U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUSIMBA A. RAGUE and PEACE CORPS,
Washington, DC

Docket No. 98-1225; Submitted on the Record;
Issued November 4, 1999

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant was not entitled to payment of a schedule award.

In the present case, the Office has accepted that appellant, a Peace Corps employee in Kenya, of Kenyan citizenship, sustained a motor vehicle collision in the performance of duty on August 16, 1986 causing a skull fracture and left leg nerve injury. Appellant returned to his position as Assistant Peace Corps Director for Kenya/Program Specialist on October 17, 1986.

On May 7, 1992 appellant requested payment of a schedule award. The Office denied appellant's request for a schedule award by decision dated November 7, 1997 on the grounds that under Kenyan law there was no provision for partial impairment awards and appellant had not experienced a loss of wage-earning capacity, which could entitle him to a schedule award.

The Board has reviewed the case record and finds that the Office properly denied appellant's claim for a schedule award.

The Federal Employees' Compensation Act[1] at section 8137 provides for the payment of compensation to employees and their dependents who are neither citizens nor residents of the United States or Canada. Subsection (a) of this section provides as follows:

> "(a) When the Secretary of Labor finds that the amount of compensation payable to an employee who is neither a citizen nor resident of the United States or Canada, or payable to a dependent of such an employee, is substantially disproportionate to compensation for disability or death payable in similar cases under local statute, regulations, custom, or otherwise at the place outside the continental United States or Canada where the employee is working at the time of

[1] 5 U.S.C. § 8101 *et. seq.*

injury, he may provide for payment of compensation on a basis reasonably in accord with prevailing local payments in similar cases by--

> "(1) the adoption or adaptation of the substantive features, by a schedule or otherwise, of local workmen's compensation provisions or other local statute, regulation, or custom applicable in cases of personal injury or death; or
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> "(2) establishing special schedules of compensation for injury, death and loss of use of members and functions of the body for specific classes of employees, areas and places."

Pursuant to the provisions of this section of the Act, the Office has promulgated regulations, at 20 C.F.R. §§ 25.1-25.27, governing the payment of compensation to noncitizen, nonresident employees and their dependents.[2] Section 25.1 of the regulations[3] restates the applicability of these regulations, at Part 25, to noncitizen, nonresidents.

Section 25.2[4] provides for the general adoption of local law, in lieu of the benefit provisions of the Act. This regulation provides in relevant part as follows:

> "Pursuant to the provision of 5 U.S.C. § 8137, the benefit features of local workers' compensation laws, or provisions in the nature of workers' compensation, in effect in the areas referred to in section 25.1, shall ... apply in the cases of the employees specified in section 25.1: *Provided, however,* that there is not established and promulgated under this part, for the particular locality, or for a class of employees in the particular locality, a special schedule of compensation for injury or death."

The regulation implementing the schedule award provision of the Act[5] is found in Subpart B -- Special Schedule of Compensation at § 25.11 of the Office's regulations.[6] The special schedule of compensation found at Subpart B of these regulations has only been extended to cover certain noncitizen, nonresident employees in the Republic of the Philippines, Australia, the Republic of Korea, certain Japanese seamen employed by the military and certain nonresident aliens employed by the military in the Territory of Guam.[7] In this regard, section 25.3 of the regulations[8] provides in pertinent part:

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[2] *See Hosneya A.R. Ibrahim (Ragab Awab Ibrahim),* 45 ECAB 654 (1994).

[3] 20 C.F.R. § 25.1.

[4] 20 C.F.R. § 25.2.

[5] 5 U.S.C. § 8107(b).

[6] 20 C.F.R. § 25.11.

[7] 20 C.F.R. §§ 25.11-25.27.

[8] 20 C.F.R. § 25.3.

> "The application of this special schedule will be by specific and appropriate provision in the regulations in this part, such provision specifying the locality to which applied, and the particular modification of or additions to the schedule, as may be made."

In the present case, the Office has properly determined that appellant is a citizen of Kenya and is neither a citizen nor resident of the United States, any territory, or Canada. The Office has also properly determined that the amount of compensation as provided under the Act is substantially disproportionate to the compensation payable in similar cases under local law in Kenya. The Office has also properly determined that the special schedule of compensation provided by the Act has not been specifically extended to Kenya. The Office therefore properly adopted the benefit features of Kenyan compensation law as the basis for payment of compensation in this case, pursuant to section 25.2 and section 25.3 of the Office's regulations.

The Office obtained a copy of the applicable Kenyan compensation law and properly determined that schedule awards were only payable under this law for 100 percent loss of a scheduled member.[9]

In a medical report dated June 26, 1997, Dr. P. Hagembe concluded that appellant had a 85 percent permanent impairment of the left lower extremity, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment.* On August 25, 1997 an Office medical adviser reviewed the case record and opined that appellant had a 23 percent permanent impairment of the left leg. As the medical evidence of record substantiates that appellant has less than a 100 percent loss of the left leg, appellant is not entitled to a schedule award under the special schedule provision of Kenyan law.

The Board also notes that the Kenyan compensation law does provide compensation benefits for permanent injuries which are not specified in the schedule award provision of the Act; however, such benefits are payable proportionate to the loss of wage-earning capacity permanently caused by the injury.[10] Kenyan law further defines loss of wage-earning capacity as the difference between the monthly earnings which the workman was earning at the time of the accident and the monthly earnings which he is earning or is capable of earning in some suitable employment or business after the accident.[11] In the present case, appellant returned to work in October 1986 to his position as Assistant Peace Corps Director for Kenya, without sustaining a permanent loss of wages. The evidence of record does not substantiate that appellant has a permanent loss of wage-earning capacity caused by the injury.[12]

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[9] *Laws of Kenya, The Workmen's Compensation Act,* Chapter 236, Second Schedule.

[10] *Supra* note 9, Part II, sec. 8 (1).

[11] *Supra* note 9, Part II, sec. 9 (1).

[12] On appeal appellant also alleges that he has not been compensated for his 30 days of lost wages immediately following the injury. The Kenyan compensation statues do appear to provide for payment of wage-loss compensation for periods of temporary incapacity, either total or partial. However, as the Office has not formally issued a decision regarding this aspect of the claim, this issue is not before the Board at this time.

The Office properly determined in this case that appellant was not entitled to payment of a schedule award.

The decision of the Office of Workers' Compensation Programs dated November 7, 1997 is hereby affirmed.

Dated, Washington, D.C.
November 4, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member