U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLEO R. HATCH and U.S. POSTAL SERVICE,
POST OFFICE, Detroit, Mich.

Docket No. 96-2629; Submitted on the Record;
Issued August 19, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for a lump sum payment of his October 11, 1991 schedule award prior to the expiration of the award period of his July 19, 1991 schedule award.

On November 12, 1989 a traumatic injury claim was filed on behalf of appellant, then a 36-year-old letter carrier, who was injured on November 10, 1989 when he fell down a flight of stairs while in the performance of duty. Appellant stopped work on November 10, 1989. On December 8, 1989 the Office accepted appellant's claim for lumbar sprain. Subsequently, the Office expanded its acceptance to include permanent paraparesis, lumbar decompressive laminectomy, neurogenic bowel and bladder, and adjustment reaction. On October 26, 1990 appellant returned to limited-duty work for four hours a day. On November 21, 1990 appellant's physician released him for limited-duty work six hours a day and indicated that appellant could begin working eight hours a day in two weeks if no problems developed. On December 4, 1990 appellant accepted a limited-duty offer as a modified letter carrier.

On July 19, 1991 the Office granted appellant a schedule award for a 100 percent permanent impairment of his right leg and a 100 percent impairment of his left leg for the period May 25, 1991 to June 7, 2002, a total of 576 weeks of compensation. On July 19, 1991 the Office also denied appellant's request for a schedule award for dysfunction of the rectum. On October 11, 1991 the Office granted appellant a schedule award for a 100 percent permanent impairment of his penis for the period of June 8, 2002 to June 11, 2006, a total of 205 weeks of compensation. By letter dated November 21, 1991, appellant acknowledged receipt of his July 1991 schedule award and requested that his October 1991 schedule award be made in a lump sum payment. Appellant was advised that his October 1991 schedule award was not payable until June 8, 2002 but that the Office might consider payment of the remainder of his July 1991 schedule award as a lump sum payment. In December 1991 appellant requested that the remainder of his July 1991 schedule award be paid as a lump sum payment.

In a letter dated January 3, 1992, the Office set forth the terms of a schedule award agreement which memorialized appellant's acceptance of the commuted value of his July 1991

schedule award in the amount of $173,345.39 for the remainder of his schedule award to run for the period of May 25, 1991 to June 7, 2002. The agreement contained the following provisions:

> "Any 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, and
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> "That I understand and agree that payment of such lump sum payment will represent full and final settlement of my schedule award for the period noted above in connection with my injury of November 10, 1989 and that no further monetary compensation benefits will be extended to me for the duration of the schedule award."

Appellant signed the above agreement on January 7, 1992. In February and March 1992, appellant received his schedule award in a commuted lump sum payment.

In May 1994 appellant began making inquiries concerning whether he could receive the October 1991 schedule award for permanent loss of his penis as a lump sum payment.[1] On August 9, 1995 appellant again requested that his October 1991 schedule award be paid as an immediate lump sum payment.

By decision dated September 1, 1995, the Office denied appellant's request for a lump sum payment of his October 1991 schedule award on the grounds that he was not entitled to a schedule award beginning in the future at the present time nor was he entitled to another lump sum payment during the award period of the July 1991 schedule award which he had previously received as a lump sum payment. The Office concluded that payment of the October 1991 schedule award as a lump sum payment during the award period of the first schedule award would constitute double compensation which is prohibited under the Federal Employees' Compensation Act. By decision dated April 8, 1996, an Office hearing representative affirmed the September 1, 1995 decision of the Office.

The Board has duly reviewed the entire case record on appeal and finds that the Office did not abuse its discretion in denying appellant's request for lump-sum payment of his October 1991 schedule award prior to the expiration of the award period of his July 1991 schedule award.

Section 8135(a) of the Act,[2] which allows for the discharge of liability of the United States by payment of lump sums, affords full discretion to the Secretary of Labor to decide whether or not to authorize payment of lump sums as a means of fulfilling the responsibility of the Office in administering the Act. The Office's regulations provide:

[1] In September 1993 appellant questioned the pay rate that was used in his July 1991 schedule award and subsequent lump sum payment and further questioned whether his schedule award for his legs included his disabilities for his knees, ankles and feet. By letter dated June 17, 1991, the Office advised appellant that a proper pay rate was used and that the July 1991 schedule award included the impairments to other parts of his legs. Appellant renewed his request and for a breakdown of his schedule award and the lump sum payment. Thereafter, the Office contacted appellant several times and he received detailed information concerning the calculation of his schedule award and the later lump sum payment.

[2] 5 U.S.C. § 8135(a).

> "[A] lump sum payment may be made to a claimant whose injury entitles him or her to a schedule award under section 8107. Even under these circumstances, a claimant possesses no absolute right to a lump sum payment of benefits under section 8107, and such a payment may be granted only where the Director determines, acting within his or her discretion, that such a payment is in the claimant's best interest. Lump sum payments of schedule awards generally will not be considered in the claimant's best interest where the compensation payments are relied upon by the claimant as a substitute for lost wages."[3]

The decision to grant or deny a lump sum payment for a schedule award is therefore within the discretionary authority of the Office. An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.[4]

In the present case, there is no evidence that the Office abused it discretion in determining that appellant was not entitled to receive payment for the October 1991 schedule award as a lump sum payment during the period of the July 1991 schedule award, which appellant received as a lump sum payment. The Office's determination in this regard is consistent with the Act. Specifically, section 8107(c)(20) of the Act which governs schedule awards provides that:

> "In the case of loss of use of more than one member or parts of more than one member as enumerated by this schedule, the compensation is for loss of use of each member or part thereof, and the awards run consecutively."[5]

In addition, section 8116 of the Act contains the following provision:

> "While an employee is receiving compensation under this subchapter, or if he has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, he may not receive salary, pay or remuneration of any type from the United States, except:
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> (1) in return for services actually performed;
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> (2) pension for service in the Army, Navy or Air Force;
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> (3) other benefits administered by the Department of Veterans' Affairs unless such benefits are payable for the same injury or the same death; and
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> (4) retired pay, retirement pay, retainer pay, or equivalent pay for service in the Armed Forces or other uniformed services, subject to the reduction

[3] 20 C.F.R. § 10.311(b).

[4] *Daniel J. Perea*, 42 ECAB 214 (1990).

[5] 5 U.S.C. § 8107(c)(20).

of such pay in accordance with section 5532(b) of title 5, United States Code."[6]

Appellant's request that he receive his October 1991 schedule award during the period of time covered by his July 1991 schedule award is both a request for remuneration and a request for the payment of concurrent schedule awards. The Office's agreement which memorialized the terms under which appellant could receive the remainder of his July 1991 schedule award as a lump-sum payment provided notice to appellant that he was not entitled to any additional compensation during the pendency of his schedule award period. Moreover, as the Act prohibits the payment of concurrent schedule awards and further prohibits the payment of any remuneration by the United States during the period of time that would have been covered by installment payments of a schedule award, whether paid by installment or as a lump-sum payment, with the four noted exceptions, the Office properly denied appellant's request for lump-sum payment of his October 1991 schedule award as his request does not fall within any of the delineated exceptions in section 8116 of the Act. Therefore, the Office did not abuse its discretion in denying appellant's request.

The decision of the Office of Workers' Compensation Programs dated April 8, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 19, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[6] 5 U.S.C. § 8116(a).