

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVEN MARK WILSON and DEPARTMENT OF JUSTICE,
FEDERAL PRISON CAMP, Bryan, TX

*Docket No. 02-41; Submitted on the Record;
Issued May 8, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant is entitled to a schedule award due to his accepted employment-related emotional condition; and (2) whether the Branch of Hearings and Review properly denied appellant's request for a second review of the written record.

Appellant, a 41-year-old facility manager, filed a notice of occupational disease on December 2, 1998 alleging that he developed post-traumatic stress disorder due to factors of his federal employment. The Office of Workers' Compensation Programs denied his claim on July 15, 1999 due to a lack of medical evidence. Appellant requested a review of the written record. By decision dated December 6, 1999, the hearing representative remanded appellant's claim for additional development of the medical evidence. By decision dated April 10, 2000, the Office accepted his claim for post-traumatic stress disorder.

Appellant submitted a claim for compensation on April 16, 2000 and requested a schedule award.¹ By decision dated May 25, 2000, the Office denied his claim finding that the Federal Employees' Compensation Act² did not provide for a schedule award due to impairment from a mental condition. Appellant requested a review of the written record on June 4, 2000. By decision dated September 22, 2000, the hearing representative denied his request for a schedule award due to a lack of supporting medical evidence and remanded for the Office to adjudicate the issue of wage-loss compensation.

On June 16, 2000 appellant submitted a letter entitled "[r]equest for [r]eview of the [w]ritten [r]ecord." The Branch of Hearings and Review issued a decision on November 24,

¹ The record does not indicate that appellant has received wage-loss compensation and medical benefits from the Office. The Board notes that the Office should develop the issue of wage-loss compensation as it deems appropriate and issue a final decision with appeal rights. As appellant's condition of post-traumatic stress disorder has been accepted as work related, he is entitled to medical treatment for this condition.

² 5 U.S.C. §§ 8101-8193.

2000 denying this request on the grounds that appellant had previously requested and received a review of the written record.³

Appellant requested reconsideration of the November 24, 2000 decision on March 25, 2001. By decision dated July 5, 2001, the Office again denied appellant's request for a schedule award.

The Board finds that appellant is not entitled to a schedule award due to his accepted emotional condition.

The schedule award provision of the Act⁴ and its implementing regulation⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the regulations provide for the payment of a schedule award in the terms of the whole person, no claimant is entitled to such an award.⁶

In support of his request for a review of the written record, appellant initially alleged that his accepted condition of post-traumatic stress disorder resulted in cataplectic episodes of total paralysis of up to five hours affecting all of his scheduled members and that, therefore, he was entitled to a schedule award.

Appellant submitted a report dated November 10, 2000 from Dr. Will Gaines, a physician Board-certified in preventative medicine, who noted appellant's history of injury and diagnosed post-traumatic stress disorder secondary to work-related psychosocial trauma with resultant cataplectic episodes precluding ability for interaction and employment on a normal basis. He stated, "[a]pplying the American Medical Association, *Guides to the Evaluation of Permanent Impairment*," fourth edition, he most closely functions as a class III with moderate impairment that is compatible with some, but not all useful, functioning." Dr. Gaines noted, "[t]he issue around what this relates to as far as permanent impairment is difficult. There are no objective well-accepted, goal standards that apply precise impairment to mental disorders and there is no data [that] exists to show the reliability of their impairment percentages based on class." Dr. Gaines concluded that appellant had a global assessment of function of 41 to 60 which was a 5 to 10 percent whole person impairment.

Appellant has submitted no medical evidence relating his impairment due to his accepted condition to the specific members listed in the Act. The Act does not provide for schedule

³ On June 16 and December 4, 2000 appellant submitted a document entitled "[r]equest for a [r]eview of the [w]ritten [r]ecord." He clarified that if he was not entitled to a schedule award he was requesting compensation for wage loss. Again the Board notes that the record does not indicate that the Office has adjudicated this issue. As the Office has not issued a final decision on this issue, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *John Yera*, 48 ECAB 243, 247 (1996).

awards due to impairment of the whole person. Neither the Office nor the Board may enlarge on the terms of the Act and, therefore, appellant is not entitled to a schedule award for impairment to the whole person due to an emotional condition.

The Board further finds that the Branch of Hearings and Review did not abuse its discretion by denying appellant's second request for an oral hearing.

Section 8124(b) of the Act,⁷ concerning a claimant's entitlement to a hearing before an Office representative, states: "[b]efore review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."⁸

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁹ Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act, which provided the right to a hearing,¹⁰ when the request is made after the 30-day period for requesting a hearing¹¹ and when the request is for a second hearing on the same issue.¹²

The Office exercised its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case was medical and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, the Office properly denied appellant's request for a hearing and properly exercised its discretion in determining to deny appellant's request for a hearing as he had other review options available.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ 5 U.S.C. § 8124(b)(1).

⁹ *Henry Moreno*, 39 ECAB 475, 482 (1988).

¹⁰ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

¹¹ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

¹² *Frederich Richardson*, 45 ECAB 454, 466 (1994); *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

The July 5, 2001 and November 24, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 8, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member