



## **FACTUAL HISTORY**

On September 23, 2008 appellant, then a 31-year-old intermittent seasonal laborer, filed a traumatic injury claim alleging that on September 8, 2008 he sustained injuries as a result of falling from a tree while cutting tree limbs. The Office accepted the claim for a spleen injury with open wound, massive parenchymal disruption, peritoneal disease and splenectomy.

On October 21, 2009 appellant filed a claim for a schedule award.

In a letter dated November 10, 2009, the Office informed appellant and his attorney about the schedule award process and the evidence required to support the claim. It also noted that the record was unclear as to which scheduled member appellant was claiming and provided a list of eligible members or anatomical parts. Appellant was given 30 days to provide the requested information. No evidence was received.

By decision dated December 11, 2009, the Office denied appellant's schedule award claim as appellant was not entitled to a schedule award for the loss of use of his spleen.

On December 16, 2009 appellant's counsel requested a telephonic hearing, which was held on March 16, 2010.

By decision dated May 11, 2010, the Office hearing representative affirmed the schedule award denial. The hearing representative found that appellant was not entitled to a schedule award for impairment of the spleen.

## **LEGAL PRECEDENT**

The schedule award provision of the Act<sup>2</sup> and its implementing regulations<sup>3</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 regulations as the appropriate standard for evaluating schedule losses.<sup>4</sup> Effective May 1, 2009, the Office adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.<sup>5</sup>

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> *Id.*

<sup>5</sup> Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.<sup>6</sup> The Act specifies such members as the arm, leg, hand, foot, thumb, fingers and toes. The Act also specifies loss of hearing and loss of vision, the loss of an eye and serious disfigurement of the face, head or neck.<sup>7</sup>

Section 8107(c)(22) of the Act provides for payment of compensation 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.<sup>8</sup> Pursuant to such authority, the Secretary has added the following organs to the compensation schedule: breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina.<sup>9</sup>

### ANALYSIS

The Office accepted that appellant sustained spleen injury with open wound, massive parenchymal disruption, peritoneal disease and splenectomy as a result of his accepted September 8, 2008 injury. Having filed a schedule award claim, appellant has the burden of proof to establish that he sustained permanent physical impairment to a member, function or organ of the body specified in the Act. He is not eligible for a schedule award for any impairment to his spleen as it is not an organ specified in the compensation schedule, 5 U.S.C. § 8107(c)(22) or the implementing regulations. The Secretary has not included the spleen under the authority delegated by statute.<sup>10</sup> Moreover, neither the Office nor the Board has the authority to enlarge the terms of the Act or make an award of benefits under any terms other than those so specified in the Act and implementing regulations.<sup>11</sup>

The record is devoid of any medical evidence addressing a permanent impairment to a scheduled member or functions of the body. The Office advised appellant of the deficiencies in his claim on November 10, 2010 and he did not respond. Thus, it properly denied his claim for a schedule award for loss of his spleen.

### CONCLUSION

The Board finds that appellant is not entitled to scheduled compensation for the loss of use of the spleen.

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<sup>6</sup> *Thomas J. Engelhart*, 50 ECAB 319 (1999); *W.D.*, Docket No. 10-274 (issued September 3, 2010); *S.K.*, Docket No. 08-848 (issued January 26, 2009).

<sup>7</sup> 5 U.S.C. § 8107.

<sup>8</sup> *Id.* at § 8107(c)(22).

<sup>9</sup> 20 C.F.R. § 10.404(a); *see D.H.*, 58 ECAB 385 (2007).

<sup>10</sup> The Act does not provide for the addition of other important organs on a case-by-case basis. The organs that have been added to the compensation schedule are set forth in implementing regulations. *Ted W. Dietderich*, 40 ECAB 963 (1989) (gallbladder).

<sup>11</sup> *See W.C.*, 59 ECAB 373 (2008); *Wayne B. Kovacs (Cynthia A. Kovacs)*, 55 ECAB 133 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 11, 2010 is affirmed.

Issued: April 14, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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