

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY GUTIERREZ and U.S. POSTAL SERVICE,
DALLAS BULK MAIL CENTER, Dallas, Tex.

*Docket No. 95-2244; Submitted on the Record;
Issued June 2, 1998*

DECISION and ORDER

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

The issue is whether appellant is entitled to compensation benefits for wage-loss during the period between August 30, 1994 and February 17, 1995, for which she has received a schedule award.

The Board has duly reviewed the case record in the present appeal and finds that appellant is not entitled to compensation benefits for wage loss during the period between August 30, 1994 and February 17, 1995, for which she has received a schedule award.

On May 20, 1982 appellant, then a clerk, filed a traumatic injury claim (Form CA-1) assigned number A16-56945 alleging that on August 18, 1981 she sustained a right hand and wrist injury, while pushing "ORC" containers from "PSM 3" to the docks.¹ On July 19, 1982 the Office advised appellant to file a claim for an occupational disease (Form CA-2), because the evidence revealed that appellant's injury was caused by work activities over an extended period of time. The Office also advised appellant to respond to specific questions regarding her right hand condition and to submit medical evidence supportive of her claim. On August 13, 1982 appellant filed a Form CA-2 indicating that she first realized that her injury was caused or aggravated by factors of her employment around June 26, 1981. By decision dated October 25, 1982, the Office found the evidence of record insufficient to establish a causal relationship between appellant's condition and factors of her federal employment. By letter dated December 2, 1982, the Office again advised appellant to respond to specific questions and to submit medical evidence supportive of her claim. The Office received appellant's narrative statement, which provided factual and medical evidence regarding her right hand injury. On June 13, 1983 the Office accepted appellant's claim for carpal tunnel syndrome of the right wrist.

¹ The Office of Workers' Compensation Programs consolidated appellant's traumatic injury claim filed under number A16-56945 and subsequent claims, *see* discussion *infra*, to create a master case file under number A16-0203814.

Subsequently, the Office accepted appellant's surgery for carpal tunnel release which was performed in September 1991.

On March 16, 1983 appellant filed a Form CA-1 assigned number A16-66444 alleging that on February 20, 1983 she sustained a lower back and right shoulder injury when lifting a sack onto a cart. The Office accepted appellant's claim for cervical and lumbar strains, first rib resection performed on August 23, 1983 and thoracic outlet syndrome. On September 24, 1985 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on June 1, 1985. Appellant filed another Form CA-2a on October 27, 1994 alleging that she experienced a recurrence of disability on August 30, 1994. By letter dated February 15, 1995, the Office accepted appellant's recurrence of disability.

On August 6, 1991 appellant filed a Form CA-2 assigned number A16-194679 alleging that she first realized that her right hand and wrist condition were caused or aggravated by her employment on June 3, 1991. On November 5, 1991 the Office accepted appellant's claim for carpal tunnel syndrome of the right wrist. On February 4, 1992 appellant filed a schedule award (Form CA-7). On July 6, 1992 the Office granted appellant a schedule award for a 15 percent permanent loss of use of the right wrist for the period September 1, 1991 through July 24, 1992.

On March 3, 1992 appellant filed a Form CA-1 assigned number A16-0203814 alleging that on that date she sustained an elbow and a knee injury, when she tripped over a piece of equipment. On November 18, 1992 appellant filed a Form CA-7 for a schedule award. On February 17, 1993 the Office accepted appellant's claim for bilateral fracture of the elbow/radius neck.

On September 21, 1993 appellant filed a Form CA-1 assigned claim number A16-0232018 alleging that on September 18, 1993 she sustained a left elbow injury as a result of constantly pushing a heavy door and pulling and pushing files. The Office accepted appellant's claim for bilateral fracture of the elbow/radius neck, knee and elbow contusions, and cubital tunnel release.

On March 24, 1994 appellant filed a Form CA-7 requesting a schedule award. On September 14, 1994 the Office granted appellant a schedule award for an additional 25 percent permanent loss of use of the right upper extremity and 40 percent permanent loss of use of the left upper extremity for the period July 12, 1994 through May 31, 1998. In a September 15, 1994 letter, the Office advised appellant that she was entitled to receive the remaining amount of the schedule award in a lump-sum payment or in regular payments each 28 days. The Office stated that a lump-sum payment computed at a 4 percent discount rate totaled \$82,577.55 as of March 5, 1995. The Office further stated that additional benefits which might be awarded at a later date for temporary total disability or loss of wage-earning capacity would not be considered in computing any lump-sum entitlement. The Office also stated that "*[a]ny lump-sum payment will represent full and final compensation payment for the period of the award even if you suffer a recurrence of total disability.*" The Office indicated that if appellant elected to receive her schedule award in the form of a lump-sum payment, she should sign an attached agreement. By letter dated January 18, 1995, the Office again advised appellant about the implications of accepting a lump-sum payment of her remaining schedule award. On January 26, 1995 appellant agreed to accept the lump-sum payment.

Appellant filed a Form CA-7 requesting a schedule award for the period August 30, 1994 through February 17, 1995, which was dated February 21, 1995.²

By decision dated May 3, 1995, the Office denied appellant's schedule award on the grounds that appellant had received a lump-sum payment in the amount of \$82,577.55, which covered the period for which appellant sought compensation.³

To the extent that appellant seeks payment of compensation for temporary total disability during the same period as entitlement to a schedule award, the Office properly found that appellant would not be entitled to concurrent payments. It is well settled that an employee cannot concurrently receive compensation under a schedule award and compensation for wage loss.⁴ In this case, appellant received a lump-sum schedule award in the amount of \$82,577.55 as of March 5, 1995, which covered the period July 12, 1994 through May 31, 1998. Therefore, appellant would not be entitled to compensation in both the form of a schedule award and wage-loss compensation.⁵ Accordingly, the Board finds that appellant is not entitled to concurrent benefits in this case.

² The Board notes that during a visit to the Office on April 28, 1995, appellant was advised to file a Form CA-7 for wage loss as a result of the August 30, 1994 employment-related recurrence of disability. Appellant indicated that she stopped work in February 1994. It appears that appellant had already submitted the February 21, 1995 Form CA-7 because the claims examiner told appellant that the Office did not have it and that an attempt would be made to obtain it. Also, the claims examiner indicated that the Form CA-7 as well as other forms were later found.

³ The record reveals that on March 6, 1995, the Office issued a check to appellant for a lump-sum schedule award in the amount of \$82,577.55 as of March 5, 1995 through May 31, 1998.

⁴ See *Arthur E. Billigmeier*, 42 ECAB 506 (1991); *Robert T. Leonard*, 34 ECAB 1687 (1983); *Marie J. Born*, 27 ECAB 623 (1976); *Stanley F. Stuczynski*, 12 ECAB 159 (1960).

⁵ *Orlando Vivens*, 42 ECAB 303 (1991); *David R. Broge*, 40 ECAB 1098 (1989).

The May 3, 1995 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
June 2, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member