

ISSUE

The issue is whether appellant has more than 60 percent permanent impairment of his right testicle after it was surgically removed.

FACTUAL HISTORY

On December 10, 2012 appellant, a 62-year-old materials handler, sustained a traumatic injury in the performance of duty while delivering refrigerators, scrap metal, and furniture to the base recycling center. After delivering the items, he felt like he had pulled something. (RD12.21.12) Appellant sought medical treatment the next day and it was discovered that the injury he received was a hernia that required surgery.

Two days later, appellant underwent an open repair of a right inguinal hernia. OWCP accepted his claim for right inguinal hernia. It expanded its acceptance to include postoperative atrophy of the right testicle. On January 15, 2014 OWCP issued a schedule award for 60 percent permanent impairment of appellant's right testicle, or a total of 31.2 weeks of compensation, for the period of August 26, 2013 to April 1, 2014.

On May 28, 2014 appellant underwent a right orchiectomy, or surgical removal of his atrophic right testicle. An OWCP medical adviser noted that the surgical removal of the testicle did not increase or decrease appellant's impairment because the testicle was atrophic and nonfunctional prior to the surgery.

In a decision dated August 26, 2014, OWCP denied appellants claim for an additional schedule award. By letter dated October 31, 2014 received on November 13, 2014 appellant requested reconsideration. On January 21, 2015 OWCP reviewed the merits of appellant's case, but denied modification of its prior decision.

On appeal, appellant argues that the OWCP medical adviser did not understand that the January 15, 2014 schedule award was not for the loss of his testicle. The testicle was surgically removed only after the first schedule award was paid.

LEGAL PRECEDENT

The schedule award provisions of FECA³ and the implementing regulations⁴ set forth the compensation payable for permanent impairment from the loss, or loss of use, of scheduled members, organs, or functions of the body. For the complete loss of one testicle, a claimant is entitled to 52 weeks of compensation.⁵

³ *Supra* note 2.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

ANALYSIS

The Board finds that appellant has more than 60 percent permanent impairment of his right testicle, following its surgical removal.

In the present case, appellant underwent surgery on May 28, 2014 to remove the accepted atrophic right testicle, constituting a complete and total surgical loss of that organ. OWCP, however, has awarded compensation for only 60 percent partial loss of use of that organ.

OWCP denied additional compensation based on the medical adviser's opinion that the surgical removal of the testicle did not increase or decrease appellant's permanent impairment. The medical adviser, however, found that the surgery did not increase impairment because the testicle was atrophic and nonfunctional prior to the surgery. In other words, appellant had suffered a 100 percent functional loss of the organ prior to the surgery.

In the case of *N.D.*,⁶ the employee sustained left flank abdominal injuries in a work-related motor vehicle accident which led to the authorized removal of several body parts among which was his left kidney. As a result of the nephrectomy, OWCP converted the whole person impairment to an impairment rating for a lost organ and granted appellant 15 percent due to the loss of kidney function. The medical adviser noted that the impairment was based on function, reasoning that although there is a 100 percent loss of function, the remaining kidney can compensate for the functional loss of the other. The Board found that the record clearly established that the appellant lost his kidney due to his employment injury. As such, the formula which OWCP used, converting the whole person impairment to an impairment of a scheduled member was inapplicable.⁷ The Board remanded the case for amendment to reflect a total loss of the kidney at 100 percent.⁸

It does not matter whether appellant completely lost the functional use of his right testicle prior to surgery or upon its surgical removal. It cannot be argued that he retains any use of that organ. Accordingly, the Board finds that appellant is entitled to 20.8 weeks of additional schedule award compensation (52 weeks maximum compensation minus 31.2 weeks previously awarded). The Board will set aside OWCP's January 21, 2015 decision and will remand the case for an additional schedule award of 40 percent permanent impairment.

CONCLUSION

The Board finds that appellant has 100 percent loss of his right testicle, which was surgically removed. Appellant is entitled to 20.8 weeks of additional schedule award compensation.

⁶ *N.D.*, 59 ECAB 344 (2008).

⁷ *Marilyn S. Freeland*, Docket No. 06-563 (issued June 7, 2006).

⁸ *See also M.E.*, Docket No. 08-52 (issued March 24, 2008); *D.J.*, Docket No. 08-725 (issued July 9, 2008).

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: August 10, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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