U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY D. CORDLE, JR., and U.S. POSTAL SERVICE,
POST OFFICE, West Palm Beach, FL

Docket No. 02-2111; Submitted on the Record;
Issued January 15, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant reached maximum medical improvement prior to September 19, 2000, the date the Office of Workers' Compensation Programs terminated his compensation benefits pursuant to 5 U.S.C. § 8106(c)(2).

On December 28, 1995 appellant, then a 31-year-old mailhandler, sustained an injury in the performance of duty while operating a motorized riding pallet jack. The Office accepted his claim for contusion and laceration of the right knee, right knee arthritis, right anterior cruciate ligament (ACL) repair and "consequential left knee." The record indicates that appellant underwent a total knee replacement in July 1998.

On or about January 21, 1999 appellant filed a claim for a schedule award.

On April 30, 1999 Dr. Paul J. LaRochelle, an attending orthopedic surgeon, reported that appellant would reach maximum medical improvement in approximately 6 weeks on June 11, 1999, at which time he would have a 15 percent total impairment for the right knee.

On February 16, 2000 Dr. Shekar S. Desai, an orthopedist and associate of Dr. LaRochelle, reported that appellant was considered at maximum medical improvement and that he warranted an impairment rating of 12 percent for his "right total knee" and 5 percent for his left knee arthroscopy and plica excision.

On April 26, 2000 Dr. LaRochelle reported that he would not change appellant's date of maximum medical improvement.

In a decision dated September 19, 2000, the Office denied further compensation benefits, including any possible schedule award, pursuant to 5 U.S.C. § 8106(c)(2). The Office found that appellant had refused an offer of suitable work.

Dr. Michael S. Zeide, an orthopedic surgeon, who took over appellant's care, reported that appellant's current complaints appeared to be related to the total knee replacement on the right, which in turn appeared to be related to his December 28, 1995 injury. He proposed an aspiration and arthrogram to help define the nature of the problem. On November 15, 2000 appellant underwent a revision right total knee arthroplasty to exchange the right total knee polyethylene liner. The Office subsequently authorized the procedure.

On May 23, 2001 a hearing representative affirmed the Office's September 19, 2000 decision insofar as it terminated compensation benefits on and after that date. The hearing representative remanded the case, however, to determine whether appellant had reached maximum medical improvement prior to September 19, 2000, in which case he might be entitled to a schedule award.[1]

On January 17 and May 11, 2001 Dr. Zeide reported that appellant was not at maximum medical improvement from his revision surgery.

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. D. Barry Lotman, an orthopedic surgeon, for an opinion on the extent of any permanent impairment to appellant's right knee.

In a report dated July 17, 2001, Dr. Lotman related appellant's history, noting a total knee replacement in the summer of 1998 and revision surgery in November 2000 to replace a tibial polyethylene tray. He reported his findings on physical examination. Referring to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), Dr. Lotman assigned 63 points, which converts to an impairment of 50 percent to the lower extremity. He reported, however: "It should be noted that generally one does not reach maximum medical improvement until a year following total knee replacement. As a result, I anticipate that [appellant] will not reach maximum medical improvement from his recent total knee replacement until approximately January (sic) 2001."

In an addendum report dated July 23, 2001, Dr. Lotman stated:

> "Please note, in response to your inquiry, I anticipated that this claimant's date of maximum medical improvement [MMI] would be in November 2001. If his circumstances and examination do not change between now and then, his impairment rating would be 36 percent to the right lower extremity. However, this claimant is not at MMI at this time."

In a decision dated August 3, 2001, the Office denied appellant's claim for a schedule award on the grounds that he did not reach maximum medical improvement until after the effective date of termination under 5 U.S.C. § 8106(c)(2).

[1] The hearing representative ordered that any monies paid to appellant for wage loss during the period of such an award be subtracted from the amount of schedule award compensation otherwise payable. Claimants are precluded from concurrently receiving compensation for wage loss and a schedule award. *See Marie J. Born*, 27 ECAB 623, 628 (1976).

An appeal to the Board must be filed no later than one year from the date of the Office's final decision.[2] Because appellant mailed his August 3, 2002 appeal more than one year after the Office's September 19, 2000 decision to terminate his compensation benefits under 5 U.S.C. § 8106(c)(2), the Board has no jurisdiction to review that decision. The only decision on appeal is the Office's August 3, 2001 decision denying appellant's claim for a schedule award for his right lower extremity.[3]

The Board finds that appellant did not reach maximum medical improvement prior to September 19, 2000, the date the Office terminated his compensation benefits pursuant to 5 U.S.C. § 8106(c)(2).

The schedule award provision of the Federal Employees' Compensation Act[4] compensates covered employees for the permanent impairment of specified members, functions and organs of the body. Before a formal evaluation of the employee's condition is carried out for the purpose of determining entitlement to a schedule award, an analysis of the history and course of the medical condition must support the conclusion that an impairment is permanent and well stabilized. Only then, when the evidence establishes that the employee has reached maximum medical improvement from the residuals of the accepted employment injury, can the extent of any impairment be considered "permanent," and only then can the employee's condition be evaluated for schedule award purposes.[5]

The question for determination in this case is whether appellant reached maximum medical improvement prior to September 19, 2000, when the Office terminated his compensation benefits for refusing suitable work. Appellant underwent a revision right knee arthroplasty on November 15, 2000 to replace a polyethylene liner from the earlier surgery. As this occurred after September 19, 2000, maximum medical improvement from the revision was not reached prior to the termination of benefits under section 8106. Based on his refusal of suitable work, the Act and implementing regulations serve as a bar to receipt of compensation under the schedule award provisions of section 8107.[6] As appellant is not entitled to compensation benefits after September 19, 2000, including schedule award benefits, the Board will affirm the denial of appellant's claim for a schedule award for his right leg.

[2] 20 C.F.R. § 501.3(d) (time for filing); *see id.* § 501.10(d)(2) (computation of time).

[3] On July 26, 2002 the Office notified appellant that it would develop the medical evidence to determine whether he reached maximum medical improvement with respect to his left lower extremity prior to September 19, 2000. As the Office has issued no final decision on this issue, the Board has no jurisdiction to review the matter. 20 C.F.R. § 501.2(c) (there shall be no appeal with respect to any interlocutory matter disposed of by the Office while the case is pending).

[4] 5 U.S.C. § 8107(a).

[5] *See Orlando Vivens*, 42 ECAB 303 (1991) (a schedule award is not payable until MMI of the claimant's condition has been reached; maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further).

[6] *See Stephen R. Lubin*, 43 ECAB 564 (1992).

The August 3, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
January 15, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member