

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

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**D.B., Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE, TINKER  
AIR FORCE BASE, OK, Employer**

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**Docket No. 17-0515  
Issued: June 7, 2017**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On January 9, 2017 appellant filed a timely appeal from a July 27, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 met her burden of proof to establish permanent impairment due to her accepted employment injuries, warranting a schedule award.

On appeal appellant asserts that she is permanently disfigured due to the accepted conditions.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

In a claim adjudicated under OWCP File No. xxxxxx735, on July 13, 2006 appellant, then a 42-year-old aircraft sheet-metal mechanic, filed a traumatic injury claim (Form CA-1) alleging that her job duties of pulling and climbing stairs caused three incisional hernias. OWCP accepted ventral hernia with gangrene.

On January 3, 2011 appellant filed an occupational disease claim (Form CA-2) adjudicated under File No. xxxxxx295, alleging that her daily job duties aggravated a recurrent ventral hernia. Following an initial denial of the claim on March 15, 2011, by decision dated May 9, 2011, OWCP accepted an additional condition of incisional hernia without obstruction or gangrene. It expanded the accepted conditions to also include scar conditions and fibrosis of skin, accepted on October 12, 2012; cellulitis of trunk and nontraumatic compartment syndrome of abdomen, accepted on January 4, 2013; postoperative peritoneal adhesions, intestinal abscess, and incisional hernia with obstruction, accepted on June 10, 2013. OWCP also authorized a hernia repair performed on February 6, 2013.

On February 6, 2013 Dr. Carlos Egas, a Board-certified surgeon, repaired a large recurrent incarcerated incisional hernia.<sup>2</sup> Appellant stopped work that day. OWCP paid her wage-loss compensation. Appellant then returned to modified duty on April 15, 2013.

On November 26, 2013 appellant filed a schedule award claim (Form CA-7). In support she submitted an October 21, 2013 report in which Dr. J. Arden Blough, an attending family physician, described appellant's medical and surgical history and reviewed medical records. He noted her complaint of abdominal pain exacerbated with any lifting. Dr. Blough's physical examination demonstrated an obviously asymmetrical abdomen with swelling located above the umbilicus in the midline. There was an approximately eight centimeter (cm) tissue defect near the umbilicus which was tender and palpable and was only partially reducible, and an 18 cm vertical scar over the midline of the abdomen involving the umbilicus. Dr. Blough advised that, in accordance with Table 6-10, Criteria for Rating Impairment Due to Herniation, of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),<sup>3</sup> appellant had 20 percent class 3 whole person impairment due to the employment-related hernia.

OWCP referred the record to Dr. Ronald Blum, an OWCP medical adviser and a Board-certified orthopedic surgeon, for an impairment rating. In a December 12, 2013 report, Dr. Blum noted his review of the record, including Dr. Blough's report. He advised that, while Dr. Blough's recommendation seemed correct, a schedule award for abdominal wall and whole person impairment were precluded by OWCP regulations. Therefore, Dr. Blough could not recommend impairment in this case.

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<sup>2</sup> Appellant previously had surgical repair of multiple incisional hernias on May 24, 2006, laparoscopic pelvic adhesiolysis on October 1, 2009, and repair of multiple recurrent abdominal wall hernias on December 9, 2009.

<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

In correspondence dated January 13, 2014, OWCP informed appellant that, based on the opinion of its medical adviser, her schedule award claim was not payable at the present. A copy of Dr. Blum's report was attached.

Appellant submitted an April 29, 2014 report from Dr. Donald E. Adams, a Board-certified physiatrist. Dr. Adams noted that appellant had an extensive medical and surgical history regarding work-related hernias, and that she had a current complaint of abdominal pain and discomfort with prolonged standing. He advised that she reported some difficulty with activities of daily living and in self-care. Dr. Adams provided physical examination findings noting that the abdomen was asymmetric with a large scar extending from the epigastric region down to the suprapubic region, and multiple laparoscopic incisions and an approximately grapefruit sized ventral hernia that was reducible. He noted the accepted conditions and advised that, in accordance with Table 6-10 of the sixth edition of the A.M.A., *Guides*, appellant had class 3 or 16 percent whole person impairment due to severe signs and symptoms interfering with activities of daily living and a reducible protrusion defect.

Dr. Blum again reviewed the record, including Dr. Adams' report. He advised that, while Dr. Adams' evaluation appeared correct, a schedule award for the abdominal wall and whole person were precluded by OWCP regulations and, therefore, he could not recommend impairment in this case.

