

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH A. FENDERSON and DEPARTMENT OF THE NAVY,
NAS BARBERS POINT, Hawaii

*Docket No. 97-326; Submitted on the Record;
Issued October 28, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly interrupted payment of appellant's wage-loss compensation to begin payment of his schedule award.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly interrupted payment of appellant's wage-loss compensation to begin payment of his schedule award.

The facts in this case indicate that on February 22, 1996 appellant, then a 35-year-old firefighter, sustained an employment-related rupture of the globe of his left eye. He stopped work that day and received appropriate continuation of pay and compensation. Following a request by the Office, Dr. Dean R. Hirabayashi, a Board-certified ophthalmologist, reviewed appellant's medical records and, in a September 13, 1996 report, advised that appellant sustained a 100 percent loss of vision in the left eye and reached maximum medical improvement on May 22, 1996. By decision dated September 23, 1996, the Office granted appellant a schedule award for a 100 percent permanent impairment of the left eye. The award was to run for 160 weeks, from September 15, 1996 to October 9, 1999. On appeal appellant does not contest the amount or period of the schedule award but argues that receiving the benefits at a later date when he is reemployed would be more beneficial to him.

Under the Federal Employees' Compensation Act,¹ compensation for disability or physical impairment may be paid in only two situations, pursuant to sections 8105 and 8106 for a loss of wage-earning capacity which an employee sustained because of his injury or pursuant to section 8107 for the permanent loss or loss of use of certain specified members or functions of the body by means of a schedule award.² While section 8107 states that schedule award

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. §§ 8105-8107; *see Daniel G. Jones*, 27 ECAB 405 (1973).

compensation is “in addition” to compensation to temporary total or partial disability,³ the Act’s implementing regulations⁴ and Board precedent provide that an injured employee cannot concurrently receive wage-loss compensation and schedule award payments.⁵ As the Board explained in *Joseph R. Waples*, when the statute provides parallel remedies for the same injury, it is not intended that a claimant should receive both remedies at the same time.⁶ Thus, the Board found in that case that the Office properly converted appellant’s wage-loss compensation to schedule award benefits and appellant received schedule award payments in lieu of wage-loss compensation. To aid the administration of payments to injured employees suffering both permanent impairments qualifying them for schedule awards and periods of loss of wage-earning capacity prior or subsequent to payment of the schedule award, the Office has established norms for coordinating receipt of wage-loss and schedule award compensation which, in specified circumstances, call for the “interruption” and subsequent “resumption” of one or the other type of benefit.⁷

A schedule award begins to run on the date when an employee’s condition reaches maximum medical improvement, which means that the physical condition of the injured member of the body has stabilized and will not improve any further.⁸ Thus, the date of maximum medical improvement is to be used as the date for commencing the payment of the schedule award.⁹ In this case, Dr. Hirabayashi advised that maximum medical improvement was reached on May 22, 1996. Appellant’s schedule award did not begin to run until after that date. As neither the Board nor the Office has any authority to delay payment of a schedule award until appellant is no longer eligible for wage-loss benefits so that he may receive his schedule award payments concurrently with his normal wages, the Office properly interrupted payment of his wage-loss compensation to begin payment of his schedule award.¹⁰

³ 5 U.S.C. § 8107(a)(3).

⁴ Section 10.304(c)(3) states that compensation is payable in addition to but not concurrently with compensation for temporary total or partial disability. 20 C.F.R. § 10.304(c)(3).

⁵ See *Marie J. Born*, 27 ECAB 623 (1976).

⁶ *Joseph R. Waples*, 44 ECAB 936, 939 (1993).

⁷ See *Arthur E. Billigmeier*, 42 ECAB 506 (1991).

⁸ See *Margaret E. Grigsby*, 27 ECAB 138 (1975).

⁹ See *Walter Lee Nichols*, 27 ECAB 209 (1975).

¹⁰ The Board notes that on appeal appellant is requesting a lump-sum payment of the schedule award. Office regulations provide that a claimant possesses no absolute right to lump-sum payment of benefits under section 8107, and the decision to grant or deny a lump-sum payment for a schedule award is within the discretionary authority of the Office. 5 U.S.C. § 8107; 20 C.F.R. § 10.311(b). In this case, however, the Office has not exercised its discretion. This issue is, therefore, not before the Board. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated September 23, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 28, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member