

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

D.J., Appellant)	
)	
and)	Docket No. 11-1359
)	Issued: February 24, 2012
)	
U.S. POSTAL SERVICE, POST OFFICE, North Platte, NE, Employer)	
)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 13, 2011 appellant filed a timely appeal of the December 14, 2010 schedule award decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 has established permanent impairment of the vagina, ovaries, bladder, colon and rectum, warranting an additional schedule award.

On appeal, appellant contends that the medical evidence from her attending physicians and an OWCP medical adviser is sufficient to establish her entitlement to an additional schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that appellant, a part-time flexible clerk, sustained aggravation of uterine prolapse, cystourethrocele and rectocele as a result of her federal work duties.² It authorized a total vaginal hysterectomy which was performed on February 8, 2002.³

On August 9, 2004 appellant filed a claim, Form CA-7, for a schedule award.

In a November 10, 2004 decision, OWCP granted appellant a schedule award for 100 percent impairment of the cervix/uterus. The period of the award ran for 205 weeks from July 15, 2004 to June 18, 2008.⁴

On January 5, 2007 appellant filed a Form CA-7 for a claim for an additional schedule award. In a December 6, 2006 medical report, Dr. John W. Ellis, an attending Board-certified family practitioner, advised that she had reached maximum medical improvement in January 2003. He opined that appellant had 20 percent impairment of the vagina due to vaginal disease and/or deformity with painful sexual intercourse, 10 percent impairment of the bladder due to signs and symptoms of bladder disorder secondary to cystocele and 10 percent impairment of the rectum/colon due to signs of rectal/colon disorder based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*. Dr. Ellis concluded that her impairments were caused by the accepted injuries and resultant surgeries.

By letter dated February 26, 2007, OWCP advised appellant that Dr. Ellis' December 6, 2006 report was insufficient to establish her schedule award claim because it did not provide sufficient medical rationale and findings to support the stated impairment ratings. It requested that she submit rationalized medical evidence which included an impairment rating based on the fifth edition of the A.M.A., *Guide*.

In an April 4, 2007 report, Dr. Ellis reviewed a March 21, 2007 report of Dr. Gary L. Conell, a Board-certified family practitioner, who found on physical examination of appellant following her hysterectomy that her tubes and ovaries were normal by palpation. He reiterated his prior opinion that appellant had 20 percent impairment of the vagina due to vaginal disease and/or deformity with painful sexual intercourse, 10 percent impairment of the bladder due to signs and symptoms of bladder disorder secondary to cystocele and 10 percent impairment of the rectum/colon due to signs of rectal/colon disease/disorder.

On April 30, 2007 Dr. Daniel O. Zimmerman, a Board-certified internist and OWCP medical adviser, reviewed appellant's medical records, including Dr. Ellis' reports. Based on

² OWCP subsequently accepted appellant's claim for recurrent severe temporary aggravation of major depressive disorder without mention of psychotic behavior.

³ On November 20, 2002 OWCP accepted that appellant sustained a recurrence of disability on September 27, 2002 causally related to her accepted employment injuries. By decision dated September 16, 2004, it reduced her compensation to zero based on its finding that her actual earnings as a modified sales/service distribution associate at the employing establishment fairly and reasonably represented her wage-earning capacity.

⁴ According to 20 C.F.R. § 10.404(b), 205 weeks of compensation reflects a total for permanent impairment to both the uterus/cervix and the vulva/vagina.

these records, he advised that her claim should not be accepted for any additional conditions or schedule award. Dr. Zimmerman stated that Dr. Ellis failed to provide any physical examination findings to support his impairment ratings.

In a May 9, 2007 decision, OWCP denied appellant's claim for an additional schedule award based on Dr. Zimmerman's April 30, 2007 medical opinion.

On June 28, 2007 appellant requested reconsideration.

In a May 31, 2007 report, Dr. Ellis stated that his impairment ratings were sufficient to establish appellant's entitlement to a schedule award for the vagina, bladder and rectum/colon.

