

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA A. ALFRED and DEPARTMENT OF JUSTICE,
METROPOLITAN CORRECTIONAL CENTER, San Diego, CA

*Docket No. 03-1062; Submitted on the Record;
Issued September 16, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant is entitled to more than a 100 percent permanent impairment of her right and left lower extremity, for which she received a schedule award.

This case is before the Board for the second time. In the first appeal, the Board set aside the Office of Workers' Compensation Programs' October 21, 1993 decision denying appellant's claim for disability beginning October 4, 1991 causally related to her October 3, 1991 employment activities and remanded the case for further development.¹ The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

After further development of the evidence, the Office accepted appellant's claim for transverse myelopathy with leg paralysis and consequential ischial pressure sores with surgery on June 19, 1998.² The Office placed appellant on the periodic rolls beginning June 19, 1998. Appellant returned to part-time light-duty employment on March 1, 1999. She retired from employment effective March 2, 2000.

On October 17, 2001 appellant filed a claim for a schedule award. On December 3, 2001 an Office medical adviser reviewed appellant's schedule award claim and found that, based on the report of Dr. Paul K. Rafter, an Office referral physician, appellant had a 100 percent permanent impairment of her right and left lower extremities.³ The Office medical adviser noted that the date of maximum medical improvement was October 3, 1991.

¹ *Barbara A. Alfred*, Docket No. 94-926 (issued November 6, 1995).

² The Office paid appellant for time lost from work from October 4, 1991 until September 13, 1993, when she returned to part-time employment. Appellant resumed full-time employment on October 23, 1993.

³ In a report dated January 4, 1996, Dr. Rafter diagnosed "[p]araplegia with upper lumbar sensory level secondary to transverse myelopathy" and related her condition to her employment activities on October 3, 1991.

In a decision dated December 14, 2001, the Office issued appellant a schedule award for a 100 percent bilateral lower extremity impairment. The period of the award ran for 576 weeks from December 2, 2001 to December 15, 2012. In a separate letter of the same date, the Office noted that appellant could concurrently receive retirement from the Office of Personnel Management and a schedule award. The Office further informed appellant that at the conclusion of her schedule award she could “contact this Office for continuing compensation disability benefits....”

By letter dated November 26, 2002, appellant requested reconsideration of her claim. Appellant argued that she was entitled to an award for an impairment of her entire body due to her level of disability, skin impairment, bowel and bladder impairment, pain, leg and foot atrophy, autonomic dystonia and impaired sexual function. In a decision dated December 17, 2002, the Office denied modification of its December 14, 2001 decision. The Office noted that there was no provision in the Federal Employees’ Compensation Act⁴ providing a schedule award for sores of the body, impaired sexual function or for an impairment of the bladder or bowels.

The Board finds that appellant has no more than a 100 percent permanent impairment of her right and left lower extremity, for which she received a schedule award.

The schedule award provisions of the Act⁵ and its implementing federal regulation⁶ provide for payment of compensation for the permanent loss or loss of use of specified members, functions and organs of the body. No schedule award is payable for a member, function or organ of the body that is not specified in the Act or the implementing regulations.⁷ The Act identifies members as the arm, leg, hand, foot, thumb and finger, functions as loss of hearing and loss of vision and organs to include the eye. Section 8107(c)(22) of the Act provides for payment of compensation for permanent loss of “any other important external or internal organ of the body as determined by the Secretary of Labor.”⁸ The Secretary of Labor has made such a determination and, pursuant to the authority granted in section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina to the schedule.⁹

The Act and the implementing regulation also set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or function of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. Where the percentage of impairment is less than 100 percent of a member, function or organ listed in the schedule, for consistent results and to

⁴ 5 U.S.C. § 8107.

⁵ 5 U.S.C. § 8107(a).

⁶ 20 C.F.R. § 10.404.

⁷ See *Donald A. Larson*, 41 ECAB 947 (1990).

⁸ 5 U.S.C. § 8107(c)(22).

