

award prior to his death on November 3, 2001.¹ The history of the case as contained in the Board's prior decision is incorporated herein by reference.

In a report dated May 29, 2007, an Office medical adviser reviewed the medical evidence and opined that the employee had a 52 percent right arm impairment and a 39 percent left arm impairment. With respect to the date of maximum medical improvement (MMI), the medical adviser found that the MMI was February 14, 2000, based on a July 29, 2005 report from the attending orthopedic surgeon, Dr. George Pugh.

By decision dated June 25, 2007, the Office found the employee was entitled to an increased schedule award. Since the employee had previously received schedule awards totaling a 39 percent impairment of the right arm and a 20 percent left arm impairment, he was entitled to an additional 13 percent for the right arm and 19 percent for the left arm. The Office found the date of MMI was February 14, 2000, and the period of the award was 99.84 weeks from February 14, 2000 to January 12, 2002. In addition, it noted that the employee had received compensation for wage loss until his death on November 3, 2001. The wage-loss compensation paid for February 14, 2000 to November 3, 2001 would therefore be converted into a schedule award.

Appellant, through her representative, requested a hearing before an Office hearing representative, which was held on November 28, 2007. She contended that the schedule award should commence at the employee's death and run for 99.84 weeks. By decision dated February 12, 2008, the hearing representative affirmed the June 25, 2007 decision with respect to the commencement of the schedule award.

LEGAL PRECEDENT

The period covered by a schedule award commences on the date that the employee reaches MMI from the residuals of the injury. The question of when MMI has been reached is a factual one, which depends upon the medical findings in the record. The determination of such date is to be made in each case upon the basis of the medical evidence in that case.²

ANALYSIS

Appellant did not contest the determination as to the degree of permanent impairment to the employee's right and left arms. On appeal, appellant's counsel argues that the schedule award should not have begun on February 14, 2000, but should have been delayed until the employee's death on November 3, 2001. Appellant acknowledges that compensation for wage loss and a schedule award cannot be paid concurrently.³ She contends that the schedule award benefit is akin to a recurrence claim. Under Office procedures, a claimant who has an accepted

¹ Docket No. 06-1010 (issued November 3, 2006).

² *L.H.*, 58 ECAB ___ (Docket No. 06-1691, issued June 18, 2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994).

³ *See Michael J. Biggs*, 54 ECAB 595 (2003).

recurrence of disability while receiving a schedule award would be entitled to a recurrent pay rate for the balance of the schedule award after the recurrent disability had ceased.⁴

The present case does not involve a recurrence of disability or a recurrent pay rate. The employee was receiving wage-loss compensation for total disability until his death. It is well established that a schedule award commences on the date of MMI. In this case, the evidence is clear and unequivocal on the issue. Dr. Pugh, the attending physician, stated in a July 29, 2005 report that the employee had reached a permanent and stationary status by February 14, 2000. An attending osteopath, Dr. David Weiss, opined in an August 26, 2005 report that the employee had reached MMI on February 14, 2000, the date of his last examination by Dr. Pugh. The Office medical adviser also concurred that the date of maximum medical improvement was February 14, 2000.

Based on the medical evidence of record, the date of MMI was properly found to be February 14, 2000. Appellant does not discuss the medical evidence. There is no provision in the Federal Employees' Compensation Act, its regulations or in Board precedent that would require the Office to disregard the medically established date of MMI in this case and begin the schedule award on the date of the employee's death.

On appeal, appellant cites *Franklin L. Armfield*⁵ and the Office procedure manual at 2.808(7)(a)(1). In *Armfield*, the Office had commenced a schedule award on the date the claimant had last been exposed to job-related noise. The Board found the proper date to commence the schedule award was the date of MMI as determined by the medical evidence, which was approximately four years later. This decision is consistent with the general principle that a schedule award begins on the date of MMI and with the holding in the present case. The Board finds that the Office considered the medical evidence and found the date of the employee's MMI was February 14, 2000. The increased schedule award properly commenced on that date.

CONCLUSION

The Office properly determined that the period of the increased schedule award should begin on February 14, 2000.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(a)(3) (August 2002).

⁵ 28 ECAB 445 (1977).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 12, 2008 is affirmed.

Issued: August 19, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board