

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS R. BEAUDET and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, TX

*Docket No. 00-1332; Submitted on the Record;
Issued February 1, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has established that he has greater than a 34 percent permanent impairment for loss of use of his left lower extremity, for which he received a schedule award; and (2) whether the Office of Workers' Compensation Programs properly found that appellant is not concurrently entitled to compensation payable from a schedule award and from that based on wage loss for the same injury.

On June 6, 1994 appellant, then a 32-year-old letter sorting machine clerk, injured his lower back while standing up from his chair. The Office accepted his claim for lumbar strain and bulging discs and later included the conditions of aggravation of bulging discs at L3-4, L4-5, L5-S1, L5-S1 herniated nucleus pulposus and failed back syndrome. The Office paid appropriate compensation.

Appellant returned to work for four hours per day in August 1998 and for six hours a day on November 3, 1998. He was off work again from March 9 to April 14, 1999 and returned to limited-duty work for six hours a day on April 15, 1999 and to full time on December 28, 1999.

On September 21, 1999 appellant filed a Form CA-7 claim for a schedule award based on partial loss of use of his left leg.

On October 13, 1999 the Office granted appellant a schedule award for a 34 percent loss of use of the left lower extremity from October 10, 1999 through August 25, 2001.

In a facsimile dated December 15, 1999, appellant's congressional representative forwarded a letter to the Office from appellant, in which he expressed dissatisfaction with the fact that he was not receiving compensation for his back disability and with the regulation prohibiting him from obtaining a schedule award based on a back injury.

By decision dated December 22, 1999, the Office denied appellant additional compensation, stating that he could not receive a schedule award and disability benefits at the

same time. The Office stated that a schedule award is payable consecutively but not concurrently with wage-loss benefits for the same injury. The Office also stated that, pursuant to section 8107 of the Federal Employees Compensation Act, schedule awards for impairment to the back alone were not payable and that permanent impairment may originate either within the affected member or in another part of the body.

The Board finds that appellant has no more than a 34 percent permanent impairment for loss of use of his left lower extremity, for which he has received a schedule award.

In this case, the Office, in its October 13, 1999 decision, granted appellant a schedule award for a 34 percent loss of use of the left lower extremity. Appellant did not request a greater award based on the left lower extremity; rather, he questioned why the Office did not grant him a schedule award based on his back. The Board notes that it has frequently explained that a schedule award is not payable for the loss, or loss of use, of a part of the body not specifically enumerated in the Act.¹ The schedule award provisions of the Act provide for payment of compensation to employees sustaining permanent impairment from loss, or loss of use, of specified members of the body and set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of the members of the body listed in the schedule.² Neither the Act nor its regulation³ provide for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of “organ” under the Act.⁴ Thus, appellant is not entitled to a schedule award for an impairment to the back.

The Board finds that the Office properly found that appellant is not concurrently entitled to compensation payable from a schedule award and from that based on wage loss for the same injury.

The Federal (FECA) Procedure Manual explicitly states at Chapter 2.808(a)(3), *Claims, Entitlement to Schedule Awards*,⁵ that a schedule award is payable consecutively but not concurrently with an award for wage loss for the same injury. Appellant is, therefore, not entitled to receive schedule award compensation and disability benefits based on his June 6, 1994 employment injury at the same time. Accordingly, appellant has not demonstrated that he is entitled to compensation greater than the 34 percent award for permanent impairment already granted by the Office.⁶

¹ *James E. Jenkins*, 39 ECAB 860 (1988).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ 5 U.S.C. § 8101(19); *see Francesco C. Veneziani*, 48 ECAB 572 (1997); *Terry Mills*, 47 ECAB 309 (1996).

⁵ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Entitlement to Schedule Awards*, Chapter 2.808(a)(3).

⁶ Subsequent to his February 2, 2000 appeal to the Board, appellant requested reconsideration of the December 22, 1999 Office decision, by letter dated February 20, 2000, which the Office denied by nonmerit decision dated March 9, 2000. This decision is null and void. Pursuant to 20 C.F.R. § 10.626, while the case is on appeal to the Board, the Office has no jurisdiction over the claim with respect to issues, which directly relate to the issue or issues on appeal.

The December 22, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 1, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member