In a June 25, 2007 report, Dr. Conell stated that appellant's disability was secondary to her accepted conditions for which she underwent surgical repair. He advised that a recent pelvic examination revealed that her cystocele and rectocele conditions had completely resolved.

On August 20, 2007 Dr. Zimmerman reviewed appellant's medical records, including the reports from Dr. Ellis and Dr. Conell. He stated that Dr. Ellis did not provide any history or examination findings to support his impairment ratings which were not in accordance with the A.M.A., *Guides*. Dr. Zimmerman further stated that Dr. Conell's normal pelvic examination findings precluded consideration of a schedule award under the A.M.A., *Guides*.

In a decision dated September 13, 2007, OWCP denied modification of the May 9, 2007 decision based on Dr. Zimmerman's August 20, 2007 medical opinion.

On January 9, 2008 appellant requested reconsideration.

In a December 24, 2007 report, Dr. Ellis again opined that appellant had 20 percent impairment to the vagina and 10 percent impairment each to the rectum/colon and bladder based on the fifth edition of the A.M.A., *Guides*.

In a March 2, 2008 report, Dr. Zimmerman stated that, although Dr. Ellis cited appellant's history in his April 4, 2007 report, he did not conduct a physical examination to calculate his April 4, 2007 impairment ratings as required by pages 163 through 169 of the fifth edition of the A.M.A., *Guides*. He further stated that OWCP did not provide schedule awards for impairment to the bladder, rectum and colon. Dr. Zimmerman concluded that Dr. Ellis' report provided no basis for OWCP to process additional impairment ratings.

In a March 11, 2008 decision, OWCP denied modification of the September 13, 2007 decision. It found that the medical evidence submitted by appellant was insufficient to establish her entitlement to an additional schedule award. OWCP also found that there was no provision under FECA for a schedule award for impairment to the bladder, rectum and colon.

By letter dated January 6, 2009, appellant requested reconsideration.

In an October 24, 2008 report, Dr. Gerald A. Snider, a family practitioner, advised that appellant had reached maximum medical improvement. He determined that she had 20 percent impairment of the vulva based on a category 2 impairment, 26 percent impairment each of the cervix and fallopian tube based on a category 3 impairment based on the fifth edition of the A.M.A., *Guides*.

In a March 13, 2009 report, Dr. Zimmerman reviewed Dr. Snider's October 24, 2008 findings. He determined that appellant had 35 percent impairment of the cervix/uterus under Table 7-10 of the fifth edition of the A.M.A., *Guides*, entitling her to 72 weeks of compensation for schedule award purposes.

On March 27, 2009 OWCP issued a decision denying modification of the March 11, 2008 decision. The medical evidence submitted by appellant was insufficient to establish her entitlement to an additional schedule award.

On March 12, 2010 appellant filed a Form CA-7 for an additional schedule award. In a February 11, 2010 report, Dr. Michael E. Hebrard, an attending Board-certified physiatrist, obtained a history of the physical employment injuries and her medical treatment. He noted that appellant's problems with urination which was extremely painful and lack of daily bowel movements. On physical examination, Dr. Hebrard advised that she had a horizontal suprapubic scar and palpable spasm of the lumbar musculature. Motor manual muscle strength testing revealed 4 to 4+/5 strength in the hip flexors and abductors. Range of motion measurements for the knee, ankle, hips and lumbar spine were essentially normal. On sensory examination, Dr. Hebrard reported that the upper and lower extremities were intact to light touch and pinprick. Appellant tended to over-pronate in the mid stance of the gait cycle. Dr. Hebrard advised that she had uterine and uterovaginal prolapse, and chronic pelvic muscular dysfunction and instability. He stated that appellant was status post total vaginal hysterectomy and anterior and posterior repair with culdoplasty, an abdominal Burch procedure and rectocele repair. Dr. Hebrard advised that she had reached maximum medical improvement on January 21, 2010. Utilizing the sixth edition of the A.M.A., *Guides*, he determined that appellant had a class 2 impairment under Table 7-10 due to vulvar or vaginal disease which made sexual intercourse possible only with some degree of difficulty. Dr. Hebrard further determined that the physical examination grade modifier was consistent with moderate alteration in vaginal or vulvar anatomy with the mention of adhesions and a history of postoperative infection secondary to a December 13, 2002 rectocele repair and abdominal Burch procedure. A computerized tomography (CT) scan of the pelvis showed status post total abdominal hysterectomy. Dr. Hebrard advised that, since appellant had a hysterectomy, she was surgically induced to become postmenopausal. He noted page 151 of the A.M.A., *Guides*, which stated that someone who fell into the class 2 impairment category, but stated that sexual intercourse was not possible, would be rated at 17 percent impairment. Dr. Hebrard concluded that appellant had 13 percent impairment of the vagina due to her difficulty with dyspareunia.

