

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

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**K.F., Appellant**

**and**

**DEPARTMENT OF JUSTICE, BUREAU OF  
PRISONS, Inez, KY, Employer**

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**Docket No. 10-2160  
Issued: May 11, 2011**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 24, 2010 appellant, through his attorney, filed a timely appeal from a July 14, 2010 merit decision of the Office of Workers' Compensation Programs denying his claim for a schedule award. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

**ISSUE**

The issue is whether appellant sustained a permanent impairment to a scheduled member or function of the body.

**FACTUAL HISTORY**

On December 31, 2007 appellant, then a 25-year-old correctional officer, filed a claim alleging that on December 30, 2007 he sustained puncture wounds to the stomach and upper chest area when he was stabbed by an inmate. The Office accepted his claim for a stab wound to

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

the right anterior chest, a laceration of both hands, right pleural effusion, left base pneumothorax and a small right hemopneumothorax, a stab wound of the right anterior abdominal wall with subcutaneous fluid collection, a stab wound to both groin with increased subcutaneous density and subcutaneous emphysema of the right chest wall. It paid appellant compensation for total disability beginning February 13, 2008.

By decision dated September 3, 2008, the Office terminated appellant's compensation effective August 15, 2008 on the grounds that the medical evidence established that he had no further employment-related disability.<sup>2</sup>

On December 11, 2009 the Office received appellant's claim for a schedule award. By letter dated December 18, 2009, it advised him of the evidence necessary to establish permanent impairment, including a finding that he had reached maximum medical improvement and a medical report addressing the extent of any permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009) (A.M.A., *Guides*).

By decision dated February 8, 2010, the Office denied appellant's schedule award claim. It noted that he had not submitted any evidence showing that he sustained any permanent impairment of a scheduled member or function.

On February 12, 2010 appellant, through his attorney, requested a telephone hearing. He submitted an impairment evaluation dated March 17, 2010 from Dr. Martin Fritzhand, a Board-certified urologist, who reviewed appellant's history of multiple stab wounds to his chest, stomach and hands and resulting surgeries. Dr. Fritzhand discussed appellant's symptoms of shortness of breath with exertion, a chronic, productive cough, intermittent sharp pain over the anterior right chest wall and "ongoing abdominal discomfort and tenderness." On examination, he found slightly distant breath sounds and tenderness to palpation of the abdomen. Citing Table 5-4 on page 114 of the A.M.A., *Guides*, Dr. Fritzhand determined that appellant had a class 0, or no lung impairment, based on the results of his pulmonary function study.<sup>3</sup> He further found three percent whole person impairment due to appellant's gastrointestinal impairment according to Table 6-5 of the A.M.A., *Guides*. Dr. Fritzhand found that appellant reached maximum medical improvement in January 2009.

At the May 11, 2009 telephonic hearing, appellant's attorney advised that he was claiming a schedule award for loss of lung capacity. Appellant noted that his lung was punctured as a result of his work injury and described difficulty breathing with exertion.

By decision dated July 14, 2010, an Office hearing representative affirmed the February 8, 2010 decision. He found that the medical evidence established that appellant had no

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<sup>2</sup> The employing establishment paid appellant administrative leave from August 15 to 30, 2008. By decision dated October 17, 2008, the Office found that he received an overpayment of \$1,555.53 because he received compensation for disability from the Office and administrative leave from the employing establishment.

<sup>3</sup> A pulmonary function study, performed on March 17, 2010 for Dr. Fritzhand, was interpreted as normal.

ratable impairment of the lung under the A.M.A., *Guides*. The hearing representative further determined that the Act did not provide a schedule award for a gastrointestinal impairment.

### **LEGAL PRECEDENT**

The schedule award provision of the Act,<sup>4</sup> and its implementing federal regulations,<sup>5</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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>6</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>7</sup>

Section 8107 sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified anatomical members, functions and organs of the body.<sup>8</sup> No schedule award is payable for any member, function or organ of the body not listed in section 8107 or the implementing regulations.<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 external or internal organ of the body as determined by the Secretary of Labor.”<sup>10</sup> Pursuant to the authority granted in section 8107(c)(22), the Secretary of Labor added the breast, kidney, larynx, lungs, penis, testicle, ovary, uterus and the tongue to the schedule.<sup>11</sup>

### **ANALYSIS**

The Office accepted appellant’s claim for a stab wound to the right anterior chest, a laceration of both hands, right pleural effusion, left base pneumothorax and a small right hemopneumothorax, a stab wound right anterior abdominal wall with subcutaneous fluid collection, a stab wound to both groin with increased subcutaneous density and subcutaneous emphysema of the right chest wall.

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.* at § 10.404(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>8</sup> 5 U.S.C. § 8107.

<sup>9</sup> *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

<sup>10</sup> 5 U.S.C. § 8107(c)(22).

<sup>11</sup> *Supra* note 5.

In an impairment evaluation dated March 17, 2010, Dr. Fritzhand found abdominal tenderness to palpation and slightly distant breath sounds. He performed pulmonary function studies which he interpreted as showing no impairment under the sixth edition of the A.M.A., *Guides*. Citing Table 6-5 of the A.M.A., *Guides*, relevant to determining colonic and rectal disorders, Dr. Fritzhand determined that appellant had three percent whole person impairment due to a gastrointestinal impairment. The Act, however, does not provide a schedule award for impairment of the colon or rectum. A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.<sup>12</sup> The Secretary did not determine, pursuant to the discretionary authority granted in section 8107(c)(22) of the Act, that a gastrointestinal impairment constitutes an important external or internal organ or function of the body. Section 8107(c)(22) provides no statutory basis for the payment of a schedule award.<sup>13</sup> The Act does not allow the Office to add organs or functions to the compensation scheduled on a case-by-case basis and the Board has no power to enlarge the provisions of either the statute or regulations.<sup>14</sup>

At the hearing appellant indicated that he was claiming an impairment of the lungs. Dr. Fritzhand reviewed the results of pulmonary function studies and opined that he had no ratable lung impairment under the provisions of the sixth edition of the A.M.A., *Guides*. It is appellant's burden to submit medical evidence supporting the degree of permanent impairment.<sup>15</sup> As he has not submitted medical evidence showing a ratable impairment of the lungs under the A.M.A., *Guides*, he has not met his burden of proof.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained a permanent impairment to a scheduled member or function of the body.

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<sup>12</sup> See *J.W.*, 59 ECAB 308 (2008); *Leroy M. Terska*, 53 ECAB 247 (2001).

<sup>13</sup> See *Donald E. Buckles*, 36 ECAB 603 (1985).

<sup>14</sup> See *Janet C. Anderson*, 54 ECAB 394 (2003).

<sup>15</sup> See *D.H.*, 58 ECAB 358 (2007); *Annette M. Dent*, 44 ECAB 403 (1993).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 14, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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