

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

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**A.S., Appellant**

**and**

**PEACE CORPS., Washington, D.C., Employer**

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**Docket No. 09-1145  
Issued: August 20, 2009**

*Appearances:*  
*Appellant, pro se*  
*No appearance, for the Director*

Oral Argument July 7, 2007

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On March 24, 2009 appellant filed a timely appeal from a March 3, 2009 merit decision of the Office of Workers' Compensation Programs affirming a May 5, 2008 merit decision that denied his schedule award claim. 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 the Office properly denied appellant a schedule award for brain damage based upon his accepted employment injury because he did not sustain permanent impairment to a scheduled member as defined by the Federal Employees' Compensation Act.

**FACTUAL HISTORY**

On June 26, 1992 appellant, a 41-year-old former employing establishment member, filed an occupational disease claim (Form CA-2) for nervousness and anxiousness. The Office, by decision dated October 28, 1992, accepted his claim for: psychosis; depression; single episode. On July 2, 2007 appellant filed a notice of recurrence. He attributed the recurrence of his prior injury to the damage and toxicity produced by the anti-malaria drug Lariam, which he took as a

member of the employing establishment.<sup>1</sup> On January 28, 2008 the Office accepted his recurrence claim.

On December 26, 2007 appellant filed a compensation claim (Form CA-7) for a schedule award for brain damage and provided reports of a physical therapist.

By decision dated May 5, 2008, the Office denied appellant's schedule award claim because the evidence of record did not establish that he sustained permanent impairment to a scheduled member, due to his accepted work injury, as defined by the Act.

Appellant disagreed and requested an oral hearing. He argued that his exposure to Lariam caused him to lose control of his whole body, unless he was on medication. Appellant asserted that, even with the assistance of medication, he loses control of his body and that often his thoughts do not make sense. He argued that, because of his mental illness, his movements and actions were limited and therefore he was entitled to a schedule award.

In several other letters and notes, appellant asserted that being forced to live on Social Security disability income alone and having to pay for his prescription medication was driving him into poverty. He asserted that he was being discriminated against because of his mental disability. Appellant alleged that other returned employing establishment volunteers with the same disability were receiving workers' compensation benefits and had been doing so for years.

By letter dated October 9, 2008, the Office notified appellant that an oral hearing had been scheduled for November 11, 2008, at 12:30 pm and that he and/or his representative should be present.

Appellant submitted reports signed by Dr. Deanna Bass, Board-certified psychiatrist, concerning appointments held between July 13, 2007 and February 3, 2009, diagnosing him with bipolar disorder. Dr. Bass reported that he continued to blame his condition on consumption of Lariam while in the employing establishment. She opined that there may be a grain of truth to this belief and that she could not rule out the possibility that Lariam predisposed or caused appellant's mental illness. But, Dr. Bass opined that appellant needed to continue taking his medications. She also noted that she could not make a determination that Lariam caused his mental illness.

In a January 2, 2008 report Dr. Jeffrey Brace, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging scan of appellant's brain revealed nothing abnormal. Further, in a January 3, 2008 report, Dr. Ansar Ahmed, Board-certified neurologist, reported that an electroencephalogram also revealed no abnormalities.

By letter dated July 3, 2008, appellant sought to subpoena from the employing establishment copies of his medical records as well as information concerning the drug Lariam

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<sup>1</sup> Appellant submitted a collection of articles concerning the drug Lariam and its effects. The Board notes that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value as they are of general application. *E.A. 58 ECAB \_\_\_* (Docket No. 07-1145, issued September 7, 2007); *Mildred Powell*, 11 ECAB 187, 188 (1959).

and its use by the employing establishment. By letter dated September 29, 2008, the Office denied his subpoena request as it did not allege sufficient pertinent facts necessary to support such a request as required by the Act.