On May 6, 2010 Dr. Zimmerman reviewed Dr. Hebrard's February 11, 2010 findings. He stated that since Dr. Hebrard's 13 percent impairment rating was not based on a pelvic or speculum examination, Dr. Hebrard would not have been able to know whether, as he speculated that, there was moderate alteration in vaginal or vulvar anatomy with limited potential for vaginal delivery if appellant was premenopausal as required for a class 2 impairment under Table 7-10 on page 151 of the sixth edition of the A.M.A., *Guides*. Dr. Zimmerman advised that even if Dr. Hebrard's opinion was acceptable, it would have resulted in a lesser percentage of impairment than that previously awarded. He concluded that his report did not warrant an additional schedule award.

By decision dated May 11, 2010, OWCP denied appellant's claim for an additional schedule award based on Dr. Zimmerman's May 6, 2010 opinion.

On June 2, 2010 appellant requested a telephone hearing before an OWCP hearing representative.

During the October 13, 2010 hearing, Dr. Mark Wilson, a Board-certified internist, testified that based on the sixth edition of the A.M.A, *Guides*, appellant had 100 percent impairment to the uterus due to her hysterectomy, 13 percent impairment to the vulva/vagina based on a category 2 impairment under Table 7-10, 19 percent impairment to the bladder due to incontinence based on a category 2 impairment under Table 4 (chapter 7) and 22 percent impairment to the colon and rectum based on a class 2 impairment under Table 6-5.

On November 2, 2010 Dr. Virginia I. Miller, a Board-certified pathologist and OWCP medical adviser, reviewed appellant's medical record and advised that she had a 100 percent uterine impairment because the uterus was surgically removed. She stated that the prior schedule award for impairment to the uterus amounted to 205 weeks of compensation and appeared to include impairment to the cervix, vulva and vagina. Therefore, Dr. Miller advised that additional separate awards for these body parts would not be appropriate. She stated that appellant was not entitled to an additional schedule award for loss of the ovaries because surgical reports showed that these organs were not removed and Dr. Ellis' April 4, 2007 report stated that her "ovaries and tubes were normal by palpation." Dr. Miller related that no other medical report mentioned any symptoms or signs of ovarian impairment due to her employment. She concluded that additional medical reports detailing such signs and symptoms, if any, were needed to calculate impairment of these organs.

In a December 14, 2010 decision, OWCP's hearing representative affirmed the May 11, 2010 decision. He found that FECA did not provide for a loss of function of the bladder, colon and rectum. The hearing representative further found that appellant was not entitled to an additional schedule award for the vulva/vagina and ovaries. He stated that under proposed FECA amendments, she was only entitled to receive 309 weeks of compensation which included 52 weeks for each ovary and the record established that there was no loss of use of her ovaries and 205 weeks for the remaining female reproductive organs for which she had already received a schedule award for 100 percent loss of use of her cervix/uterus.⁵

LEGAL PRECEDENT

The schedule award provision of FECA⁶ and its implementing federal regulations⁷ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members, functions and organs of the body. 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 for all claimants under the law, good administrative practice requires the use of uniform standards

⁵ Also, in the December 14, 2010 decision, OWCP's hearing representative reversed a July 27, 2010 decision which found that appellant received an overpayment of \$32,107.91 for the period November 21, 2004 to June 17, 2005 because she received schedule award compensation for 205 weeks rather than 127 weeks. He found that she was entitled to 205 weeks of compensation based on her schedule award for 100 percent impairment of the uterus.

