

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

D.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Chicago, IL, Employer)

**Docket No. 14-1648
Issued: December 15, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 21, 2014 appellant filed a timely appeal from a March 17, 2014 merit 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 established permanent impairment due to her accepted parastomal hernia condition.

FACTUAL HISTORY

On August 26, 2013 appellant, then a 57-year-old mail processing clerk, filed a traumatic injury claim alleging that she injured both wrists while lifting. In a subsequent statement, received by OWCP on September 13, 2013, she alleged that she sustained an abdominal injury.

¹ 5 U.S.C. § 8101 *et seq.*

In an August 20, 2013 report, Dr. David Lewin, Board-certified in diagnostic radiology, advised that a computerized tomography (CT) scan revealed 9.9 centimeter parastomal hernia with no evidence of bowel obstruction or fluid collection. He further advised that appellant had a left lower quadrant colostomy, left nephrolithiasis, and right side renal cyst without evidence of urinary obstruction.

On November 7, 2013 OWCP accepted appellant's claim for parastomal hernia. A November 7, 2013 nurse referral report indicated that she had a nonwork-related colostomy. OWCP noted accepting the claim for parastomal hernia and that appellant underwent surgery on October 9, 2013. It found her temporarily totally disabled following her surgery. The record indicates that appellant received wage-loss compensation from October 18 to December 15, 2013.

In a December 6, 2013 postoperative report, Dr. James O'Donnell, a Board-certified general surgeon, advised that appellant reported sensitivity and pain at the stoma site of the skin lateral to the wound. In a December 6, 2013 disability status report, he advised that she was able to return to work but was restricted to lifting 10 pounds. In a January 10, 2014 disability status report, Dr. O'Donnell reiterated that appellant should not lift more than 10 pounds. In a February 21, 2014 disability status report, appellant was released to full duty by Dr. O'Donnell.

On March 3, 2014 appellant requested a schedule award.

By decision dated March 17, 2014, OWCP denied appellant's request for a schedule award because medical evidence was insufficient to establish that she sustained a permanent loss or permanent loss of use of a scheduled body member under FECA or OWCP regulations.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations² 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, FECA 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 American Medical Association, *Guides to the Evaluation of Permanent Impairments*³ has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴ As of May 9, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁵

² 20 C.F.R. § 10.404.

³ A.M.A., *Guides* (6th ed. 2008).

⁴ *Supra* note 2.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (February 2013).

It is the claimant's burden to establish that he or she has sustained a permanent impairment of the scheduled member or function as a result of any employment injury.⁶ OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of maximum medical improvement), describes the impairment in sufficient detail so that it can be visualized on review and computes the percentage of impairment in accordance with the A.M.A., *Guides*.⁷

No schedule award is payable for a member, function, or organ of the body not specified in FECA or in the implementing regulations.⁸ FECA identifies members such as the arm, leg, hand, foot, thumb and finger, organs to include the eye and functions as loss of hearing and loss of vision.⁹ 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.¹⁰ 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, ovary, uterus, and tongue to the schedule.¹¹

ANALYSIS

OWCP accepted appellant's claim for left parastomal hernia due to an August 19, 2013 work-related injury. On March 3, 2014 appellant filed a schedule award claim for her hernia. OWCP denied her schedule award claim finding that she had not submitted sufficient evidence to establish that she sustained a permanent impairment to a scheduled body member.

The Board finds that the medical evidence fails to establish any permanent impairment. Appellant has not submitted medical evidence establishing that she sustained any permanent impairment to a scheduled member as defined under section 8107 of FECA or the implementing federal regulations. No medical report from her physician specifically found permanent impairment to a scheduled member based on the accepted hernia. Thus, OWCP properly denied appellant's request for a schedule award.

The Board further notes that a schedule award cannot be granted for permanent impairment based on appellant's hernia condition because the hernia or abdomen have not been included under FECA or the regulations as a scheduled member.¹² The terms of FECA are

⁶ *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁷ *Supra* note 5 at Chapter 2.808.5(b) (February 2013).

⁸ *See Leroy M. Terska*, 53 ECAB 247 (2001).

⁹ *Id.*; 5 U.S.C. § 8107(c).

¹⁰ *Id.* at § 8122(c)(22).

¹¹ *Supra* note 2; *Henry B. Floyd, III*, 52 ECAB 220 (2001).

¹² *K.S.*, Docket No. 14-133 (issued April 1, 2014); *K.H.*, Docket No. 09-275 (issued August 14, 2009); *S.K.*, Docket No. 08-848 (issued January 26, 2009).

specific as to the method and amount of payment of compensation. Neither, OWCP nor the Board has the authority to enlarge the terms of FECA or to make an award of benefits under terms other than those specified in the statute.¹³

On appeal appellant argues that, following her surgery, she continues to be limited in the amount of weight she can lift and that several of her coworkers have been compensated for hernias. As explained, the medical evidence is insufficient to establish that appellant sustained a permanent impairment to a scheduled member.

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 OWCP properly denied appellant's request for a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 15, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹³ *Danny E. Haley*, 56 ECAB 393 (2005).