By decision dated July 28, 2014, and after a reconsideration request, of an August 4, 2014 decision, OWCP denied appellant's claim for a schedule award. In each decision it noted that the medical evidence submitted failed to support permanent impairment of a member or function of the body covered under section 8107 of FECA or section 10.404 of OWCP regulations.

Appellant requested reconsideration on November 18, 2014. She described her surgical history and maintained that she still had daily pain and needed pain medication.<sup>4</sup>

In a merit decision dated May 12, 2015, OWCP denied modification of the prior decision. It noted that both Dr. Blough and Dr. Adams based their impairment findings on the whole person and the abdominal wall. OWCP again explained that the abdominal wall was not a scheduled member and whole person impairment was precluded under FECA.

Appellant again requested reconsideration on February 2, 2016.

In a merit decision dated March 16, 2016, OWCP denied modification of its prior decisions, noting that appellant had not submitted any medical evidence that supported permanent loss or loss of use to a member or function of the body listed in section 8107 of FECA or section 10.404 of OWCP regulations.

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<sup>4</sup> Dr. Blough submitted additional progress notes. He did not provide an impairment evaluation. On November 25, 2014 Dr. Blough contended that appellant's work-related condition caused consequential depression and anxiety. Dr. Egas also submitted follow-up reports but did not provide an impairment evaluation.

Appellant again requested reconsideration on July 12, 2016. She submitted a June 28, 2016 impairment rating in which Dr. Adams noted that abdominal examination showed small incisions consistent with laparoscopy, a large, curving scar that extended for 25 cm, and a softball-sized hernia in the hypogastric region. Dr. Adams indicated that Table 8-3 of the A.M.A., *Guides*, directed that scars should be evaluated under Table 8-2 for rating permanent impairment due to skin disorders. He advised that, under Table 8-2, appellant had class 1 impairment with a default value of five percent permanent impairment due to the abdominal scar.

In a merit decision dated July 27, 2016, OWCP denied modification of its prior decisions. It noted that, although a schedule award could be paid for impairment to the skin, as appellant did not have an accepted skin condition and did not have disfigurement of the face, head, or neck, she did not have impairment under FECA.

### **LEGAL PRECEDENT**

It is the claimant's burden of proof to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of any employment injury.<sup>5</sup>

The schedule award provision of FECA<sup>6</sup> and its implementing federal regulations<sup>7</sup> 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>8</sup> For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>9</sup> Chapter 8 of the sixth edition is to be utilized in assessing skin impairment.<sup>10</sup>

A schedule award is not payable for the loss or loss of use, of a member or function of the body not specifically listed in FECA and its implementing regulations.<sup>11</sup> OWCP issued the revised implementing federal regulations effective August 29, 2011. The new regulations provide that, pursuant to the authority provided by 5 U.S.C. § 8107(c)(22), skin was added to the

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<sup>5</sup> See *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Id.* at § 10.404(a).

<sup>9</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

<sup>10</sup> *Supra* note 3 at 159-82.

<sup>11</sup> *J.W.*, 59 ECAB 308 (2008).

list of scheduled members for which FECA provides compensation for loss. A schedule award for the skin may be paid for injuries sustained on or after September 11, 2001.<sup>12</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.<sup>13</sup>

### **ANALYSIS**

The Board finds this case is not in posture for decision with respect to OWCP's finding regarding permanent impairment of the skin.

The Board finds that, in denying entitlement to a schedule award in its July 27, 2016 decision, OWCP incorrectly indicated that appellant did not have an accepted skin condition. Scar conditions and fibrosis of skin were accepted on October 12, 2012. OWCP also authorized surgery for appellant's accepted conditions. On August 29, 2011 OWCP's regulations were revised to include skin in the list of scheduled members for which FECA provides compensation for loss. A schedule award for the skin may be paid for injuries, such as appellant's, sustained on or after September 11, 2001.<sup>14</sup>

On remand OWCP's medical adviser should be asked provide an opinion regarding whether the accepted skin conditions would entitle appellant to a schedule award under Chapter 8 of the A.M.A., *Guides* and, if so, to provide an impairment rating. After this and further development deemed necessary, OWCP should issue an appropriate decision.

### **CONCLUSION**

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

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<sup>12</sup> *Supra* note 7.

<sup>13</sup> *See* Federal (FECA) Procedure Manual, *supra* note 9 at Chapter 2.808.6(f) (February 2013).

<sup>14</sup> 20 C.F.R. § 10.404.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 27, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: June 7, 2017  
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