

accepted a lumbosacral strain due to a February 19, 1988 fall at work.² The claims were combined under File No. xxxxxx741 as the master file. OWCP paid benefits and authorized further bladder surgeries, which appellant underwent in 1991, 1997, 2002 and 2008.³

On January 9, 2012 appellant requested a schedule award. In a January 9, 2012 letter, her attorney noted that the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) allowed for schedule awards payable for urinary incontinence and bladder stabilization.

In a July 22, 2011 report, Dr. Martin Fritzhand, a Board-certified urologist, reviewed the history of injury and appellant's medical treatment. He opined that she reached maximum medical improvement by January 2004. Appellant had recurrent stress urinary incontinence after unloading books in September 1984 and subsequently required multiple procedures for incontinence. She continued to have persistent unrelenting urinary incontinence over the years and wore at least 10 pads daily, having remained refractory to treatment. Dr. Fritzhand noted that appellant's symptoms were corroborated by the objective findings. Under Table 7-4 of the A.M.A., *Guides*, he opined that she was a class C with a severity rating of E, which he advised was 29 percent whole person permanent impairment.

Appellant underwent further bladder surgeries on October 11, 2011 and February 28, 2012.

In a March 15, 2012 report, OWCP's medical adviser reviewed a statement of accepted facts and appellant's medical file concurred with Dr. Fritzhand's 29 percent whole person impairment rating.

Dr. Philip J. Buffington, a Board-certified urologist, stated in a May 29, 2012 report, that appellant's symptoms were about the same but were expected to improve after the February 28, 2012 procedure.

By decision dated August 2, 2012, OWCP denied appellant's claim for a schedule award as the medical evidence did not support an impairment to a scheduled member or function of the body under 5 U.S.C. § 8107 or 20 C.F.R. § 10.404.

In an August 6, 2012 letter, appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held November 6, 2012.

In an October 11, 2012 letter, Dr. Buffington noted that appellant has a long-standing history of stress incontinence and a history of a renal transplant. He noted the February 28, 2012

² Appellant slipped on steps at work on February 19, 1988 and sustained a hematoma to the left buttock. No time was lost from work as a result of this injury.

³ By decision dated March 14, 2011, OWCP found that appellant's actual earnings in the private sector as a customer service/surveyor effective December 2, 2010 fairly and reasonably represented her wage-earning capacity. It reduced her wage-loss compensation benefits effective March 9, 2011. It noted that effective April 1, 2011, appellant elected to receive retirement benefits from the Office of Personnel Management. By decision dated September 27, 2011, OWCP's hearing representative affirmed the March 14, 2011 decision.

procedure was for a transvaginal sling and that she has had multiple failed incontinence procedures in the past. A request for authorization was also received.

By decision dated January 8, 2013, OWCP's hearing representative affirmed the August 2, 2012 decision.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing federal regulations⁵ 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 applicable to all claimants.⁶ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷ For decisions issued after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸ For decisions issued after May 1, 2009, the sixth edition will be used.⁹

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).¹⁰ 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.¹¹ 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.¹² 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.¹³ The Secretary of Labor has

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Ausbon N. Johnson*, 50 ECAB 304 (1999).

⁷ *Supra* note 4.

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁹ FECA Bulletin No. 09-03 (issued March 15, 2009).

¹⁰ A.M.A., *Guides* 494-531.

¹¹ *See J.W.*, 59 ECAB 308 (2008); *Paul A. Zoltek*, 56 ECAB 325 (2005); *Leroy M. Terska*, 53 ECAB 247 (2001).

¹² 5 U.S.C. § 8107(c).

¹³ *Id.* at § 8122(c)(22).

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, vulva/vagina and skin to the compensation schedule.¹⁴ There is no statutory basis for payment of a schedule award for impairment to the bladder, colon or rectum under FECA or in the regulations.¹⁵

ANALYSIS

OWCP accepted that appellant sustained recurrent urinary incontinence and authorized several surgeries. Appellant filed a schedule award claim, which it denied in decisions dated August 2, 2012 and January 8, 2013. The Board finds that she has not met her burden of proof to establish that she sustained an impairment to a scheduled member under FECA.

In a July 22, 2011 report, Dr. Fritzhand found that appellant had 29 percent whole person impairment under Table 7-4, criteria for rating permanent impairment due to bladder disease, of the A.M.A., *Guides*. The medical adviser agreed with this assessment. The Board notes that neither FECA nor the implementing federal regulations provide a schedule award for the bladder.¹⁶ A schedule award is not payable for a member, function or organ of the body not specified in FECA or in the implementing regulations.¹⁷ 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 the statute or regulations.¹⁸ Consequently, appellant is not entitled to a schedule award for the bladder impairment. There is no other medical evidence showing impairment to another body part or organ other than the bladder.

For this reason, appellant did not show that she was entitled to schedule award compensation and OWCP properly denied her claim.

On appeal, appellant argues that OWCP's decision is contrary to fact and law. As noted there is no legal provision for schedule award compensation for the bladder as it is not a scheduled member under FECA.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish entitlement to a schedule award for permanent impairment.

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

¹⁵ *Supra* note 12; *supra* note 5. *D.J.*, Docket No. 11-1359 (issued February 24, 2012).

¹⁶ *Id.*

¹⁷ *Supra* note 10.

¹⁸ *Janet C. Anderson*, 54 ECAB 394 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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