A hearing was held on November 10, 2008 and appellant was present and offered testimony. He testified that Lariam caused his mental illness and brain damage. Appellant argued that a newly enacted federal law prohibited discrimination against those with mental disabilities and that the Act needed to change to reflect the implications of this new law. He asserted that he was permanently disabled and entitled to workers' compensation benefits. Appellant testified that he applied for a schedule award because the benefits he receives from the Social Security Administration are not sufficient. He reported that he had no psychological problems before he entered the employing establishment.

By decision dated March 3, 2009, the Branch of Hearings and Review affirmed the Office's May 5, 2008 decision. The hearing representative found that although appellant had an accepted condition for a major depressive order, he was not entitled to a schedule award for this condition. The Act does not provide for schedule awards for brain damage as the brain is not a recognized scheduled member.

### **LEGAL PRECEDENT**

The 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

No schedule award is payable for a member, function or organ of the body not specified under the Act or the implementing regulations.<sup>5</sup> The Act specifically provides that the brain, heart and back are excluded under the term organ.<sup>6</sup> Neither the Act nor the regulations authorize payment of a schedule award for loss of cognitive function.<sup>7</sup>

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<sup>2</sup> 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).

<sup>3</sup> 5 U.S.C. § 8107(c).

<sup>4</sup> 20 C.F.R. § 10.404(a) (1999).

<sup>5</sup> *Patricia J. Horney*, 56 ECAB 256 (2005).

<sup>6</sup> 5 U.S.C. § 8101(20).

<sup>7</sup> *Brent A. Barnes*, 56 ECAB 336 (2005).

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* (A.M.A., *Guides*) as the uniform standard applicable to all claimants in calculating a schedule award.<sup>8</sup> As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.<sup>9</sup>

### ANALYSIS

The Office accepted appellant's occupational disease claim for: psychosis; depression; single episode. Appellant alleged recurrence of this accepted condition, which the Office also accepted. Now he seeks an award for brain damage which he attributed to consumption of the anti-malaria drug Lariam while a member of the employing establishment. None of the medical evidence of record identified an impaired member, function or organ of the body for which a schedule award could be granted.<sup>10</sup>

The only relevant question here is whether appellant identified an impairment to a scheduled member, function or organ of the body under the Act.<sup>11</sup> 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 and, furthermore, there is no provision under the Act for adding organs to the compensation schedule on a case-by-case basis.<sup>12</sup> The terms of the Act are specific as to the method and amount of payment of compensation; and neither the Office nor the Board has the authority to enlarge the terms of the Act or to award benefits under any terms other than those specified in the statute.<sup>13</sup>

Appellant submitted notes from a physical therapist. Because healthcare providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered physicians under the Act, their reports and opinions do not constitute competent medical evidence.<sup>14</sup> Thus, the physical therapy reports appellant submitted are of no probative value.

Because the brain is a portion of the body not listed in the schedule or in the organs listed in the related regulation, the Board finds that appellant is not entitled to a schedule award for

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<sup>8</sup> A. *George Lampo*, 45 ECAB 441 (1994).

<sup>9</sup> FECA Bulletin No. 01-05 (issued January 29, 2001).

<sup>10</sup> See *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

<sup>11</sup> 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*.

<sup>12</sup> *John F. Critz*, 44 ECAB 788 (1993).

<sup>13</sup> See *Virginia Chappell (William F. Chappell)*, 45 ECAB 275, 277 (1993).

<sup>14</sup> 5 U.S.C. § 8101(2); see also *G.G.*, 58 ECAB \_\_\_\_ (Docket No. 06-1564, issued February 27, 2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

brain damage. Therefore, the Office properly determined that he was not entitled to a schedule award in its May 5, 2008 decision.<sup>15</sup>

**CONCLUSION**

The Board finds the Office properly denied appellant a schedule award for brain damage based upon his accepted employment injury because he did not sustain permanent impairment to a scheduled member as defined by the Act.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 3, 2009 and May 5, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 20, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>15</sup> The Board notes that nothing in this decision precludes appellant from submitting additional medical evidence to the Office that identifies an impaired scheduled member, function or organ of the body for which a schedule award could be granted filing a new claim or requesting reconsideration of his existing claim.