



leiomyoma at the broad ligament. Dr. Mulchahey opined that heavy lifting at work caused the uterine prolapse, necessitating the hysterectomy. Appellant returned to full-time light duty on April 1, 2000.<sup>1</sup> She claimed a schedule award.

The Office obtained a second opinion from Dr. Daniel McBrayer, a Board-certified obstetrician and gynecologist. In a May 3, 2000 report, Dr. McBrayer opined that the hysterectomy was not work related.

The Office found a conflict of opinion between Dr. McBrayer, for the government, and Dr. Mulchahey, for appellant. The Office referred appellant, the medical record and statement of accepted facts, to Dr. Samantha Anderson, Board-eligible obstetrician and gynecologist.<sup>2</sup> In a November 29, 2000 report, Dr. Anderson opined that the hysterectomy was necessitated by a uterine prolapse caused by heavy lifting at work.

On December 6, 2000 the Office referred the medical record to an Office medical adviser to determine the appropriate percentage of impairment for permanent functional loss of use of the uterus. In a December 8, 2000 report, an Office medical adviser opined that appellant reached maximum medical improvement as of November 29, 2000. Referring to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (hereinafter, A.M.A., *Guides*), appellant had a 10 percent whole person impairment due to a Class I postmenopausal anatomic uterine loss.<sup>3</sup>

In a December 29, 2000 report, Dr. Mulchahey stated that appellant was premenopausal at the time of the hysterectomy and, therefore, she had a 25 to 35 percent whole person impairment according to the fourth edition of the A.M.A., *Guides*.

On January 5, 2001 the Office requested that the Office medical adviser explain if appellant's premenopausal status prior to surgery would change his opinion. In a January 9, 2001 report,<sup>4</sup> the Office medical adviser opined that appellant had a 25 to 35 percent whole person impairment as she was premenopausal prior to surgery. According to the A.M.A., *Guides*, dividing 30 percent whole person impairment by the 35 percent allowable for impairment of the uterus itself resulted in 86 percent impairment of the uterus.

By decision dated February 26, 2001, the Office granted appellant a schedule award for an 86 percent impairment of the uterus. The period of the award ran for 176.30 weeks.

---

<sup>1</sup> In an August 11, 2000 report, Dr. Anne K. Wiskind, an attending Board-certified obstetrician and gynecologist, opined that lifting more than 20 pounds would damage pelvic ligaments and cause failure of the previous surgery.

<sup>2</sup> The Office initially referred appellant to a physician to whom she objected. The Office then referred appellant to a physician who was unavailable on the date of the scheduled examination. Appellant agreed to Dr. Anderson as the impartial medical examiner.

<sup>3</sup> The fourth edition of the A.M.A., *Guides* was still in effect as of December 29, 2000. The fifth edition of the A.M.A., *Guides* became effective on February 1, 2001. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>4</sup> On its face, the report is dated "January 9, 2000." However, its position in the record and reference to the Office's January 5, 2001 request indicates that the report was prepared on January 9, 2001.

In July 20, 2006 and March 22, 2007 letters, appellant requested reconsideration. She contended that she was entitled to a schedule award for a 100 percent loss of her uterus as it was entirely removed.

On April 18, 2007 the Office requested that an Office medical adviser review the record and address whether appellant had greater than 86 percent impairment of the uterus. In an April 18, 2007 report, the Office medical adviser noted that Table 7-10, page 165 of the fifth edition of the A.M.A., *Guides*<sup>5</sup> provided that a hysterectomy constituted a 15 percent impairment of the whole person.<sup>6</sup> He explained that the maximum impairment for a hysterectomy is 35 percent of the whole person. Using the formula  $A/B = X/100$ , A representing the whole person impairment and B representing the maximum impairment for the organ, the medical adviser determined that 15/35 multiplied by 100 equaled 1500/35 or a 42 percent impairment of the uterus.

