

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT S. BUSSARD and DEPARTMENT OF THE ARMY,  
Tooele, Utah

*Docket No. 97-873; Submitted on the Record;  
Issued January 12, 1999*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's schedule award for 29 percent permanent loss of use of his right leg was payable during the period December 12, 1993 through July 19, 1995.

In the present case, the Office accepted that appellant sustained a back strain and herniated disc at L5-6 on April 19, 1988 in the performance of his federal employment. On December 9, 1993 the Office granted appellant a schedule award for a 29 percent permanent loss of use of his right leg. The Office advised appellant that the period of the award would be from December 12, 1993 to July 19, 1995. On January 31, 1994 the Office advised appellant that his schedule award would be interrupted and he would be placed back on temporary disability rolls starting January 9, 1994 as he was participating in a vocational rehabilitation program through the Office. Appellant was advised that his schedule award would be reinstated once the rehabilitation program was completed. On August 30, 1994 appellant advised the Office that his application for Office of Personnel Management (OPM) disability retirement benefits had been approved and that he wanted to receive OPM benefits and payment of his schedule award.

By decision dated September 26, 1996, the Office found that appellant's schedule award was inappropriately interrupted on January 9, 1994. The Office stated that, as appellant's date of maximum medical improvement was December 12, 1993, the schedule award should have been paid during the period December 12, 1993 through July 19, 1995. The Office advised appellant that his temporary total disability benefits received during that time period would be converted to reflect payment of the schedule award and he would not be entitled to payment of an additional compensation.<sup>1</sup>

The Board finds that the Office properly determined that appellant's schedule award was payable during the period December 12, 1993 through July 19, 1995 and that the Office properly

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<sup>1</sup> The Office also advised appellant that he could apply for payment of OPM benefits during the period of the schedule award.

converted to schedule award payments those payments for temporary total disability already received by appellant during that time period.

It is a well-established principle that a claimant is not entitled to dual workers' compensation benefits for the same injury.<sup>2</sup> With respect to benefits under the Federal Employees' Compensation Act, the Board has held that "an employee cannot [con]currently receive compensation under a schedule award and compensation for disability for work."<sup>3</sup>

It is also well-established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury.<sup>4</sup> The issue of maximum medical improvement was extensively treated by the Board in its two decisions in *Marie J. Born*.<sup>5</sup>

In the *Marie J. Born* decision, the Board reviewed the well-settled rule that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement and explained that maximum medical improvement "means that the physical condition of the injured member of the body has stabilized and will not improve further."<sup>13</sup> The Board also noted a reluctance to find a date of maximum medical improvement which is retroactive to the award, as retroactive awards often result in payment of less compensation benefits. The Board therefore required persuasive proof of maximum medical improvement for selection of a retroactive date of maximum medical improvement.

In the present case, appellant's treating physician, Dr. Mark V. Anderson reported on July 23, 1993 that appellant had a 29 percent permanent impairment of the right lower extremity and that appellant had probably reached maximum medical improvement by February 15, 1993. The Office properly found based upon Dr. Anderson's report that appellant had reached maximum medical improvement for payment of a schedule award, however, that there was not persuasive proof of the exact date of retroactive maximum medical improvement. The Office therefore selected December 12, 1993 as the date of maximum medical improvement for purposes of commencement of the schedule award.

In a factually similar case, the Board in *Joseph R. Waples*,<sup>6</sup> affirmed the principle that as schedule award benefits were payable from the date of maximum medical improvement, the Office can properly convert to schedule award those payments for temporary total disability already received by appellant during the schedule award period.

Finally, the Board notes that while the Office had initially advised appellant that payment of his schedule award would be suspended while he was receipt of vocational rehabilitation

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<sup>2</sup> *Benjamin Swain*, 39 ECAB 448(1988).

<sup>3</sup> *Andrew B. Poe*, 27 ECAB 510 (1976).

<sup>4</sup> *Yolandra Librera*, 37 ECAB 388 (1986).

<sup>5</sup> *Marie J. Born*, 27 ECAB 623 (1976); *petition for recon., denied*, 28 ECAB 89 (1976).

<sup>6</sup> 44 ECAB 936 (1993).

services, the Office's own procedures allow payment of either a schedule award or temporary disability benefits during receipt of vocational rehabilitation.<sup>7</sup>

The decision of the Office of Workers' Compensation Programs dated September 26, 1996 is hereby affirmed.

Dated, Washington, D.C.  
January 12, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>7</sup> Federal (FECA) Procedure Manual, Chapter 2.808.7(5) (March 1995).