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

applicable to all claimants.⁸ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁹ For decisions issued after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹⁰ For decisions issued after May 1, 2009, the sixth edition will be used.¹¹

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).¹² The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

No schedule award is payable for a member, function or organ of the body not specified in FECA or in the implementing regulations.¹³ FECA identifies members such as the arm, leg, hand, foot, thumb, finger and toes. FECA also specifies loss of hearing and vision, the loss of an eye and serious disfigurement of the face, head or neck.¹⁴ Section 8107(c)(22) of FECA 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.¹⁵ The Secretary of Labor has made such a determination, and pursuant to the authority granted in section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina to the compensation schedule.¹⁶

ANALYSIS

OWCP accepted that appellant sustained aggravation of uterine prolapse, cystourethrocele and rectocele and authorized a total vaginal hysterectomy which was performed on February 8, 2002. At the time it issued the November 10, 2004 decision for 100 percent impairment of the cervix/uterus, the sixth edition of the A.M.A., *Guides* was in effect.¹⁷ Subsequent to the November 10, 2004 decision, appellant filed several claims for an additional schedule award. In decisions dated May 9 and September 13, 2007, March 11, 2008, March 27, 2009 and December 14, 2010, OWCP's hearing representative denied her schedule award claim for the vagina, ovaries, bladder, colon and rectum. The Board finds that appellant has not met her burden of proof to establish that she sustained greater impairment.

⁸ *Ausbon N. Johnson*, 50 ECAB 304 (1999).

⁹ *Supra* note 7.

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

¹¹ FECA Bulletin No. 09-03 (issued March 15, 2009).

¹² A.M.A., *Guides* 494-531.

¹³ *See J.W.*, 59 ECAB 308 (2008); *Paul A. Zoltek*, 56 ECAB 325 (2005); *Leroy M. Terska*, 53 ECAB 247 (2001).

¹⁴ 5 U.S.C. § 8107(c).

¹⁵ *Id.* at § 8122(c)(22).

¹⁶ 20 C.F.R. § 10.404(a); *Marilyn S. Freeland*, 57 ECAB 607 (2006).

¹⁷ *Supra* note 10.

On February 11, 2010 appellant's attending physician, Dr. Hebrard, found that appellant had reached maximum medical improvement on January 21, 2010 and she had 13 percent impairment of the vagina due to her difficulty with dyspareunia. He listed findings on physical and sensory examination of the upper and lower extremities. Dr. Hebrard advised that a CT scan of the pelvis showed status post total abdominal hysterectomy. He diagnosed uterine and uterovaginal prolapse and chronic pelvic muscular dysfunction and instability. Dr. Hebrard stated that appellant was status post total vaginal hysterectomy and anterior and posterior repair with culdoplasty, abdominal Burch procedure and rectocele repair. Utilizing the sixth edition of the A.M.A., *Guides*, he determined that she had a class 2 impairment under Table 7-10 on page 151 due to vulvar or vaginal disease which made sexual intercourse possible only with some degree of difficulty. Dr. Hebrard stated that the physical examination grade modifier was consistent with moderate alteration in vaginal or vulvar anatomy with the mention of adhesions and a history of postoperative infection secondary to the abdominal Burch procedure and December 13, 2002 rectocele repair. He advised that since appellant had a hysterectomy, she was surgically induced to become postmenopausal. The Board finds that Dr. Hebrard's report is insufficient to constitute the weight of the medical opinion evidence for schedule award purposes. Impairment to the vulva/vagina was included in appellant's prior schedule award for 100 percent impairment of the uterus/cervix for which OWCP already paid her appropriate compensation.¹⁸

