U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK P. BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Pueblo, CO

Docket No. 99-585; Submitted on the Record;
Issued August 2, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant is entitled to payment of his schedule award at the augmented rate; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On July 15, 1994 appellant, then a 40-year-old automation clerk, filed an occupational disease claim alleging that he sustained carpal tunnel syndrome due to factors of his federal employment. The Office accepted his claim for bilateral carpal tunnel syndrome and bilateral de Quervain's and authorized right and left carpal tunnel releases which appellant underwent in August 1994.

By decision dated May 4, 1995, the Office found that appellant had no loss of wage-earning capacity based on its determination that his actual earnings as a modified postal automation clerk fairly and reasonably represented his wage-earning capacity.

On August 27, 1997 appellant filed a claim for a schedule award. He listed his dependent as his "girlfriend." In a report dated August 6, 1997, Dr. Kevin R. Boehle, who specializes in occupational medicine, evaluated appellant for purposes of providing an impairment rating. Dr. Boehle found that appellant reached maximum medical improvement on August 6, 1997. The Office medical adviser, in a report dated August 19, 1997, concurred with his finding of August 6, 1997 as the date of maximum medical improvement.

By decision dated October 22, 1997, the Office granted appellant a schedule award for a 10 percent permanent impairment of both the right and left arms. The period of the award ran for 62.20 weeks from August 6, 1997 to October 15, 1998.

In a letter dated January 5, 1998, appellant informed the Office that his son was a dependent until June 1997. He requested augmented compensation on the grounds that he would

have filed for a schedule award while his son was still a dependent had he known that he was entitled to an award.

By decision dated February 12, 1998, the Office found that appellant was not entitled to be paid augmented compensation based on his claim of his son as a dependent on the grounds that his son was not his dependent in August 1997, the date he reached maximum medical improvement and his schedule award began.

In a letter dated July 25, 1998, appellant requested reconsideration. In support of his request, appellant resubmitted an April 6, 1995 work capacity evaluation (OWCP-5c) from Dr. Taylor, who listed the date of maximum medical improvement as April 6, 1995.

By decision dated August 10, 1998, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and insufficient to warrant review of the prior decision.

The Board finds that appellant is not entitled to payment of his schedule award at the augmented rate.

Compensation to injured employees is payable at the rate of 66 2/3 percent of the pay rate established for compensation purposes. The compensation rate is increased to 75 percent when the employee has one or more dependents. Section 8110 of the Federal Employees' Compensation Act,[1] entitled augmented compensation for dependents, provides in pertinent part that the term "dependent" includes an unmarried child "while living with the employee or receiving regular contributions from the employee towards his support."[2]

In the instant case, appellant had a dependent son until June 1997. His schedule award began August 6, 1997, the date the Office determined that the medical evidence established that he had reached maximum medical improvement. On appeal, appellant contends that the Office incorrectly set the date of maximum medical improvement.

It is 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.[3] Maximum medical improvement "means that the physical condition of the injured member of the body has stabilized and will not improve further."[4] The Board has stated that the question of when maximum medical improvement has been reached is a factual one which depends on the medical findings in the record and that the determination of such date is to be made in each case upon the basis of the medical evidence in that case."[5]

[1] 5 U.S.C. §§ 8101-8193.

[2] 5 U.S.C. § 8110(3).

[3] *Robert J. Mitchell*, 34 ECAB 8 (1982).

[4] *Marie J. Born*, 27 ECAB 623 (1976); *petition for recon., denied*, 28 ECAB 89 (1976).

[5] *Id.*

The Office generally establishes the date of maximum improvement as the date that appellant was medically evaluated for purposes of making a schedule award. In the instant case, the Office set the date of maximum medical improvement and thereby the date on which the period of the schedule award would begin, as August 6, 1997, the date of appellant's impairment evaluation. Both Dr. Boehle, appellant's physician who evaluated him for schedule award purposes, and the Office medical adviser, who reviewed Dr. Boehle's report, found that appellant had reached maximum medical improvement on August 6, 1997. While Dr. Taylor, another attending physician, indicated in a work restriction evaluation dated April 6, 1995 that appellant reached maximum medical improvement on that date, he did not evaluate appellant for purposes of determining impairment for a schedule award. Therefore, the opinions of Dr. Boehle and the Office medical adviser constitute the weight of the medical evidence and establish that appellant reached maximum medical improvement on August 6, 1997. As appellant did not have a dependent on that date, he is not entitled to compensation at the augmented rate.

The Board further finds that the Office properly denied appellant's request for reconsideration under section 8128.

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and the specific issue(s) within the decision which claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

"(i) Showing that the Office erroneously applied or interpreted a point of law, or

"(ii) Advancing a point of law or fact not previously considered by the Office, or

"(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[6]

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.[7] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[8] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[9]

In support of his request for reconsideration, appellant resubmitted the April 6, 1995 work restriction evaluation from Dr. Taylor and a copy of a June 15, 1995 job offer from the

[6] 20 C.F.R. § 10.138(b)(1).

[7] *See* 20 C.F.R. § 10.138(b)(2).

[8] *Daniel Deparini*, 44 ECAB 657 (1993).

[9] *Id.*

employing establishment. As this duplicated evidence already of record, it did not constitute a basis for reopening appellant's case for merit review under 20 C.F.R. § 10.138.[10]

Appellant further argued that the Office erred in failing to set the date of maximum medical improvement as April 6, 1995. However, the determination of the date of maximum medical improvement is medical in nature and must be resolved by the submission of medical evidence.

An abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known facts.[11] Appellant has made no such showing here.

The decisions of the Office of Workers' Compensation Programs dated August 10 and February 12, 1998 are hereby affirmed.

Dated, Washington, D.C.
August 2, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

[10] *Richard L. Ballard*, 44 ECAB 146 (1992).

[11] *Rebel L. Cantrell*, 44 ECAB 660 (1993); *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992).