

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS W. DOPPS and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Oldtown, ID

*Docket No. 02-1786; Submitted on the Record;
Issued February 5, 2003*

DECISION and ORDER

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

The issue is whether appellant has established entitlement to a schedule award under 5 U.S.C. § 8107.

On May 24, 1999 appellant, then a 34-year-old maintenance worker, filed a claim for a traumatic injury alleging that on May 20, 1999 he sustained a hernia in the performance of duty.

On August 19, 1999 the Office of Workers' Compensation Programs approved appellant's claim for inguinal hernia and hernia repair on June 24, 1999. He previously had a nonwork-related left inguinal hernia repair in 1969.

The Office authorized hernia repairs which occurred on June 24, 1999 and November 20, 2000. On January 2, 2001 Dr. John L. Pennings, appellant's Board-certified attending surgeon, released him to light-duty effective January 8, 2001.

On April 9, 2001 appellant filed a claim for a schedule award.

In a letter dated April 13, 2001, the Office requested that appellant submit a report from his treating physician to determine the extent of his impairment related to the hernia in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

In a report dated January 8, 2002, Dr. Ward Houston Leedy, appellant's treating physician Board-certified in family practice, stated that he had been appellant's treating physician since 1992. He evaluated appellant that day in accordance with the A.M.A., *Guides* (5th ed. 2001) and reported findings. Dr. Leedy stated: "[t]rying to give him a fair rating based on the information for ilioinguinal neuralgia is not possible."

Dr. Leedy then stated:

“On page 482, Table 16-10 [appellant’s] impairment of the lower extremity due to sensory deficits or pain would be a [G]rade 2, with percent of sensory deficit between 61 and 80 percent.

“On page 552, Table 17-37 the ilioinguinal nerve is omitted from the impairments due to nerve deficits of the lower extremity. On page 575, Table 18.3 entitled impairment classification due to pain disorder, he would be in a [c]lass 2 or moderate, which according to Algorithm in Figure 18.1 on page 574 would allow one to increase his percentage by three percent. That would put us at three percent, since the ilioinguinal nerve is not included on page 552, [T]able 17-37. Therefore, the only fair way that [appellant] can be rated is by referring [t]o page 136 in the portion entitled Hernias. He would clearly fit class three criteria in that he has significant limitations in activities of daily living, due to his failure of obtaining relief of hernia repair by three surgeries.

“Therefore, I would rate [appellant] at a 22 percent impairment of the whole person based on his failure to having his hernia adequately repaired and an additional 3 percent for the chronic pain that he has sustained resulting in a[n] impairment of 28 percent for the whole man.”

In a report dated March 12, 2002, the Office medical adviser reviewed the medical records and stated that “[w]hether an impairment rating is accepted for [appellant’s] status post failed hernia repair depends on whether [the Office] accepts organ systems impairment ratings.”

By decision dated April 10, 2002, the Office determined that appellant was not entitled to a schedule award.

The schedule award provisions of the Federal Employees’ Compensation 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

In this case, the Office accepted an ilioinguinal hernia as employment related; appellant underwent hernia repair surgery on June 24, 1999 and November 20, 2000. With respect to a schedule award, however, there is no medical evidence discussing an impairment to a scheduled member, organ or function of the body. The attending surgeon, Dr. John Penning, did not submit

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

a medical report regarding a permanent impairment. Although he did find a whole man impairment rating, such ratings are not provided for under the Act and in this case. Dr. Penning's estimate was not responsive to the Office's request for an evaluation in accordance with the A.M.A., *Guides*.⁴ Accordingly, the Board finds that the Office properly determined that appellant was not entitled to a schedule award in this case.

The decision of the Office of Workers' Compensation Programs dated April 10, 2002 is affirmed.

Dated, Washington, DC
February 5, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ Gary L. Loser, 38 ECAB 673 (1987).