

strain and right knee chondromalacia. Appellant underwent right knee arthroscopic surgery on June 6, 1992 and was totally disabled through February 28, 1993.

Appellant's compensation was terminated on April 14, 1993 for refusal of suitable work and a hearing on that issue was held March 7, 1994. The decision to deny further monetary compensation was affirmed, but the case was remanded on May 17, 1994 by the Branch of Hearings and Review for further development of the medical evidence. On September 21, 1995 appellant was referred for vocational rehabilitation.

Appellant began attending law school. His vocational rehabilitation counselor determined that completion of law school was a viable rehabilitation plan. Thereafter, however, the employing establishment offered appellant a position as a forestry technician that was within his medical restrictions and which the Office deemed to be suitable to his partially disabled condition. Appellant refused this suitable job offer, contending that continuing law school would further increase his wage-earning capacity.

The Office tried to get appellant to return to suitable work full time as an automation clerk. Appellant, however, declined as he was working part time as a law clerk while attending law school. On March 8, 1996 the vocational rehabilitation counselor stated in a plan to the Office that, as appellant had completed two years of a three-year program at Gonzaga University, studying law, the decision was made to go ahead and support him in his last year. The Office was directed by the rehabilitation counselor to pay reimbursement for his last year in law school.

In a June 10, 1997 decision, the Office found that appellant was capable of full-time work and that his part-time law clerk position was not representative of his wage-earning capacity. It denied further compensation as he had not provided a valid reason for declining the automation clerk position.

By decision dated January 26, 1999, an Office hearing representative reversed the Office's June 10, 1997 decision, finding that appellant did have an acceptable reason for refusing the light-duty job offered to him and he instructed the Office to pay compensation benefits for partial loss of wage-earning capacity through January 18, 1998.

By decision dated September 27, 1999, the Office found that the evidence of record failed to establish entitlement to compensation under 5 U.S.C. § 8104(a), because it was determined that his educational level at that time, without finishing law school, was sufficient to increase his wage-earning capacity.

The Branch of Hearings and Review reversed this decision on May 7, 2001 and directed the Office to reimburse appellant for his expenses for his last year of law school.

Appellant submitted memoranda regarding tuition and bar examination costs and he included the accrued interest and finance charges on the loans he had obtained to complete law school. He sought reimbursement for \$28,420.06. The Office paid him \$21,364.56, the actual cost of the tuition, books and fees.

By decision dated May 7, 2002, the Office denied payment of accrued interest and finance charges.

Appellant disagreed with this decision and requested an oral hearing, which was held on December 10, 2002. By decision dated May 1, 2003, an Office hearing representative affirmed the May 7, 2002 decision, finding that appellant was not entitled to reimbursement of accrued interest or finance charges.

LEGAL PRECEDENT

In *Abraham Hoffenberg*¹ the Board addressed the question of entitlement to interest on compensation under the Federal Employees' Compensation Act, noting: "Payments under the Act are in the nature of grants or gratuities and are limited to the amounts and under the circumstances specified in the Act." The Board noted that, "although interest is payable under the workers' compensation laws of several states, the Act deals with payments of compensation by the sovereign to its employees."² In subsequent cases, the Board has reiterated that "interest is not payable on an award of compensation."³

The Board held in *Robert S. Winchester*,⁴ that there is no provision in the Act for payment of interest on awards of compensation. The Act contains no provision which either in specific terms or by way of implication would authorize the payment of interest to a beneficiary when awards of compensation are made retroactively.⁵

The terms of the Act are specific as to the method and amount of payment of compensation. Neither the Office, nor the Board has the authority to enlarge the terms of Act, nor to make an award of benefits under any terms other than those specified in the statute.⁶ Unless a claimant's contentions are in keeping with the scope or intent of the Act, *i.e.*, unless the statute authorizes payment of the kind demanded by appellant, the Office's denial of such demand must be affirmed.⁷

¹ 17 ECAB 527 (1966).

² *Robert S. Winchester*, 45 ECAB 135, 137 (1993), in which Professor Arthur Larson is noted as stating in his treatise *The Law of Workers' Compensation*, at § 56.11, that the distinction between state workers' compensation law and the Act is significant. He states: "This Act is in most respects similar to a typical state act. But there are several basic differences, which alter profoundly the nature of the legal practice in this field. The most fundamental difference stems from the concept that federal benefits are granted as an act of grace and that, therefore, the Congress can attach any conditions it pleases." *Id.*, n. 3 at 138.

