the loss or loss of use is compensable under the schedule award provisions).

⁴ The Act itself specifically excludes the back from the definition of “organ.” 5 U.S.C. § 8101(19).

⁵ *John F. Critz*, 44 ECAB 788, 792-93 (1993) (brain disorder); *Ted W. Dietderich*, 40 ECAB 963, 965 (1989) (gallbladder); *Thomas E. Stubbs*, 40 ECAB 647, 649 (1989) (spleen).

⁶ *Rozella L. Skinner*, 37 ECAB 398, 402 (1986).

⁷ 20 C.F.R. § 10.404(a).

⁸ *Id.*

⁹ Appellant’s claim for a schedule award for loss of use of her vulva and vagina is not before the Board on the current appeal; *see* 20 C.F.R. § 501.2(c).

member of the body, in either the Act or the regulations, and the Board has no power to change or add to the plain meaning of the terms used in the statute.¹⁰

Appellant argues on appeal that the language of section 8107(c)(22), “*any other important external or internal organ of the body,*” would not have been included if Congress had intended to limit schedule awards to only the members of the body enumerated in the preceding clauses. (Emphasis added.)

The intent of subsection 22 of section 8107(c) is to enable the Secretary to determine what other organs of the body may qualify for schedule awards. That intent is evident from the language, “as determined by the Secretary.” Congress thus intended to leave further determinations of what specific organs would be considered “important” for the purpose of a schedule award to the discretionary authority of the Secretary. For example, the Board has found that the Act provides no statutory requirement for the payment of a schedule award for a claimant’s loss of her sense of smell.¹¹

This is also the situation, with loss of use of the bladder. The Act clearly provides the Secretary of Labor with the authority to add other organs to the list of those that now qualify for a schedule award. The fact that she has not designated the bladder is not a contravention of congressional intent, but rather a proper exercise of her discretionary authority granted by Congress.¹²

Inasmuch as loss of use of the bladder is not specifically enumerated in the compensation schedule, the Board finds that the Office properly denied appellant’s claim for a schedule award for permanent impairment of her bladder.

¹⁰ See *Virginia Chappell (William F. Chappell)*, 45 ECAB 275, 277 (1993) (finding that the terms of the Act are specific as to the method and amount of payment of compensation; neither the Office nor the Board has the authority to enlarge the terms of the Act or to award benefits under any terms other than those specified in the statute).

¹¹ See *Billie Sue Barnes*, 47 ECAB 478 (1996) (finding that the Office’s authority to add other important internal or external organs to the compensation schedule will be exercised through properly promulgated regulations).

¹² See *John Yera*, 48 ECAB 243 (1996) (finding that bowel, bladder and sexual dysfunction were taken into account in the 100 percent impairment rating of appellant’s penis).

The August 26, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 8, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member