

**United States Department of Labor
Employees' Compensation Appeals Board**

KENNETH W. MEANS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dallas, TX, Employer**

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**Docket No. 04-1513
Issued: February 16, 2005**

Appearances:
Kenneth W. Means, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On May 24, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 15, 2004, denying his claim for a schedule award. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award decision.

ISSUE

The issue is whether appellant has sustained any permanent impairment to a scheduled member of his body causally related to his accepted right inguinal hernia injury, thereby entitling him to a schedule award under 5 U.S.C. § 8107.

FACTUAL HISTORY

Appellant, a 29-year-old letter carrier, sustained a right inguinal hernia on April 25, 1995 when he attempted to open a stuck door on his postal vehicle. The Office accepted his claim for right inguinal hernia.

In a report dated May 15, 1996, Dr. Abraham Syrquin, a Board-certified surgeon, stated that he performed a right inguinal herniorrhaphy on appellant on November 16, 1995. He advised that appellant had been off work from November 14, 1995 through January 28, 1996. Dr. Syrquin stated that he last examined appellant on March 6, 1996.

On February 12, 2003 appellant filed a Form CA-7 claim for a schedule award based on his accepted right inguinal hernia condition.

By letter dated February 27, 2003, the Office asked Dr. Syrquin to submit an impairment evaluation of appellant in order to assess his entitlement to a schedule award. By letter dated February 27, 2003, the Office asked appellant to submit medical evidence in support of his claim for a schedule award.

Dr. Syrquin submitted a form report dated February 14, 2003, in which he noted the history of treatment, stated restrictions on appellant's activities and reiterated the diagnosis of right inguinal hernia. However, he did not submit an impairment evaluation or impairment rating in accordance with the Office's request.

By decision dated April 16, 2003, the Office denied appellant's claim for a schedule award. The Office stated that the medical evidence of record did not indicate that he had sustained any permanent loss of function or use, of any specified member or function of the body due to the effects of his accepted work injury.

In a report dated April 15, 2003, Dr. Mike Raper, a chiropractor, stated that appellant had a 19 percent whole person impairment due to his right inguinal hernia.

By letter dated October 9, 2003, appellant requested reconsideration of the April 16, 2003 Office decision.

By decision dated March 15 2004, the Office denied reconsideration.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act, 5 U.S.C. § 8107, and the implementing regulations, 20 C.F.R. § 10.404 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 regulation.¹

Section 8107(c)(22) of the Act² provides for payment of compensation for permanent loss or loss of use, of "any other important external or internal organ of the body as determined by the Secretary" of Labor. On April 1, 1987 the Secretary of Labor added the following organs to the

¹ See *Ted W. Dieterich*, 40 ECAB 963 (1989).

² 5 U.S.C. § 8107(c)(22).

compensation schedule: breast, kidney, larynx, lung, penis, testicle and tongue.³ The Secretary made no provision in the implementing regulation for a hernia, repair of a hernia or residual abdominal symptomatology. The current implementing regulations at 20 C.F.R. § 10.404(a), includes the following members only: breast, kidney, larynx, lung, penis, testicle, tongue, ovary and uterus and vulva/vagina.

In 1966, amendments to the Act modified the schedule award provision 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. As the schedule award provision of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to a lower extremity even though the cause of the impairment originates elsewhere.⁴ The ilioinguinal nerve distribution radiates into the lower extremities and, therefore, a claimant could be entitled to a schedule award for impairment of the lower extremity due to ilioinguinal pain, resulting from an ilioinguinal hernia.

ANALYSIS

In this case, the Office accepted an ilioinguinal hernia as employment related; appellant underwent a right inguinal herniorrhaphy on November 16, 1995. With respect to a scheduled award, however, there is no medical evidence discussing impairment to a scheduled member, organ or function of the body. The attending physician, Dr. Syrquin, was requested by the Office to submit an impairment evaluation of appellant; however, he did not submit an impairment evaluation or an impairment rating in accordance with the Office's request.

Dr. Raper, a chiropractor, did submit a report wherein he indicated that appellant sustained a 19 percent permanent impairment to the whole person based on his accepted right inguinal hernia condition. There are several deficiencies in this report which reduce its probative value as medical evidence. No schedule award is payable for impairment of the body as a whole.⁵ Therefore, the 19 percent permanent impairment rating assigned by Dr. Raper does not provide a basis for a schedule award under the Act. Appellant would be entitled to an impairment rating if it was medically established that his hernia caused impairment of the ilioinguinal nerve distribution resulting in lower extremity pain. However, Dr. Raper is a chiropractor. A chiropractor is limited to assessment of subluxations, as demonstrated by x-ray; a chiropractor is unable to evaluate nerve impairments. Dr. Raper's opinion does not constitute medical evidence pursuant to section 8101(2)⁶ of the Act, as he did not submit evidence of subluxation as shown by x-ray.

As there is no other medical evidence establishing that appellant sustained any permanent impairment of a scheduled member, the Office properly found that he was not entitled to a schedule award due to his accepted April 25, 1995 employment injury. The Board, therefore,

³ 20 C.F.R. § 10.304(b) (1987).

⁴ See *Rozella L. Skinner*, 37 ECAB 398 (1986).

⁵ *Id.*

⁶ 5 U.S.C. § 8101(2).

affirms the Office's March 15, 2004 decision, affirming the Office's July 30, 2002 decision denying benefits for a schedule award.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained any permanent impairment to a scheduled member of his body causally related to his accepted right inguinal hernia injury, thereby entitling him to a schedule award under 5 U.S.C. § 8107.

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member