

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALFREDO A. SORENIA and DEPARTMENT OF THE AIR FORCE,  
CLARK AIR FORCE BASE, Republic of the Philippines,

*Docket No. 97-1313; Submitted on the Record;  
Issued June 11, 1999*

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DECISION and ORDER

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

The issue is whether appellant is entitled to further monetary compensation for an attendant's allowance, in excess of the maximum amount of monetary benefits payable under the Philippines special schedule.<sup>1</sup>

This is the second appeal before the Board in this case. In the prior appeal, the Board determined that appellant had received appropriate compensation under the Philippines Special Schedule of Compensation for his injury.<sup>2</sup> The facts and circumstances of the case are set out in that decision and are hereby incorporated by reference. In that decision the Board affirmed the Office of Workers' Compensation Programs March 9, 1977 award, finding that appellant had received the maximum amount of monetary benefits payable under the Philippines special schedule for his employment-related permanent total disability, in the form of a lump sum in the amount of \$5,204.00 for 400 weeks of compensation.<sup>3</sup>

Following the Board's decision, appellant and others on his behalf wrote to the Office on numerous occasions to inquire about his possible entitlement to additional compensation for an attendant's allowance under 5 U.S.C. § 8111(a). After informally notifying appellant that he was not entitled to additional compensation for an attendant's allowance, the Office issued a February 29, 1996 letter decision formally rejecting this aspect of appellant's claim on the grounds that he had already received the maximum amount of compensation to which he was entitled for his permanent total disability.

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<sup>1</sup> See 20 C.F.R. § 25.21(i)(1998); the total aggregate compensation payable in any case, for injury or death or both, shall not exceed \$8,000.00.

<sup>2</sup> 29 ECAB 74 (1977).

<sup>3</sup> Under 20 C.F.R. § 25.21(e) appellant was entitled for permanent total disability to 400 weeks of compensation at a two-thirds of his weekly wage rate. The Board also noted that the Office had paid appellant additional compensation for temporary total disability through November 2, 1997 in the amount of \$483.97.

Thereafter, the Office reopened this aspect of appellant's claim pursuant to section 8128(a) of the Act, and issued a January 14, 1997 decision vacating the February 29, 1996 letter decision, and it authorized the payment of a supplemental lump-sum payment in the amount of \$2,796.00 in additional compensation. In an explanatory cover letter the Office advised appellant that he was entitled to additional compensation for an attendant's allowance, as claimed, and noted that he would receive a check for a supplemental lump-sum payment of \$2,796.00 which was issued on January 24, 1997.

The Board finds that appellant is not entitled to further monetary compensation for an attendants allowance, in excess of the maximum amount of monetary benefits payable under the Philippines Special Schedule.

Section 8137 of the Act provides for the payment of compensation to employees who are neither citizens nor residents of the United States or Canada. Under section 8137(a) the Office may adopt the substantive features of a local workmen's compensation system or establish a special schedule of compensation. Pursuant to this authority, the Office has promulgated regulations with respect to the Republic of the Philippines, set out at 20 C.F.R. § 25.21 (1998) as the Philippines Special Schedule, that apply to claims arising before March 10, 1982 which includes appellant's claim.<sup>4</sup>

In its decision on the prior appeal of this claim, the Board found that the Office had properly paid appellant a lump sum of \$5,204.00 for his employment-related permanent total disability, which is the maximum amount of monetary benefits to which he was entitled for permanent total disability under the formula set out in 20 C.F.R. § 25.21(e).<sup>5</sup> Thereafter on January 14, 1997 the Office found that appellant was entitled to additional compensation under 5 U.S.C. § 8111(a) and authorized the payment of a supplemental lump sum of \$2,796.00, which was the method of payment required by 20 C.F.R. § 25.21(j).<sup>6</sup> The Board notes that since 20 C.F.R. § 25.21(j) provides that the "total aggregate compensation payable in any case [under the Philippines Special Schedule] shall not exceed \$8,000.00" and since the record establishes that the Office paid this regulatory maximum in two separate lump-sum payments (\$5,204.00 + \$2,796.00 = \$8,000.00), appellant is not entitled to any additional monetary benefits.<sup>7</sup>

