U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS R. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Cheyenne, WY

Docket No. 98-1313; Submitted on the Record;
Issued December 21, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained greater than a 91 percent permanent impairment of the left leg for which he received a schedule award.

This is the third appeal in this case. By decision dated December 19, 1997,[1] the Board set aside decisions of the Office of Workers' Compensation Programs dated June 28 and April 12, 1995 and remanded the case for further development because the Office had incorrectly determined appellant's total schedule award by using the Combined Values Chart in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter "the A.M.A., *Guides*"). The Office had incorrectly determined that appellant had sustained a 71 percent total permanent impairment of the left leg by combining the original 55 percent schedule award with a 36 percent additional award, rather than adding the two percentages.[2] By decision dated November 30, 1994,[3] the Board dismissed the appeal on the grounds that appellant had not filed an appeal for review of a final Office decision within one year of the date of the decision. The facts of this case are more fully set forth in the Board's prior decisions and are herein incorporated by reference.

On December 18, 1985 appellant, then a 31-year-old letter carrier, sustained a left knee injury in the performance of duty and underwent surgery on December 19, 1985. He returned to regular work on January 6, 1986. On November 22, 1989 appellant sustained another injury to his left knee.[4]

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[1] *See* Docket No 95-2641.

[2] Note to the Board: I have used the black printed page references in my draft, not the red numbers.

[3] *See* Docket No. 94-2288.

[4] The two left knee claims were consolidated into one claim according to a June 20, 1990 Office memorandum.

By decision dated February 23, 1987, the Office granted appellant a schedule award based upon a 55 percent permanent impairment of the left leg. By decision dated June 18, 1992, the Office granted appellant an additional schedule award for a 16 percent impairment. As noted above, the Board found in its December 19, 1997 decision that the Office had incorrectly determined that appellant had a total impairment of 71 percent by combining the original 55 percent permanent impairment with appellant's 36 percent additional permanent impairment, rather than correctly adding the two impairment percentages, which would yield a total permanent impairment of 91 percent.

Subsequent to the Board's December 19, 1997 decision, the Office granted appellant an additional schedule award for a 20 percent impairment based on a 91 percent total permanent impairment of the left leg (the original 55 percent schedule award added to a 36 percent additional schedule award, less the 71 percent previously awarded). The Office determined that appellant was entitled to a schedule award in the amount of $17,719.83 and noted that this amount resulted after a deduction was made for a third-party credit in the amount of $8,219.04.

On appeal appellant alleges that the schedule award percentage was incorrect, that the Office did not follow the instructions of the Board as set forth in its December 19, 1997 decision, and that a mistake was made by the Office in its deduction of the third-party credit from his schedule award.

The Board finds that appellant has sustained no greater than a 91 percent permanent impairment of the left leg for which he received a schedule award.

Section 8107 of the Federal Employees' Compensation Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[5] Neither the Act nor the regulations specify the manner, in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as a standard for evaluating schedule losses and the Board has concurred in such adoption.[6]

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's attending physician. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation made by the attending physician must include a "detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member of function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment."[7] This description

[5] 5 U.S.C. § 8107(a).

[6] *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

[7] Federal (FECA) Procedure Manual, Part -- 2 Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6c (March 1995); *see John H. Smith*, 41 ECAB 444, 448 (1990).

must be in sufficient detail so that the claims examiner and other reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.[8]

In this case, the Office obtained a description of appellant's impairment from Dr. Thomas J. Gasser, his attending Board-certified orthopedic surgeon. In a report dated April 8, 1992, Dr. Gasser opined that appellant had a 45.5 percent permanent impairment based upon loss of range of motion (14.5 percent), a torn anterior cruciate ligament (15 percent) and a total medial meniscectomy and a partial lateral meniscectomy (25 percent). However, as noted by the Office medical adviser in an April 20, 1992 memorandum, appellant had already received compensation for his torn anterior cruciate ligament in the Office's February 23, 1987 schedule award decision. In his April 20, 1992 memorandum, the Office medical adviser found that, based upon Dr. Gasser's April 8, 1992 report, appellant had a 25 percent permanent impairment for his two meniscectomies and a 15 percent permanent impairment for loss of range of motion, which equaled a 36 percent permanent impairment according to the Combined Values Chart of the A.M.A., *Guides*. As the report of the Office medical adviser provided the only evaluation, which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.[9] There is no competent medical evidence of record establishing that appellant sustained greater than an additional 36 percent permanent impairment following the granting of the original schedule award for a 55 percent permanent impairment.

Regarding appellant's contention on appeal that the Office failed to follow the Board's instructions in its December 19, 1997 decision, the record shows that the Board remanded the case because the Office had failed to add together the 55 percent original schedule award and the additional 36 percent permanent impairment. In its March 3, 1998 decision, the Office correctly determined that appellant had a total permanent impairment of 91 percent (55 percent added to 36 percent). Therefore, contrary to appellant's contention that the Office's March 3, 1998 decision did not conform to the Board's December 19, 1997 decision, the record shows that the Office did correct its error.

Regarding appellant's contention that the $8,219.04 third-party credit should not have been deducted from his additional schedule award, the Board has held that it is mandatory for the Office to offset a third-party credit surplus against the amount payable as a schedule award.[10] Section 8132 of the Act provides that an employee who sustains an injury, for which compensation is payable under the circumstances creating legal liability in a party other than the United States, has the obligation to reimburse "to the United States the amount of compensation

[8] *Alvin C. Lewis*, 36 ECAB 595-96 (1985).

[9] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

[10] *Donald Bonte*, 48 ECAB _____ (Docket No. 95-867) (issued January 6, 1997); *David R. Gilmer*, 34 ECAB 1342, 1345-46 (1982).

paid" once recovery is made against the responsible tortfeasor.[11] The purpose underlying this obligation is to prevent a double recovery by the employee.[12]

The March 3, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
December 21, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[11] 5 U.S.C. § 8132; *see Richard J. Maher*, 42 ECAB 902, 906-07 note 11 (1991).

[12] *Richard J. Maher*, *supra* note 11 at 907.