

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

J.L., Appellant)
and) Docket No. 07-2046
PEACE CORPS, Santo Domingo,) Issued: February 14, 2008
Dominican Republic, Employer)

)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 30, 2007 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated September 15, 2006 which denied her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUE

The issue is whether appellant is entitled to a schedule award for neurological injury to her breasts and for sexual impairment.

FACTUAL HISTORY

On February 17, 2001 appellant, then a 25-year-old volunteer, filed a Form CA-2, occupational disease claim, alleging that she sustained an arteriovenous malformation (AVM) following an episode of dengue fever which she contracted in the course of her federal duties. On March 7, 2001 the Office accepted that she sustained aggravation of a preexisting AVM with consequential Brown-Sequard syndrome and spinal cord embolization. Appellant was placed on

the periodic rolls. She returned to work as a school teacher in February 2002, and on November 5, 2002 her wage-loss compensation was reduced accordingly. Appellant underwent a second embolization procedure in November 2002 and stopped teaching in April 2003 but continued to work.

By letter dated March 22, 2004, appellant, through her attorney, requested a schedule award and submitted an August 16, 2004 report from Dr. Gary R. Schuster, a Board-certified internist, who practices sports medicine. Dr. Schuster noted the history of injury, his review of medical records and appellant's complaints of decreased abdominal sensation, bilateral arm weakness, weakness and decreased sensation in both lower extremities and bladder and rectal incontinence. He stated that he performed a comprehensive neuromuscular examination on August 16, 2004. Dr. Schuster provided findings regarding appellant's extremities. He advised that sensory examination revealed decreased sensation from the chest down to the pelvis level including the breast area, with the left side much more dense than the right. Dr. Schuster diagnosed aggravation of preexisting AVM as a consequence of appellant's employment exposure with hemorrhage and a partially successful embolization procedure which led to multiple complications including neurogenic bladder, neurogenic bowel and sexual impairment secondary to residual of anesthesia of the chest and perineal region and anorgasmia secondary to residual of AVM and embolization procedure. He advised that she had marked diminution of sensation in her left greater than right breast areas and vaginal/clitoral region and provided analysis in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),¹ stating that, under Table 13-1, appellant's neurologic sexual impairment was rated at Class 3 which equaled a 20 percent whole person impairment.

On December 3, 2004 an Office medical adviser performed a medical record review for the Office regarding whether a vertebroplasty procedure should be authorized. His report stated that the accepted conditions were unspecified anomaly of brain, spinal cord and nervous system, other specified paralytic syndrome, spinal vessel anomaly, T1-6 injury, anterior cord syndrome, endovascular repair of vessel and neurogenic bladder. On January 31, 2005 an Office medical consultant, Dr. Thomas C. Fleming, Board-certified in orthopedic surgery, noted his review of Dr. Schuster's report and advised that additional information was needed for an impairment rating of appellant's extremities. He advised that neurological sexual, anorectal and bladder impairments were not ratable by the Office. By report dated May 10, 2005, Dr. Schuster provided additional impairment ratings for appellant's extremities and advised that he believed that the Office allowed an impairment rating for neurologic sexual impairment and stated that his August 16, 2004 rating in that regard remained unchanged. In a March 1, 2006 report, an Office medical adviser stated that appellant was entitled to a 33 percent impairment of the left lower extremity, a 15 percent impairment of the right lower extremity, and a 5 percent impairment of right upper extremity.

On April 28, 2006 appellant submitted a schedule award claim, and by decision dated May 24, 2006, the Office found that appellant was not entitled to a lump-sum payment for a schedule award because she continued to receive partial wage-loss compensation. In a May 25,

¹ A.M.A., *Guides* (5th ed. 2001); Joseph Lawrence, Jr., 53 ECAB 331 (2002).

2006 decision, appellant was granted a schedule award for a 33 percent impairment of the left leg, a 15 percent impairment of the right leg, and a 5 percent impairment of right arm. The date of maximum medical improvement was August 16, 2004. On June 1, 2006 appellant, through her attorney, requested a hearing on both decisions. In an August 14, 2006 decision, an Office hearing representative vacated both decisions and remanded the case to the Office to issue a new schedule award to commence on August 16, 2004. The Office was also to specifically grant or deny a schedule award for loss of sexual function.

By decision dated September 15, 2006, the Office reissued the schedule award for a 33 percent impairment of the left leg, a 15 percent impairment of the right leg, and a 5 percent impairment of right arm, for 153.84 weeks of compensation, to run from August 16, 2004 to July 28, 2007.² In a second decision dated September 15, 2006, the Office noted the aforementioned schedule award and found that appellant was not entitled to a schedule award for sexual impairment on the grounds that the medical evidence did not support a permanent impairment to an additional scheduled member.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act³ and section 10.404 of the implementing federal regulations,⁴ schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*⁵ has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁶

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.⁷ The Act also 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) of the Act, added the

² Appellant did not file an appeal with the Board of this decision.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ A.M.A., *Guides*, *supra* note 1.

⁶ See *Joseph Lawrence, Jr.*, *supra* note 1; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁷ 5 U.S.C. § 8107(c).

⁸ 5 U.S.C. § 8107(c)(22).

breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina to the schedule.⁹

ANALYSIS

The Board finds that this case is not in posture for decision as further development is needed regarding whether appellant is entitled to a schedule award due to sexual impairment and a sensory loss to the breasts. The Act does not separately list sexual dysfunction as a specified member, function or organ. However, the A.M.A., *Guides* provides that “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.”¹⁰ Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under the Act for injury to the spine.¹¹ In 1960, amendments to the Act modified the schedule award provisions 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.¹²

In his reports dated August 16, 2004 and May 10, 2005, Dr. Schuster advised that appellant had decreased breast sensation, left greater than right and sensory deficits of the vagina. While he did not describe with sufficient specificity whether appellant had an impairment of the vulva/vagina or breasts in accordance with the A.M.A., *Guides*, his reports are generally supportive of her claim for a schedule award and constitute sufficient evidence to warrant further development of the issue by the Office.¹³ As the schedule award provisions of the Act include the vulva/vagina and breast, a claimant may be entitled to a schedule award for permanent impairment to these scheduled members even though the cause of the impairment originated in the spine.¹⁴ The case will therefore be remanded for further development on the issue of whether appellant has an impairment of the breasts, vulva and/or vagina which would entitle her to an additional schedule award.¹⁵ After this and such further development deemed necessary, the Office shall issue an appropriate decision.

CONCLUSION

The Board finds this case is not in posture for decision regarding whether appellant is entitled to an additional schedule award.

⁹ 20 C.F.R. § 10.404(a).

¹⁰ A.M.A., *Guides*, *supra* note 1 at 163.

¹¹ *Pamela J. Darling*, 49 ECAB 286 (1998).

¹² *Thomas J. Engelhart*, 50 ECAB 319 (1999).

¹³ *John J. Caralone*, 41 ECAB 354 (1989).

¹⁴ See *Thomas J. Engelhart*, *supra* note 12.

¹⁵ See *Barbara A. Alfred*, Docket No. 03-1062 (issued September 16, 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 15, 2006 be vacated and the case remanded to the Office for findings consistent with this opinion of the Board.

Issued: February 14, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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