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<sup>4</sup> See *Wenceslao Ebancuel*, 44 ECAB 357 (1993) which explains that 20 C.F.R. § 25.21(a)(2) states that "benefits for injuries occurring on and after July 1, 1968, which cause permanent disability or death, shall be payable at the rates specified in the specific schedule as modified in this section...." The Board notes claims for injuries or occupational diseases subsequent to March 10, 1982 are governed by the Philippine Employees' Compensation Program, in accordance with the March 10, 1982 agreement on Employees' Compensation and Medical Care Programs. 34 U.S.T. 312, T.I.A.S. No. 10358; see *Gregorio Llagas*, 37 ECAB 116 (1985).

<sup>5</sup> See *Felix M. Calimbahin*, 28 ECAB 178 (1977); *Domingo Fechalín*, 24 ECAB 209 (1973).

<sup>6</sup> See *Wenceslao Ebancuel*, *supra* note 4. Payment of this additional compensation was consistent with 20 C.F.R. §§ 25.13 (b) and 25.21(a).

<sup>7</sup> See *Felipe Sarcos Lagnas*, 46 ECAB 970 (1995). The record also supports that appellant received an additional \$483.97 for a period of temporary total disability over and above the \$8,000.00 monetary regulatory maximum.

On appeal appellant argues that 5 U.S.C. § 8111(a) defines an attendant's allowance as "additional compensation," but the Board notes that this refers to compensation which is additional to compensation for wage loss or for medical benefits.<sup>8</sup> Appellant further argues that an attendant's allowance is an independent, separate and additional compensation not contemplated as part of or included in the \$8,000.00 compensation regulatory maximum specified by the Philippines Special Schedule, but the Board notes that 20 C.F.R. § 10.5(a)(6) explains that the terms

*"Benefits or Compensation means the money paid or payable under the Act to the employee on account of loss of wages or loss of wage-earning capacity and to enumerated survivors on account of the employee's death, and includes any other benefits paid for from the Employees' Compensation Fund such as scheduled compensation under 5 U.S.C. § 8107, medical diagnostic and treatment services supplied pursuant to the Act and this part, vocational rehabilitation services, additional money for services of an attendant or for vocational rehabilitation under 5 U.S.C. § 8111, and funeral expenses under 5 U.S.C. 8134, but does not include continuation of pay as provided by 5 U.S.C. § 8118."* (Emphasis added.)

The Board further notes that 20 C.F.R. § 25.21 makes no modification to this applicable definition.

Appellant argues that the \$2,796.00 paid on January 24, 1997 was not for aid and an attendant, but represented the "difference to satisfy the aggregate compensation of \$8,000.00." The Board, however, notes that appellant was only entitled, under the Philippines Special Schedule, to a regulatory maximum of 400 weeks of wage-loss compensation for his permanent total disability which was paid as a lump sum of \$5,204.00, and therefore was not entitled to a "guaranteed minimum" of \$8,000.00 for wage-loss compensation as he alleges. As he received an additional \$2,796.00, this represented appellant's compensation entitlement for an attendant's allowance and any other nonwage-loss benefits, exclusive of medical costs, which brought his total entitlement to compensation benefits from the Employees' Compensation Fund to the regulatory maximum of \$8,000.00.

Finally, appellant argues that since his injury occurred before the United States -- Republic of the Philippines Agreement of March 10, 1982, the agreement did not apply, however, the Board notes that the codified regulations resulting from that agreement specifically state, at 20 C.F.R. § 25.21(a) that the special schedule "shall apply... to injury or death occurring on or after July 1, 1968." Therefore, this regulation clearly applies in appellant's case as his injury occurred on March 31, 1973.

Accordingly, the decision of the Office of Workers' Compensation Programs dated January 14, 1997 is hereby affirmed.

Dated, Washington, D.C.

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<sup>8</sup> See 5 U.S.C. § 8101(12) which defines compensation as including "the money allowance payable to an employee or his dependents and *any other benefits* paid for from the Employees' Compensation Fund."

June 11, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member