

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL J. BIGGS and U.S. POSTAL SERVICE,
POST OFFICE, Prather, CA

*Docket No. 03-751; Submitted on the Record;
Issued May 28, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for concurrent compensation for a schedule award and wage-loss compensation; and (2) whether the Office properly refused to reopen appellant's claim for consideration of the merits on November 14, 2002.

Appellant, a 47-year-old postmaster, filed a notice of occupational disease on September 10, 2001 alleging that he developed tendinitis of the left foot due to excessive walking in the performance of duty. The Office accepted his claim for left ankle tendinitis on October 18, 2001. The Office noted that appellant received a schedule award for his left ankle in a previous claim and that his schedule award ran from September 18, 2000 to June 25, 2002.¹ The Office stated that appellant's claim for compensation due to his tendinitis was deferred until the expiration of his schedule award.

Appellant stopped work on August 29, 2001 and returned to limited-duty work on September 17, 2001. He completed a claim for compensation and requested wage-loss compensation from September 19, 2001 to March 17, 2002. In a letter dated April 29, 2002, the Office informed appellant that he was not entitled to receive a schedule award and wage-loss compensation at the same time for the same part of the body.

By decision dated August 20, 2002, the Office denied appellant's claim for compensation from September 19, 2001 to March 17, 2002. The Office found that appellant received a combined schedule award for his left leg, including both his left ankle and left knee and that this schedule award ran from September 18, 2000 to June 25, 2002. The Office noted that appellant was requesting compensation for temporary total disability from September 19, 2001 to March 17, 2002 and that these time periods overlapped. The Office found that its procedures

¹ The Office granted a schedule award for a 32 percent impairment of the left leg based on appellant's ankle injury.

provided that a schedule award for one injury may be paid concurrently with compensation for wage loss paid for another injury as long as the two injuries do not involve the same part of the body.² The Office concluded that as appellant's separate injuries both involved his left ankle, he was not entitled to both his schedule award and his compensation for total disability for the same period for the same part of his body.

In a letter dated September 16, 2002, appellant requested reconsideration of the August 20, 2002 decision and alleged that he sustained an additional injury in the form of tendinitis of his left foot and that he was able to work from May 2 to June 12, 2001 but was denied light-duty work. He requested wage-loss compensation for this period. By decision dated November 14, 2002, the Office denied reconsideration of the merits finding that the submitted evidence was cumulative or substantially similar to that previously submitted.

The Board finds that appellant is not entitled to concurrent compensation for a schedule award and wage-loss compensation.

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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. In a separate claim, the Office granted appellant a schedule award for permanent impairment of his left leg including both his left ankle and left knee. The Office stated that this schedule award ran from September 18, 2000 to June 25, 2002.

Appellant developed an additional condition of his left ankle in September 2001, which the Office accepted as work-related left ankle tendinitis. He requested wage-loss compensation from September 19, 2001 to March 17, 2002 due to this condition, during a period he was in receipt of compensation for a schedule award for his left ankle injury. The Office's procedure manual provides that appellant would be entitled to receive both a schedule award and compensation for wage-loss due to two separate injuries when the injuries involve two different parts of the body.⁵ In this case, both of appellant's injuries involve his left ankle. He is not entitled to receive both his schedule award and his wage-loss compensation concurrently. Appellant received his schedule award payments from September 18, 2000 to June 25, 2002 and is not entitled to receive compensation for wage loss during this period. Therefore, the Office properly denied appellant's request for wage loss from September 19, 2001 to March 17, 2002 as this period was encompassed by his schedule award.

The Board further finds that the Office properly refused to reopen appellant's claim for consideration of the merits on November 14, 2002.

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5.a(4) (March 1995).

³ 5 U.S.C. §§ 8101-8193, § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5.a.(4) (March 1995).

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office or constitutes relevant and pertinent new evidence not previously considered by the Office.⁶

In his request for reconsideration, appellant alleged that he had sustained a new injury, tendinitis of the left ankle. The Board notes that this does not constitute new evidence as the Office had previously accepted that his ankle tendinitis was the result of an occupational disease arising in September 2001.

Appellant also asserted that he was able to work from May 2 to June 12, 2001 but was denied light-duty work. As noted above the Office properly denied appellant's claim for wage-loss compensation during the period of his schedule award for a left ankle condition, from September 18, 2000 to June 25, 2002. As the additional period of wage loss alleged by appellant is also encompassed by his schedule award, his argument that he is entitled to wage-loss compensation for this period due to the lack of light-duty work is irrelevant.

As appellant failed to submit any relevant and pertinent new evidence or relevant legal argument, the Office properly declined to reopen his claim for consideration of the merits.

The November 14 and August 20, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 28, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁶ 20 C.F.R. § 10.606(b).