

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of YUN K. CHOE and DEPARTMENT OF THE ARMY,  
CAMP HUMPHREYS, Republic of Korea

*Docket No. 96-252; Submitted on the Record;  
Issued February 9, 1998*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined the amount of compensation appellant was entitled to receive for his employment-related Grade 12 permanent impairment of his left leg under the Korean Labour Standards Act (KLSA).

On October 13, 1992 appellant, then a 32-year-old automotive mechanic and citizen of the Republic of Korea, sustained a fracture of the left leg in the performance of duty. He used leave from October 14, 1992 through April 1, 1993 and then entered leave-without-pay status. Appellant was separated from the employing establishment on August 2, 1993.

By letter dated June 8, 1994, the Office requested that appellant's physician provide an evaluation of appellant's permanent impairment of his left leg.

In a report dated July 8, 1994, Dr. Kye Lim Lee, appellant's attending orthopedic surgeon, indicated that appellant had reached maximum medical improvement on October 18, 1993 and provided findings on examination. He determined that appellant had a 14 percent permanent impairment of the left lower extremity.

In a September 28, 1994 report, an Office medical adviser reviewed Dr. Lee's findings and concluded that appellant had an 11 percent permanent impairment of the left leg according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) and a Grade 12 permanent impairment described as "Disability left in function of one of the joints of one leg" according to the Disability Benefit Table of the KLSA.

In memoranda dated August 21 and 23, 1995, an Office claims examiner computed appellant's entitlement to compensation for the permanent impairment of his left leg under both the Federal Employees' Compensation Act<sup>1</sup> and the KLSA. The claims examiner noted that

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

appellant's daily wage on the date of injury was \$47.01, multiplied this figure by 140 (the number of days to be paid for a Grade 12 physical handicap under the KLSA) and determined that appellant was entitled to an award of \$6,581.40 under the KLSA. The claims examiner then applied the provisions of the Act and determined that appellant would be entitled to a schedule award in the amount of \$6,949.95 for the 11 percent permanent impairment of his left leg. The claims examiner compared these two amounts and selected the \$6,581.40 payable under the KLSA as the proper amount to which appellant was entitled.

By decision dated August 22, 1995, the Office granted appellant an award of \$6,581.40 under the KLSA for the employment-related Grade 12 permanent impairment of his left leg.

The Board finds that the Office properly determined appellant's compensation benefits under the Act and the KLSA.

Section 8137 of the Act provides for the payment of compensation to employees, and their dependents, who are neither citizens nor residents of the United States or Canada. Under subsection (a) the Office may, under certain circumstances, adopt the substantive features of a local workers' compensation system or establish a special schedule of compensation, and may modify these benefits at anytime.<sup>2</sup> The Office has adopted the features of the KLSA for claims filed by Korean nationals.<sup>3</sup>

In memoranda dated August 21 and 23, 1995, an Office claims examiner computed appellant's entitlement to compensation for his permanent impairment of his left leg under both the Act and the KLSA. The claims examiner noted that appellant's daily wage on the date of injury was \$47.01, multiplied this figure by 140 (the number of days to be paid for a Grade 12 physical handicap under the KLSA)<sup>4</sup> and determined that he was entitled to an award of \$6,581.40 under the KLSA. The claims examiner then applied the provisions of the Act and determined that appellant would be entitled to a schedule award in the amount of \$6,949.95 for the 11 percent permanent impairment of his left leg.

After determining that the amount payable to appellant under the KLSA was \$6,581.40 and the amount payable under FECA was \$6,949.95, the Office properly awarded appellant the amount due under the KLSA because the Office's procedure manual provides that compensation benefits for Korean nationals are paid in accordance with the KLSA or the Act, "whichever is less."<sup>5</sup> As the amount of \$6,581.40, computed under the KLSA, was less than the amount computed under the Act, the Office correctly awarded appellant the amount of \$6,581.40 for the employment-related permanent impairment of his left leg.

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<sup>2</sup> 5 U.S.C. § 8137(a); *see also* 20 C.F.R. § 25.2(e) (1997).

<sup>3</sup> *See Mu-Hyang Ku (Chin-Kyu Kim)*, 39 ECAB 217 (1987).

<sup>4</sup> *See* Federal (FECA) Procedure Manual, Part 4 -- Special Case Procedures, *Foreign National Claims*, Chapter 4.801, Exhibit 5 (September 1994).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 4 -- Special Case Procedures, *Foreign National Claims*, Chapter 4.801.11(a) (September 1994).

The decision of the Office of Workers' Compensation Programs dated August 22, 1995 is affirmed.

Dated, Washington, D.C.  
February 9, 1998

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member