⁹ 20 C.F.R. 10.404(a). The Board notes that the Office has awarded schedule awards for conditions which are not covered under the compensation schedule if the condition is shown to have contributed to impairment of a scheduled member.

ensure equal justice under the law for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001) as the uniform standard applicable to all claimants.¹⁰

In a report dated January 4, 1996, Dr. Rafter, an Office referral physician, found that appellant had paraplegia secondary to transverse myelopathy, which he attributed to her employment activities on October 3, 1991. Based on his report the Office determined that appellant was entitled to a schedule award for a 100 percent permanent impairment of the right and left lower extremities. The Act provides for 288 weeks of compensation for 100 percent loss of use of a leg.¹¹ The Office found that appellant was entitled to compensation for 288 weeks for each leg, or a total of 576 weeks, from December 2, 2001 to December 15, 2012. Appellant has received the maximum allowable schedule award under the Act for an impairment of the right and left lower extremities and thus is not entitled to an additional schedule award for the lower extremities.

Appellant contended that she was entitled to a whole person impairment. However, while the A.M.A., *Guides* provides for both impairment to the individual member and to the whole person, the Act does not provide for permanent impairment of the whole person.¹² As stated above, the schedule award provisions of the Act provide for loss of use of a member, function and organ of the body listed.

Appellant further alleged that she is entitled to a schedule award for loss of bowel function and for a skin impairment. However, the bowels and skin are not specified members of the body, either in the Act or the regulations.¹³ Appellant, therefore, is not entitled to a schedule award on this basis.

Appellant further argued that she was entitled to a schedule award for loss of sexual function and bladder dysfunction. The Board finds that further development is needed regarding whether appellant is entitled to a schedule award due to sexual and bladder dysfunction. The Act does not separately list sexual dysfunction or bladder problems as a specified member, function or organ. However, the Board notes that, according to the A.M.A., *Guides*, “Vulval and vaginal function impairment symptoms and signs include sensation alteration or loss ... difficulties with sexual intercourse, urination or vaginal delivery; and underlying perineal structure support defect.”¹⁴ Therefore, bladder and sexual dysfunction are considered under the A.M.A., *Guides* in providing an impairment rating of the vulva/vagina, which are scheduled members under the implementing regulations.¹⁵

¹⁰ *Id.*

¹¹ 5 U.S.C. § 8107(c)(2).

¹² See, e.g., *Timothy J. McGuire*, 34 ECAB 189 (1982).

¹³ 5 U.S.C. § 8107; 20 C.F.R. §10.404.

¹⁴ A.M.A., *Guides* at 163.

¹⁵ See *John Year*, 48 ECAB 243 (1996).

In a report dated April 5, 2002, Dr. Kevin D. Gerhart, a Board-certified psychiatrist and appellant's attending physician, stated that Dr. Gerhart had reviewed appellant's schedule award for a 100 percent loss of use of the legs. He related:

“Review of the disability manual indicates that there are other bases for her disability including her wheelchair dependence, bladder impairment, impaired sexual function, inability to stand and impaired skin, all of which together would clearly cause her to be considered 100 [percent] disabled as a whole person.”

Dr. Gerhart found that appellant had impaired sexual and bladder function but did not specifically address whether she had an impairment of the vulva/vagina in accordance with the A.M.A., *Guides*. His report, however, is generally supportive of appellant's claim and constitutes sufficient evidence to warrant further development of the issue by the Office.¹⁶

The case, therefore, will be remanded for further development on the issue of whether appellant has an impairment of the vulva and/or vagina, which would entitle her to an additional schedule award. On remand, the Office should request that Dr. Gerhart provide a rationalized opinion regarding the degree, if any, of appellant's permanent impairment of the vulva/vagina in accordance with the A.M.A., *Guides*.

The decision of the Office of Workers' Compensation Programs dated December 17, 2002 is hereby affirmed, in part, and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, DC
September 16, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁶ *John J. Carlone*, 41 ECAB 354 (1989).