

FACTUAL HISTORY

On December 6, 2010 appellant, then a 44-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 4, 2010 he sustained a swollen groin after slipping on water which was on the floor and hitting his groin on a chair. He did not stop work following this injury. OWCP accepted the claim for genital organ contusion, scrotal varices, impotence of organic origin, and unspecified orchitis and epididymitis.

In progress notes dated January 15, 2014, Dr. David A. Nachamie, a treating physician specializing in urology, reported that appellant sustained a contusion to his penis and right testicle on December 4, 2010. Appellant related cold weather caused soreness of his right testicle. Diagnoses included erectile dysfunction and chronic epididymitis. In a report dated February 25, 2014, Dr. Nachamie opined that appellant reached maximum medical improvement (MMI) on May 8, 2013, which was when appellant no longer had testicular or penile pain, but continued to have partial erections. He noted there had been no impairment prior to the accepted December 4, 2010 employment injury.

On February 28, 2014 appellant filed a claim for a schedule award (Form CA-7).

In a report dated February 21, 2014, an OWCP medical adviser reviewed the medical evidence and found no evidence of any permanent impairment due to the accepted conditions using Table 7-8, page 147 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*).

By decision dated March 11, 2014, OWCP denied appellant's schedule award claim as he had not established permanent impairment due to his accepted employment injury.

On April 8, 2014 OWCP received appellant's request for reconsideration. Appellant resubmitted Dr. Nachamie's February 25, 2014 report in support of his request.

In an April 18, 2014 report, OWCP's medical adviser reviewed Dr. Nachamie's February 25, 2014 report and provided an impairment rating for appellant's sexual dysfunction. Using Table 7-6, page 144 of the A.M.A., *Guides*, he determined that appellant had 33 percent permanent impairment due to penile sexual dysfunction.

By decision dated May 12, 2014, OWCP granted appellant a schedule award for 33 percent permanent impairment of his penis. The period of the award was for 67.65 weeks and ran from May 8 to August 24, 2014.

In a form dated May 15, 2014, received on May 22, 2014, appellant requested reconsideration. In support of his request, he resubmitted January 15, 2014 progress notes and the February 25, 2014 report from Dr. Nachamie.

By decision dated June 3, 2014, OWCP denied appellant's request for reconsideration for the May 12, 2014 decision. It found that he failed to meet any of the requirements set forth in section 8128(a).

On November 10, 2014 appellant filed a schedule award claim (Form CA-7) for impairment to his testicles.

In a report dated November 25, 2014, OWCP's medical adviser determined that appellant had 33 percent permanent impairment of the right testicle using Table 16.8, page 147 of the A.M.A., *Guides*. The impairment determination was based on appellant's increased problems with the accepted genital organ contusion, which resulted in impotence, orchitis, epididymitis, scrotal varices, and tender, painful and enlarged testicles. The date of MMI was found to be May 8, 2013.

In a December 5, 2014 report, OWCP's medical adviser opined that the evidence of record only supported a permanent impairment rating for the right testicle, which was the organ injured in the December 4, 2010 employment injury. He explained that at the time appellant was hit in the right groin area by the chair on December 4, 2010, the medical evidence showed a large hematoma at the base of the right testicle and right side of the penis.

On December 8, 2014 OWCP granted appellant a schedule award for 33 percent permanent impairment of the right testicle. The period of the award was for 17.16 weeks and ran from August 25 to November 14, 2014.

On March 11, 2016 appellant filed a claim for a schedule award (Form CA-7) for impairment to his left testicle. In support of his request, he submitted progress notes and an impairment report from Dr. Nachamie.

In progress notes dated January 27 and March 17, 2015, Dr. Nachamie noted that appellant complained of dull aching in the left testicle and tender left testicle on palpation. In progress notes dated August 7, 2015 and February 9, 2016, he reported that appellant complained of an aching left testicle.

In an April 3, 2016 report, Dr. Nachamie reported that appellant was first seen for ecchymosis and edema to the penis and scrotum on December 10, 2010. On February 9, 2016 he noted left epididymitis and scar tissue and periodic left testicle swelling and pain.

In an April 26, 2016 report, OWCP's medical adviser determined that appellant had five percent whole person impairment for his left testicle using Table 7-8, page 147. In reaching this determination, he assigned a class 1 or three percent whole person impairment for the occasional testicular/epididymal disease symptoms. Under physical findings, the medical adviser assigned a class 2 modifier for moderate hormonal abnormalities, persistent anatomic alteration, and physical signs attributable to epididymitis. The class 2 modifier resulted in moving the impairment rating to the right, resulting in five percent whole person impairment. The medical adviser advised that there was no whole person conversion table for one testicle in the A.M.A., *Guides*. Next, he determined the date of MMI as May 8, 2013, which was based on Dr. Nachamie's opinion.

