

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOUGLAS NEWTON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, West Los Angeles, CA

*Docket No. 03-1690; Submitted on the Record;
Issued November 20, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly denied lump-sum payment of appellant's schedule award.

Appellant, a 28-year-old motor vehicle operator, filed a notice of traumatic injury on August 15, 1985 alleging that, on August 13, 1985, he injured his back in the performance of duty. The Office accepted his claim for low back strain on December 4, 1985. Appellant returned to full duty on January 2, 1986.

Appellant filed a second notice of traumatic injury on December 18, 1995 alleging that he injured his back while moving gas cylinders. The Office accepted the claim for low back strain on March 18, 1986. By decision dated August 4, 1995, the Office granted appellant a schedule award for 25 percent permanent impairment of his left lower extremity.

The Office expanded appellant's claim to include injury to his right testicle on February 19, 2002. By decision dated October 22, 2002, the Office granted appellant a schedule award for 100 percent permanent loss of use of his right testicle to run from October 5, 2002 to October 4, 2003.¹

In letters dated November 12, 2002, appellant stated that he wished to elect to receive Office of Personnel Management (OPM) benefits. He stated that he understood that he would receive a lump sum for his schedule award once he was on the OPM rolls. In a letter dated March 31, 2003, appellant inquired as to why he was not receiving OPM benefits and why he had not received his schedule award in a lump-sum payment.

¹ As appellant received the maximum percentage of loss of use of his right testicle and did not controvert the amount of his benefits, there is no adverse decision on this issue and the Board will not address this aspect of appellant's case on appeal. 20 C.F.R. § 501.3.

By decision dated May 5, 2003, the Office denied appellant's request for a lump-sum payment of his schedule award on the grounds that he had already received the majority of his schedule award funds and the medical evidence suggested that appellant would require surgery in the near future, necessitating an interruption of his schedule award for total disability compensation payments.

The Board finds that the Office properly denied lump-sum payment of appellant's schedule award.

Section 8135(a) of the Federal Employees' Compensation Act,² which allows for the discharge of the liability of the United States by payment of lump sums, affords the Secretary of Labor discretionary authority to use lump sums as a means of fulfilling the responsibility of the Office in administering the Act. The Secretary has exercised discretion under this section by promulgation of regulation section 10.422.³ This regulation provides that a lump-sum payment may be made to an employee entitled to a schedule award where the Office determines that such a payment is in the employee's best interest.⁴ The regulation also provides that a lump-sum payment will be considered in the employee's best interest only where the employee does not rely upon compensation payments as a substitute for lost wages (that is, the employee is working or is receiving annuity payments). An employee possesses no absolute right to a lump-sum payment of benefits payable under 5 U.S.C. § 8135(b).⁵

In this case, the issue is whether payment of the lump-sum schedule award would be in appellant's best interest. The record establishes that appellant is not receiving a disability annuity from OPM despite repeated requests and, is therefore, relying upon compensation payments as a substitute for lost wages. As appellant is not receiving an annuity, payment of a schedule award in a lump sum cannot be considered in appellant's best interest in accordance with the Office's regulations. The Office offered two additional reasons that the lump-sum payment of appellant's schedule award was not in his best interest noting that the majority of appellant's schedule award had already been paid and that appellant was anticipating additional back surgery which would entail interrupting the schedule award due to a new recurrence of total temporary disability for work. The claims examiner stated, "This office cannot in good conscience consider a lump-sum schedule award payment when there is obvious concern that the schedule award would need to be interrupted for the payment of wage-loss disability payments."

As appellant is not receiving an annuity, but relies upon compensation payments as a substitute for lost wages, the Office properly denied his request for a lump-sum payment of his schedule award as against his best interest.

² 5 U.S.C. §§ 8101-8193, 8135(a).

³ 20 C.F.R. § 10.422.

⁴ 20 C.F.R. § 10.422(b).

⁵ *Id.*

The May 5, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 20, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member