U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY J. COMBS and DEPARTMENT OF THE ARMY, ARMOR CENTER, Fort Knox, KY

Docket No. 03-194; Submitted on the Record;
Issued March 6, 2003

DECISION and ORDER

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

The issue is whether appellant is entitled to a schedule award for permanent impairment causally related to her accepted work-related condition.

On June 7, 2000 appellant, then a 68-year-old retired sales and supply clerk, filed a notice of occupational disease alleging that she developed a respiratory disease as a result of exposure to chemical and airborne toxins while in the performance of duty. Appellant last worked for the employing establishment on September 9, 1989. The Office of Workers' Compensation Programs accepted the claim for multiple myeloma.

On March 27, 2002 appellant filed a CA-7, claim for a schedule award.

In a letter dated April 9, 2002, the Office requested a medical report from appellant's attending physician, Dr. Cora A. Veza, a Board-certified physician in the fields of hematology oncology and internal medicine. Dr. Veza was asked to complete a form assessing the degree of appellant's permanent impairment due to the accepted work-related condition in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[1] The Office requested that Dr. Veza provide the date of maximum medical improvement in her assessment of appellant's permanent impairment rating.

On May 13, 2002 Dr. Veza completed only the first part of the form provided by the Office with respect to the date of maximum medical improvement indicating that a specific date was not applicable as appellant was still suffering from symptoms of multiple myeloma.

In a decision dated September 30, 2002, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence of record failed to provide a

[1] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

prima facie case that appellant had reached maximum medical improvement and that she sustained a permanent partial impairment.

The schedule award provisions of the Federal Employees' Compensation Act[2] and its implementing federal regulation,[3] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[4] However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[5]

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. A schedule award is not payable until maximum improvement of the claimant's condition has been reached.[6] Maximum improvement means that the physical condition of the injured member's body has stabilized and will not improve further.[7] The question of when maximum medical improvement has been reached is a factual one which depends on the medical evidence of record. The determination of such date in each case is to be made based upon the medical evidence.[8]

In the instant case, appellant's treating physician was asked by the Office to prepare a medical opinion addressing appellant's degree of permanent impairment under the A.M.A., *Guides* and the date of maximum medical improvement. On May 13, 2002, Dr. Veza opined that appellant had not reached maximum medical improvement as she continued to suffer from the condition of multiple myeloma. In the absence of a date for maximum medical improvement, it cannot be found that appellant's condition has "stabilized" and "will not improve" any further. Since Dr. Veza did not find that maximum medical improvement has been reached, the Office properly found that appellant is not entitled to receive a schedule award.

Moreover, Dr. Veza did not make any assessment of appellant's degree of permanent partial impairment under the fifth edition for the A.M.A., *Guides*. Although appellant contends that she is entitled to a schedule award for permanent impairment of her extremities due to the accepted work-related condition, she has the burden to submit probative medical evidence in

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] 5 U.S.C. § 8107(c)(19).

[5] *See* 20 C.F.R. § 10.404 (1999).

[6] *See Robert L. Mitchell, Jr.*, 34 ECAB 8 (1982).

[7] *Joseph R. Waples*, 44 ECAB 936 (1993).

[8] *Richard Larry Enders*, 48 ECAB 184 (1996); *Joseph R. Waples, supra* note 6.

support of her claim.[9] The evidence of record is insufficient to support a *prima facie* claim for a schedule award.

The decision of the Office of Workers' Compensation dated September 30, 2002 is hereby affirmed.

Dated, Washington, DC
March 6, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[9] A description of a claimant's impairment must be obtained from his or her physician which is in sufficient detail so that the claims examiner and other reviewing the file will be able to clearly visualize the impairment with it resulting restrictions and limitations. *James E. Archie*, 43 ECAB 180 (1991); *Patricia J. Lieb*, 42 ECAB 861 (1991).