

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

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**K.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Columbus, GA, Employer**

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**Docket No. 09-275  
Issued: August 14, 2009**

*Appearances:*  
*Greg Dixon, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On November 6, 2008 appellant filed a timely appeal from March 7 and September 16, 2008 decisions of the Office of Workers' Compensation Programs adjudicating his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant is entitled to a schedule award for his accepted aggravation of a ventral hernia.

**FACTUAL HISTORY**

On June 11, 1998 appellant, then a 45-year-old letter carrier, filed a claim for an occupational disease claim alleging that on January 9, 1995 he realized that he had a left foot injury and a hernia causally related to his employment. His claim was accepted for a fractured left foot and aggravation and acceleration of a ventral hernia. On August 21, 1998 appellant filed a claim for a schedule award. On May 10, 1999 the Office granted a schedule award based

on 25 percent impairment of his left lower extremity. On July 17, 2003 and February 9, 2004 appellant underwent surgical repair of his ventral hernia.<sup>1</sup> On July 25, 2007 he filed a claim for a schedule award for his hernia condition.

Appellant submitted a January 5, 1999 rating decision from the Department of Veterans Affairs which noted that in a prior rating decision dated July 17, 1997 he was found to be 100 percent disabled due to his military service-connected ventral hernia.

In a report dated July 27, 2007, Dr. John A. DeClue, an attending family practitioner, stated that appellant had experienced abdominal problems since 1980. After surgery in 1994 to repair a ventral incisional hernia, appellant returned to work with restrictions, but he required additional surgery in 2003 and 2004. Dr. DeClue opined that appellant was totally disabled.

By letter dated December 19, 2007, the Office advised appellant that the Federal Employees' Compensation Act did not provide a schedule award for hernias.

By decision dated March 7, 2008, the Office denied appellant's claim for a schedule award for his accepted aggravation and acceleration of a ventral hernia.

Appellant requested an oral hearing which was held on July 7, 2008. He testified that he had undergone multiple surgeries on his ventral hernia which left him in severe pain and significantly restricted his physical activities. Appellant argued that he was entitled to a schedule award based on section 8107(c)(21) which provides for an award for up to \$3,500.00 for serious disfigurement of the face, head or neck. He also argued that he was entitled to a schedule award under section 8107(c)(22) which provides 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.

By decision dated September 16, 2008, the Office denied appellant's claim for a schedule award on the grounds that the Act did not provide a schedule award for hernias.<sup>2</sup>

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act<sup>3</sup> authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the

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<sup>1</sup> Appellant previously underwent surgery for repair of a ventral hernia in 1994.

<sup>2</sup> Subsequent to the September 16, 2008 decision, additional evidence was associated with the case. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

<sup>3</sup> 5 U.S.C. § 8107.

American Medical Association, *Guides to the Evaluation of Permanent Impairment* (the A.M.A., *Guides*).<sup>4</sup>

Section 8107 of the Act specifies bodily members or functions as the upper and lower extremities, eye or vision and loss of hearing.<sup>5</sup> No schedule award is payable for any member, function or organ of the body not listed in section 8107 or its implementing regulation.<sup>6</sup> The Secretary of Labor, through implementing regulations, added to the list of covered organs the breast, kidney, larynx, lung, tongue, penis, testicle, ovary, uterus/cervix and vulva/vagina. The Act does not provide for the Office to add organs to the compensation schedule on a case-by-case basis<sup>7</sup> nor does the Board have the power to enlarge the provisions of either statute or regulation.<sup>8</sup>

The Act provides that, for serious disfigurement of the face, head or neck likely to handicap an individual in securing or maintaining employment, proper and equitable compensation not to exceed \$3,500.00 shall be awarded in addition to any other compensation payable under this schedule.<sup>9</sup>

### ANALYSIS

Appellant filed a claim for a schedule award based on impairment due to his accepted aggravation and acceleration of a ventral hernia.

Appellant submitted evidence that the Department of Veterans Affairs found him to be 100 percent disabled due to his military service-connected ventral hernia. The Board has held that entitlement to benefits under one program or statute does not establish entitlement to benefits under the Act.<sup>10</sup>

In this case, a schedule award cannot be granted for any permanent impairment based on appellant's hernia condition because a hernia has not been included under the Act or regulations as a scheduled member. Appellant argued that he was entitled to a schedule award under section 8107(c)(22) which provides 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. However, as noted, no schedule award is payable for any member, function or organ of the body not listed in section 8107 of the Act or its implementing regulations. A hernia is not listed in either section 8107 or

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<sup>4</sup> 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> See *J.Q.*, 59 ECAB \_\_\_\_ (Docket No. 06-2152, issued March 5, 2008); *Janet C. Anderson*, 54 ECAB 394 (2003).

<sup>7</sup> *Janet C. Anderson*, *supra* note 6.

<sup>8</sup> *Id.*

<sup>9</sup> 5 U.S.C. § 8107(c)(21).

<sup>10</sup> See *Daniel Deparini*, 44 ECAB 657, 659-60 (1991).

the implementing regulations which added organs to the original list in section 8107. As noted, the Act does not provide for the Office to add organs to the compensation schedule on a case-by-case basis nor does the Board have the power to enlarge the provisions of either statute or regulation.

Appellant argued that he was entitled to a schedule award for scarring and disfigurement due to his hernia based on section 8107(c)(21). This section provides for an award of up to \$3,500.00 for serious disfigurement of the face, head or neck. There is no evidence in this case that appellant has disfigurement of his face, head or neck. Section 8107(c)(21) does not provide an award for disfigurement based on a hernia. Therefore, appellant is not entitled to a schedule award based on section 8107(c)(21).

### **CONCLUSION**

The Board finds that appellant is not entitled to a schedule award for his accepted aggravation and acceleration of a ventral hernia.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 16 and March 7, 2008 are affirmed.

Issued: August 14, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board