

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of XEROLYBE BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Boston, Mass.

*Docket No. 97-259; Submitted on the Record;
Issued November 17, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he is entitled to a schedule award for permanent impairment of his penis.

On February 6, 1988 appellant sustained a stroke as a result of his reaction to an altercation with his supervisor, which the Office of Workers' Compensation Programs accepted as being employment related. Concurrent disability not due to injury was noted to include paranoid schizophrenia, depression, syphilis, and blindness of the left eye.

Thereafter appellant had difficulty with his right side and had problems with impotence, and he requested schedule awards. The Office granted appellant a schedule award for a 9 percent loss of use of his right arm and a 13 percent loss of use of his right leg, which was ultimately affirmed by the Branch of Hearings and Review. The Office, however, omitted any award for loss of function of the penis as the medical evidence of record failed to demonstrate a relationship between the stroke and the impairment of the penis as reflected in the symptom of impotence

By letter dated July 28, 1994, appellant, through his representative, reiterated his request for a schedule award for sexual dysfunction. By letter dated September 29, 1994, appellant's representative again reiterated his request. By letter dated October 20, 1994, appellant's representative requested response to appellant's claim for sexual dysfunction.

By response generated on October 28, 1994 the Office advised appellant that at the time of schedule award rating, the record did not contain any evidence which identified an impairment of sexual function as a result of his accepted condition. The Office suggested that a rationalized medical report from a urologist addressing causal relation and containing an impairment rating would be necessary for further development of his claim.

On November 18, 1994 the Office advised appellant that it would be issuing a decision specifically addressing his penis impairment claim.

By decision dated December 2, 1994, the Office denied appellant's claim for a schedule award for permanent impairment of his penis finding that the evidence of record failed to establish that appellant suffered such impairment as a result of his work injury. The Office found that the evidence of record failed to demonstrate sexual dysfunction as a result of appellant's 1988 stroke.

By letter dated May 26, 1995, appellant requested reconsideration of the December 2, 1994 decision, and provided May 17, 1995 report from Dr. Thomas C. Platt, a Board-certified internist, in support. Dr. Platt stated: "A neuro-urology study performed in 1990 demonstrated a bilateral pudendal neuropathy. Because his vascular urologic studies were normal, it is concluded that his impotence is neurologic in nature and as a result of his stroke."

By decision dated August 29, 1995, the Office denied modification of the prior decision finding that the evidence submitted in support of the request was not sufficient to warrant modification.

By letter dated March 28, 1996, appellant requested reconsideration of the prior decision and as support he submitted three medical reports. By reports dated November 21, 1995 and January 3, 1996, Dr. Jacques G. Susset, a Board-certified urologist of professorial rank, examined and tested appellant, noting as history that since the 1988 stroke appellant had "not seen an erection even in the morning and has not been able to masturbate with a good erection." Dr. Susset noted that appellant had no problem with his urinary stream, but noted that testing indicated some sensory deficit affecting the penis bilaterally, prolongation and increased latencies suggesting a lesion affecting the motor neuron, and moderate arterial insufficiency dorsally. Dr. Susset opined: "His erectile dysfunction appears to be due to the association of multiple factors. Arterial insufficiency, nerve damage affecting the lower motor neuron, psychological attitude, and situational problem in view of his lack of partner at present."

By report dated February 6, 1996, Dr. Alan D. Podis, a Board-certified urologist, noted that he had referred appellant to Dr. Susset who dealt with potency problems, quoted Dr. Susset's findings, and concluded that, "[t]herefore, Dr. Susset has indeed related the impotence, at least in part, to dysfunctional nerves. Also, he has substantiated some impairment of arterial blood flow."

The Office then referred the case record to an Office medical adviser, who evaluated the reports and explained that Dr. Platt was illogical and incorrect, finding a bilateral pudendal neuropathy, but then concluding that it was the result of a stroke. The Office medical adviser noted that a stroke was a lesion of the brain, and pudendal neuropathy was a peripheral nerve abnormality unrelated to stroke, with the peripheral nerves being far removed from the brain. The Office medical adviser noted that Dr. Susset found appellant's sacral evoked response suggested a lesion affecting the motor neuron as contributing to appellant's erectile dysfunction, in addition to arterial insufficiency, psychological attitude and situational problems, and noted that Dr. Podis opined that appellant's impotence was partly related to dysfunctional nerves. The Office medical adviser explained that dysfunctional nerves, pudendal neuropathy and lower

motor neuron lesions were all abnormalities of the peripheral nerves or the spinal cord, but a stroke was a brain lesion, which did not cause peripheral nerve or spinal cord problems. He noted that while dysfunctional nerves, pudendal neuropathy, and lower motor neuron lesions might cause impotence, they were related, not to a stroke, but to things independent of the stroke such as diabetes, nutritional deficiencies, or unrelated spinal cord disease. The Office medical adviser concluded that appellant might be impotent but that the impotence was not sustained, and hence the loss of use of the penis was not sustained, as a result of the February 6, 1988 stroke.

By decision dated September 12, 1996, the Office denied modification of the prior decision finding that the evidence submitted in support of the request was insufficient to warrant modification. The Office found that the medical evidence submitted by appellant supported that his impotence was due, in part, to peripheral nerve problems including dysfunctional nerves, pudendal neuropathy, and lower motor neuron lesions, and not due to a cerebral lesion such as a stroke. Accordingly, the Office found that appellant had failed to submit medical evidence to support that he sustained permanent impairment of the penis as a result of the accepted 1988 stroke.

The Board finds that appellant has failed to establish that he is entitled to a schedule award for permanent impairment of his penis.

Section 8107 of Title 5 of the U.S. Code provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹

Appellant did not meet his burden in this case.

The medical evidence appellant submitted attributed appellant's impotence to a variety of peripheral nerve abnormalities: Dr. Platt attributed it to bilateral pudendal neuropathy, Dr. Susset attributed it to a lesion affecting the lower motor neuron, and Dr. Podis attributed it to dysfunctional nerves, all of which are of peripheral nerve origin. As all of the medical evidence appellant submitted attributes his loss of erectile function of his penis to peripheral nerve lesions or abnormalities, none of the evidence submitted demonstrates a causal relationship between the loss of erectile function and appellant's 1988 cerebral lesion due to stroke. Consequently, appellant has failed to meet his burden to submit probative evidence sufficient to establish his claim of causal relationship between his 1988 cerebral lesion and his erectile dysfunction, such that he has failed to establish his entitlement to a schedule award for permanent loss of function of his penis.

¹ 5 U.S.C. § 8107(a). It is thus the claimant's burden of establishing that he sustained a permanent impairment of a scheduled member or function as a result of his employment injury; *see Raymond E. Gwynn*, 35 ECAB 247 (1983) (addressing schedule awards for members of the body that sustained an employment-related permanent impairment); *Philip N.G. Barr*, 33 ECAB 948 (1982) (indicating that the Act provides that a schedule award be payable for a permanent impairment resulting from an employment injury).

Accordingly, the decision of the Office of Workers' Compensation Programs dated September 12, 1996 is hereby affirmed.

Dated, Washington, D.C.
November 17, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member