

FACTUAL HISTORY

Appellant, a 60-year-old retired supervisory veterinary medical officer, has an accepted claim for bilateral Meniere's disease and tinnitus, which arose on or about September 11, 2006.² OWCP granted him schedule awards totaling 93 percent binaural hearing loss. On March 1, 2010 appellant filed a claim for a schedule award (Form CA-7) for loss of vestibular function. In a June 10, 2010 report, Dr. George E. Hyde, a Board-certified otolaryngologist, noted that appellant continued to have exacerbations of his vertigo, worsening tinnitus, loss of balance and progressive loss of his hearing, which was typical of Meniere's disease. He advised that appellant was permanently disabled. Dr. Hyde did not, however, provide an impairment rating with respect to appellant's claimed loss of vestibular function.

By decision dated September 16, 2010, OWCP denied appellant's claim for a schedule award for loss of vestibular function. It found that impairment due to vestibular disorders was not covered under FECA for purposes of a schedule award.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.³ FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.⁴ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).⁵

No schedule award is payable for a member, function or organ of the body that is not specified in FECA or in the implementing federal regulations.⁶ FECA's list of scheduled members includes the eye, arm, hand, fingers, leg, foot and toes.⁷ Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.⁸ By authority

² Effective March 3, 2007, appellant received a disability retirement annuity from the Office of Personnel Management.

³ 5 U.S.C. § 8107(c).

⁴ 20 C.F.R. § 10.404 (2010).

⁵ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

⁶ W.C., 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

⁷ 5 U.S.C. § 8107(c).

⁸ *Id.*

granted under FECA, the Secretary of Labor expanded the list of scheduled members to include the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina.⁹ FECA also provides that “[f]or serious disfigurement of the face, head or neck of a character 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.”¹⁰ Neither FECA nor the implementing regulations provide for the payment of a schedule award for vestibular dysfunction or loss of equilibrium.

ANALYSIS

Appellant acknowledged that loss of vestibular function is not included among the list of schedule members or loss of function; however, he argued that the schedule is antiquated and in need of updating. He also noted that the A.M.A., *Guides* (6th ed. 2008) provides for impairment due to vestibular disorders.¹¹ On appeal, appellant requested that loss of vestibular function be added to the schedule and that he be awarded appropriate compensation.

Neither OWCP nor the Board has the authority to enlarge the terms of FECA.¹² Impairment due to vestibular disorders is not compensable as a scheduled member under FECA. The Board lacks the authority to expand coverage beyond those specific schedule members delineated in the statute or added by the Secretary pursuant to authority granted under FECA. Accordingly, OWCP properly denied appellant’s claim for a schedule award for loss of vestibular function.

CONCLUSION

Neither FECA nor the implementing regulations provide for a schedule award for loss of vestibular function.

⁹ *Id.* at § 8107(c)(22); 20 C.F.R. § 10.404(a).

¹⁰ 5 U.S.C. § 8107(c)(21).

¹¹ *See* Table 11-4, A.M.A., *Guides* 258.

¹² *See e.g., Leona B. Jacobs*, 55 ECAB 753, 756 (2004).

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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