

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANET C. ANDERSON and DEPARTMENT OF THE NAVY,
NAVAL AVIATION DEPOT, Jacksonville, FL

*Docket No. 02-2239; Submitted on the Record;
Issued February 13, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant is entitled to a schedule award for permanent partial impairment of her liver.

Appellant's claim, filed on June 13, 1997, was accepted for acute fulminant hepatitis and subsequent hypertension after she developed liver disease during a business trip to Thailand the previous January. She had a liver transplant on May 14, 1997. The Office of Workers' Compensation Programs paid appropriate compensation until appellant returned to work in March 1999.

Appellant subsequently requested a schedule award. On March 14, 2000 the Office informed her that a schedule award was not payable for a liver transplant. Appellant requested reconsideration on July 11, 2000 and the Office issued a formal decision on December 21, 2000 denying her request.

Appellant requested a hearing, which was held on June 26, 2001. By decision dated September 4, 2001, the hearing representative denied appellant's claim for a schedule award.

The Board finds that appellant is not entitled to a schedule award for her liver condition.

Section 8107 of the Federal Employees' Compensation Act¹ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified anatomical members, functions and organs of the body.² No schedule award is payable for any member, function or organ of the body not listed in section 8107 or its implementing regulation.³

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S. C. § 8107.

³ *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

Section 8107 specifies bodily members or functions as the upper and lower extremities, eye or vision and loss of hearing.⁴ The implementing regulation, section 10.404, lists the breast, the kidney, the larynx, the lung, the penis, the testicle and the tongue.⁵ The Board has held that this principle of exclusion applies equally to bodily members that were not enumerated in the schedule provision as it read before the 1974 amendment and to bodily organs that are not enumerated in the regulations promulgated pursuant to that amendment.⁶

The Act does not provide for the Office to add organs to the compensation schedule on a case-by-case basis.⁷ Nor does the Board have the power to enlarge the provisions of either statute or regulation.⁸

In this case, a schedule award cannot be granted for permanent impairment resulting from her work-related liver condition. Appellant received wage-loss compensation when her liver condition and the medical problems associated with her transplant -- such as increased susceptibility to infections and muscular ailments -- rendered her disabled from work. She also receives medical benefits for treatment related to the accepted injury. However, under the Act she cannot be granted a schedule award for impairment to her liver because this organ has not been included under the Act or regulations as a scheduled member.⁹

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Richard G. Jones*, 36 ECAB 639, 640 (1985). The 1974 amendment authorized a schedule award for the loss or loss of use of “any other important external or internal organ of the body as determined by the Secretary.” See *Thomas P. Mooney*, 51 ECAB 556 (2000) (finding that appellant was not entitled to a schedule award for his lung condition due to asbestos because, although the lung was listed in the regulation implementing the 1974 amendment, appellant’s injury occurred prior to the effective date of the amendment).

⁷ *Ted W. Dieterich*, 40 ECAB 963, 965 (1989).

⁸ See *Barbara L. Riggs*, 50 ECAB 133, 138 (1998) (finding that because the plain language of the Act does not support that Congress intended to include employees of Gallaudet University under the Act, the Board must hold that appellant was not an employee as defined by the Act).

⁹ See *Thomas E. Stubbs*, 40 ECAB 647, 649 (1989) (finding that a schedule award for impairment of the spleen, ribs, abdomen or liver is not payable under the Act).

The September 4, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
February 13, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member