By decision dated May 17, 2016, OWCP granted appellant a schedule award for five percent permanent impairment of his left testicle. The period of the award was for 2.6 weeks and ran from December 24, 2014 to January 11, 2015.

On July 5, 2016 appellant requested reconsideration. He contended that the schedule award given for his left testicle was erroneous. Appellant argued that he was entitled to a greater schedule award due to impact the employment injury has had on his sex life and problems with his genital area.

By decision dated July 14, 2016, OWCP denied appellant's request for reconsideration. It found that he had not submitted further evidence as to how his left testicle impairment affected his sex life.

LEGAL PRECEDENT -- ISSUE 1

Under section 8107 of FECA³ and section 10.404 of the implementing federal regulations,⁴ schedule awards are payable for permanent impairment of specified body members, functions or organs. FECA, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.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 regulations.⁶ The list of scheduled members includes the eye, arm, hand, fingers, leg, foot, and toes.⁷ By authority 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, and skin.⁸ A schedule award is not payable under section 8107 of FECA for an impairment of the whole person.⁹

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *D.J.*, 59 ECAB 620 (2008); *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

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). For a total or 100 percent loss of use of a leg, an employee shall receive 288 weeks' compensation. *Id.* at § 8107(c)(2).

⁸ *Id.* at § 8107(c)(22); 20 C.F.R. § 10.404(b). For a total or 100 percent loss of use of one's penis, an employee shall receive 205 weeks' compensation. 20 C.F.R. § 10.404(b).

⁹ 5 U.S.C. § 8107; *see W.D.*, Docket No. 10-274 (issued September 3, 2010); *Marilyn S. Freeland*, 57 ECAB 607 (2006).

percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.¹⁰

ANALYSIS -- ISSUE 1

The Board finds this case is not in posture for a decision.

OWCP accepted the claim for genital organ contusion, scrotal varices, impotence of organic origin, and unspecified orchitis and epididymitis. By decision dated May 17, 2016, OWCP granted appellant a schedule award for five percent permanent impairment of his left testicle based on the April 26, 2016 OWCP medical adviser's report.

In an April 26, 2016 report, OWCP's medical adviser reviewed Dr. Nachamie's report. Applying the findings from Dr. Nachamie's report and applying Table 7-8, page 147 of the A.M.A., *Guides*, he determined that there was five percent whole person impairment for the impairment to appellant's left testicle. In support of this impairment rating, the medical adviser observed that the A.M.A., *Guides* do not provide for a conversion of whole person impairment for impairment of the testicle. As there was no conversion table in the A.M.A., *Guides* from whole person impairment, the medical adviser concluded that appellant was only entitled to five percent permanent impairment for his left testicle.

However, Chapter 3.700.4(d)(2) of the procedure manual does provide a formula for converting from whole person impairment for certain organs.¹¹ While the medical adviser was correct that the A.M.A., *Guides* only provided a whole person impairment rating, he did not consider the conversion formula contained in the FECA Procedure Manual. OWCP's procedures further provide that "For certain schedule organs which have more than one physiologic function, the A.M.A., *Guides* provide whole person impairment scores for each affected system within that organ. When calculating the impairment of these organs, the [district medical adviser] must consider all affected organ systems as instructed in the A.M.A., *Guides*."

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013). See *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

¹¹ The formula for converting a whole person impairment to an impairment for certain organs is set forth at Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(d)(2) (January 2010). When the maximum whole person rating of the organ is less than 100 percent, direct translation of the whole person measurement into a percentage of impairment to the organ is not valid. In these cases, to obtain the percentage of impairment to an organ corresponding to a given whole person impairment, the following mathematical ratio should be used:

$$\frac{(A)}{(B)} = \frac{(X)}{100}$$

In this equation:

- (A) = Actual whole person impairment of the claimant,
- (B) = Maximum whole person impairment for the injury or condition of the organ, and
- (X) = Organ rating to be determined.

As OWCP's medical adviser did not appropriately consider whether more than one physiologic function was affected and did not apply the conversion chart contained in the procedure manual when calculating appellant's impairment rating, this case must be remanded for an appropriate permanent impairment rating using the conversion method set forth in the FECA Procedure Manual. Following any necessary development, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds this case is not in posture for a decision. In view of the Board's disposition of the first issue, the Board finds the second issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 14, 2016 is set aside and the case is remanded for further proceedings consistent with the above opinion.

Issued: February 7, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board