Dr. Wilson found that appellant had 100 percent impairment to the uterus due to her hysterectomy, 13 percent impairment to the vulva/vagina based on a category 2 impairment under Table 7-10, 19 percent impairment to the bladder due to incontinence based on a category 2 impairment under Table 4 (chapter 7) and 22 percent impairment to the colon and rectum based on a class 2 impairment under Table 6-5. As stated, appellant's impairment of the vulva/vagina was included in her November 10, 2004 schedule award for 100 percent impairment of the uterus/cervix.¹⁹ Further, neither FECA nor the regulations provide a schedule award for the bladder, colon and rectum.²⁰ As discussed, no schedule award is payable for a member, function or organ of the body not specified in FECA or in the implementing regulations.²¹ FECA does not provide for OWCP to add organs or functions to the compensation scheduled on a case-by-case basis and the Board does not have the power to enlarge the provisions of either statute or regulations.²² Consequently, appellant is not entitled to a schedule award for the bladder, colon and rectum impairment.

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of permanent impairment and OWCP may rely on the opinion of its OWCP medical adviser to apply the A.M.A., *Guides* to the findings of the attending physician.²³ On May 6, 2010 Dr. Zimmerman, OWCP's medical adviser, reviewed the medical

¹⁸ *Supra* note 16.

¹⁹ *Id.*

²⁰ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404.

²¹ *Supra* note 13.

²² *Janet C. Anderson*, 54 ECAB 394 (2003).

²³ *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

record and found that appellant was not entitled to a schedule award for impairment to the vagina. He explained that as Dr. Hebrard's 13 percent impairment rating was not based on a pelvic or speculum examination, he would not have been able to know whether there was moderate alteration in vaginal or vulvar anatomy with limited potential for vaginal delivery if appellant was premenopausal as required for a class 2 impairment under Table 7-10 of the sixth edition of the A.M.A., *Guides*. Dr. Zimmerman stated that even if Dr. Hebrard's opinion was acceptable, it would have resulted in a lesser percentage of impairment than that previously awarded. Nonetheless the Board notes that appellant was not entitled to an additional schedule for impairment to the vulva/vagina as such impairment was included in her schedule award for 100 percent impairment to the cervix/uterus.²⁴ The Board finds, therefore, that Dr. Zimmerman's opinion is of diminished probative value in determining appellant's entitlement to an additional schedule award.

On November 2, 2010 Dr. Miller, a second OWCP medical adviser, reviewed appellant's medical record and properly found that her November 10, 2004 schedule award for 100 percent impairment to the uterus included any impairment to her cervix, vulva and vagina. Additional separate awards for these body parts would not be appropriate. Dr. Miller also properly found that appellant was not entitled to a schedule award for impairment to the ovaries. She explained that surgical reports revealed that these organs were not removed and Dr. Ellis's April 4, 2007 report stated that appellant's ovaries and tubes were normal by palpation. Dr. Miller further explained that there was no other medical evidence of record establishing that appellant had any symptoms or signs of ovarian impairment due to her employment.

The Board finds that the weight of the medical evidence rests with Dr. Miller, who provided sufficient medical rationale for her conclusion that appellant was not entitled to an additional schedule award for the vagina and ovaries. Further, appellant has not submitted sufficient medical evidence to establish that, as a result of her employment injuries, she sustained any permanent impairment to another scheduled member or function such that she would be entitled to an additional schedule award pursuant to the A.M.A., *Guides*. The Board finds, therefore, that she is not entitled to a schedule award for permanent impairment to the bladder, colon and rectum.

On appeal, appellant contended that the medical evidence from her attending physicians and OWCP's medical adviser is sufficient to establish her entitlement to an additional schedule award for the vagina, ovaries, bladder, colon and rectum. As discussed above, the schedule award she received for 100 percent impairment to the cervix/uterus included any impairment to the vulva/vagina.²⁵ Further, appellant did not submit any medical evidence establishing permanent impairment to the ovaries. Lastly, there is no statutory basis for the payment of a schedule award for impairment to the bladder, colon and rectum under FECA or the regulations.²⁶

²⁴ *Supra* note 16.

²⁵ *Id.*

²⁶ *Supra* note 20.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish entitlement to an additional schedule award for permanent impairment to the vagina, ovaries, bladder, colon and rectum.

ORDER

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

Issued: February 24, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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