By decision dated January 3, 2008, the Office affirmed the prior schedule award on the grounds that appellant did not submit medical evidence demonstrating an increased percentage of impairment from the 86 percent previously awarded.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>7</sup> and its implementing regulation<sup>8</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>9</sup>

The Act identifies members such as the arm, leg, hand, foot, thumb and finger; functions such as loss of hearing and loss of vision; and organs to include the eye. Section 8107(c)(22) of the Act provides for the payment of compensation for permanent loss of any other important

---

<sup>5</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7b(4) (August 2002) (awards calculated according to any previous edition should be evaluated according to the edition originally used; any recalculations of previous awards which result from hearings, reconsideration or appeals should, however, be based on the fifth edition of the A.M.A., *Guides* effective February 1, 2001).

<sup>6</sup> Table 7-10, page 165 of the fifth edition of the A.M.A., *Guides*, "Criteria for Rating Permanent Impairment Due to Cervical and Uterine Disease," provides that "anatomic cervical or uterine loss in the postmenopausal period" is a 0 to 15 percent impairment of the whole person. "[A]natomic or complete functional cervical or uterine loss in the premenopausal period" is a 26 to 35 percent impairment of the whole person.

<sup>7</sup> 5 U.S.C. § 8107.

<sup>8</sup> 20 C.F.R. § 10.404.

<sup>9</sup> See *id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

external or internal organ of the body as determined by the Secretary of Labor.<sup>10</sup> 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, ovary, uterus and tongue to the list of scheduled members.<sup>11</sup> The Office's regulations provide that total impairment of the uterus/cervix and vulva/vagina entitles an employee to 205 weeks of compensation.<sup>12</sup> Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.<sup>13</sup>

### ANALYSIS

The Office accepted that appellant sustained a work-related uterine prolapse requiring a total hysterectomy. It found that she sustained 86 percent impairment of the uterus. The Office relied on the impairment rating of the Office medical advisers based on portions of the A.M.A., *Guides* describing a hysterectomy as a whole person impairment. As the Act does not provide for whole person impairments,<sup>14</sup> the second medical adviser used a formula set forth in the Office's procedures for converting whole person impairments into impairment ratings of individual reproductive organs.<sup>15</sup> However, the Board finds that this formula does not apply to a total uterine loss. It is well established that complete surgical loss of a scheduled member equals a 100 percent loss of use.<sup>16</sup> Appellant's total hysterectomy entitles her to 205 weeks of compensation for total uterine loss as specified under the implementing federal regulation.<sup>17</sup> The Board will affirm appellant's entitlement to schedule award compensation modified to find 100 percent loss of the uterus.

### CONCLUSION

The Board finds that appellant has 100 percent loss of use of the uterus.

---

<sup>10</sup> 5 U.S.C. § 8107(c)(22).

<sup>11</sup> 20 C.F.R. § 10.404; *Henry B. Floyd, III*, 52 ECAB 220 (2001). See also FECA Bulletin No. 92-18 (issued May 25, 1992).

<sup>12</sup> 20 C.F.R. § 10.404(a); *Marilyn S. Freeland*, 57 ECAB 607 (2006).

<sup>13</sup> 5 U.S.C. § 8107(c)(19). *Henry B. Floyd, III*, *supra* note 11.

<sup>14</sup> *Tommy R. Martin*, 56 ECAB 273 (2005).

<sup>15</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Special Determinations, Loss of Function of Other Organs, Chapter 3.700.4c(2), (March 2005); FECA Bulletin No. 92-18 (issued May 25, 1992), "Impairment/Schedule Awards -- Inclusion of Female Reproductive Organs in the Compensation Schedule."

<sup>16</sup> See *N.D.*, 59 ECAB \_\_\_\_ (Docket No. 07-1981, issued February 1, 2008) (where appellant underwent a complete removal of his left kidney, he was entitled to the maximum 156 weeks of compensation for complete loss of the kidney); *Paul A. Zoltek*, 56 ECAB 325 (2005) (total surgical removal of a kidney equals a 100 percent impairment of the kidney entitling the claimant to the full 156 weeks of compensation set forth in the Act's schedule award provisions); See *Hildred I. Lloyd*, 42 ECAB 944 (1991) (amputation of a finger); *John A. Randall*, 38 ECAB 553 (1987) (amputation of a toe).

<sup>17</sup> 5 U.S.C. § 8107(c)(22); 20 C.F.R. § 10.404; *Marilyn S. Freeland*, *supra* note 12.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 3, 2008 is affirmed, as modified.

Issued: July 9, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board