³ See *Ralph W. Moody*, 42 ECAB 364 (1991); *Steven M. Gourley (Louise E. Gourley)*, 39 ECAB 413 (1998); *Edith C. Alter (David E. Alter)*, 32 ECAB 995 (1981).

⁴ *Supra* note 2 at 138.

⁵ *Id.*

⁶ *Raymond C. Beyer*, 50 ECAB 164, 165 (1998); *Robert S. Winchester*, *supra* note 2 at 138.

⁷ *Id.*

ANALYSIS

Section 8104(a) of the Act provides for the furnishing of vocational rehabilitation services. The section further provides that “the cost of providing these services to individuals undergoing vocational rehabilitation ... shall be paid by the Employees’ Compensation Fund.”⁸

Appellant argues that the plain meaning of the word “cost” as set forth under section 8104(a), when construed in accord with its common and broad usage, clearly dictates the reimbursement of costs would include interest and finance charges incurred in securing financing for participation in vocational rehabilitation. Specifically, appellant is seeking reimbursement for approximately \$7,055.50 in interest charged on personal loans he obtained to finance his third year of law school. He argued that, but for the erroneous decisions made by the Office on June 10, 1997 and September 27, 1999, which denied vocational rehabilitation, he would never have incurred the interest and finance costs which became part of his tuition. Appellant argued that the actual costs of his vocational rehabilitation included the accrued actual interest and actual finance charges, much as the actual reimbursable costs of books and supplies include sales taxes, despite the fact that the Act does not specifically provide for reimbursement of such costs.

As stated above, the terms of the Act are specific as to the method and amount of payment of compensation; neither the Office nor the Board has the authority to enlarge the terms of the Act, nor to make an award of benefits under terms other than those specified in the statute. Unless appellant’s contentions are in keeping with the scope or intent of the Act, *i.e.*, unless the statute authorizes payment of the kind demanded by appellant, the Office’s denial of such demands must be affirmed.⁹

The Board finds that interest cannot be awarded on benefits simply because they were delayed by the appeal process. As a claimant is not entitled to such benefits under any conditions. The reimbursable costs of tuition are limited to the immediate actual costs at the time the tuition is due and do not include subsequently accrued interest on delayed payments or the cost of borrowed money. Therefore, a claimant is entitled to reimbursement only for the immediate costs of tuition and not its financing over time.

The Board notes that, as federal workers’ compensation benefits under the Act are awarded at the Office’s discretion, unlike the benefits under many mandatory state workers’ compensation provisions, Congress can attach any conditions or requirements.¹⁰ Congress has delineated the role of the Office as dual, as it acts in the role of investigator of the facts and as protector of the Employees’ Compensation Fund and then in the same case it performs the quasi-judicial function of deciding the rights of the claimant.¹¹ The Board has held in similar cases,

⁸ 5 U.S.C. § 8104(a).

⁹ *Ralph W. Moody*, 42 ECAB 364, 370 (1991); *Helen A. Pryor*, 32 ECAB 1313 (1981).

¹⁰ See *Robert S. Winchester*, *supra* note 2.

¹¹ See *Joel C. Webb*, 4 ECAB 79, 84 (1950).

that “interest is not payable on an award of compensation.”¹² In cases requesting interest on various types of compensation payments, including retroactive payments for vocational rehabilitation, the Board has determined that “the Act contains no provision which either in specific terms or by way of implication would authorize the payment of interest when awards of compensation are made retroactively.”¹³ Since the Act does not provide for payment of interest¹⁴ or accrued finance charges,¹⁵ the Office properly denied appellant’s request.

CONCLUSION

There is no provision for reimbursement of accrued interest or finance charges incurred during vocational rehabilitation activities. Appellant is not entitled to such monies and the Board finds that such additional costs were properly denied.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated May 1, 2003 is affirmed.

Issued: August 20, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹² *Robert S. Winchester, supra* notes 2 at 138; *Ralph W. Moody, supra* note 9 at 370; *Steven M. Gourley (Louise E. Gourley), supra* note 3 at 422; *Edith C. Alter (David E. Alter), supra* note 3 at 978.

¹³ *Robert S. Winchester, supra* note 2 at 138.

¹⁴ *Ralph W. Moody, supra* note 9 at 370-71; *Richard T. DeVito*, 39 ECAB 668 (1988); *Charles E. Harlan*, 24 ECAB 266 (1973).

¹⁵ As defined in the Act at section 8101(12), “‘compensation’ includes the money allowance payable to an employee or his dependents and any other benefits paid for from the Employees’ Compensation Fund, ...” 5 U.S.C. § 8101(12).