

In a report dated October 9, 2002, Dr. Patricia Walz, a clinical psychologist, provided a history and results of psychological examination. She diagnosed mild cognitive deficits related to traumatic brain injury and somatoform pain disorder. Dr. Walz opined that appellant had 10 percent impairment to the right hand due to motor deficit and weakness, 10 percent impairment for clinical dementia related to tactile memory and speech discrimination impairment and a 14 percent impairment for “emotional and behavioral disorder related to his depression and the somatoform illness.”

Appellant’s attending osteopath opined in a March 10, 2004 report that appellant had a nine percent right arm permanent impairment. An Office medical adviser concurred with this opinion in a July 19, 2004 report. By decision dated January 12, 2006, the Office issued a schedule award for a nine percent permanent impairment to the right upper extremity.

On November 10, 2006 appellant filed a claim for compensation (Form CA-7) indicating he was claiming a schedule award. He explained in a narrative statement that he would like the Office to consider the report of Dr. Walz and the impairment for clinical dementia, and emotional and behavioral disorders.

By decision dated March 29, 2007, the Office found that appellant was not entitled to a schedule award for a brain disorder as the brain was not a scheduled member of the body.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ The specific members enumerated include the eye, arm, hand, fingers, leg, foot and toes. As to functions, the Act provides compensation for loss of hearing and loss of vision.² In addition, 5 U.S.C. § 8107(c)(22) vests the Secretary of Labor with the authority to expand the list of scheduled members to include “any other important external or internal organ of the body.” In accord with the authority granted under section 8107(c)(22), the Secretary added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue as scheduled members or organs.³

No schedule award is payable for a member, function or organ of the body not specified under the Act or the implementing regulations.⁴ The Act specifically provides that the brain,

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

² 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.404(a) (1999).

⁴ *Patricia J. Horney*, 56 ECAB 256 (2005).

heart and back are excluded under the term “organ.”⁵ Neither the Act nor the regulations authorize payment of a schedule award for loss of cognitive function.⁶

For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants in calculating a schedule award.⁷ As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.⁸

ANALYSIS

Appellant received a schedule award for a nine percent permanent impairment to his right arm as a result of the February 17, 1999 employment injury. He seeks an additional award based on the October 9, 2002 report from Dr. Walz, who had noted cognitive deficits and provided impairment ratings for clinical dementia and “emotional and behavioral disorder.” While Dr. Walz referred to the A.M.A., *Guides*, the initial question is whether she identified an impairment to a scheduled member, function or organ of the body under the Act.⁹ As noted above, the brain is not a scheduled organ of the body. There is no schedule award for loss of cognitive function, or a behavioral disorder. Dr. Walz did not identify a scheduled member, function or organ of the body with respect to her impairment ratings due to a traumatic brain injury. The right arm impairment was considered in the January 12, 2006 Office decision and is not before the Board on this appeal.

There is, therefore, no basis for issuing an additional schedule award based on the report of Dr. Walz or other medical evidence of record. There is no schedule award payable for a member, function or organ of the body not specified under the Act or the implementing regulations. The Office properly determined that appellant was not entitled to a schedule award in its March 29, 2007 decision.

CONCLUSION

Appellant is not entitled to a schedule award related to a brain disorder, cognitive deficit or an emotional condition.

⁵ 5 U.S.C. § 8101(20).

⁶ *Brent A. Barnes*, 56 ECAB 336 (2005).

⁷ *A. George Lampo*, 45 ECAB 441 (1994).

⁸ FECA Bulletin No. 01-05 (issued January 29, 2001).

⁹ If a scheduled member or function is identified, then the question is whether the impairment described is causally related to federal employment and, if so, whether it is ratable under the A.M.A., *Guides*.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 29, 2007 is affirmed.

Issued: April 18, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board