

FACTUAL HISTORY

On November 30, 1992 appellant, then a 52-year-old accounting technician, sustained an injury in the performance of duty when he tried not to drop a drawer of savings bonds. The Office accepted his claim for left wrist contusion and left wrist sprain. The Office later accepted left wrist reflex sympathetic dystrophy and then expanded its acceptance to include reflex sympathetic dystrophy of the right upper and left lower extremities. Appellant received compensation benefits, including various schedule awards.

On September 21, 1998 appellant agreed to receive a lump sum of \$59,274.12, for the remainder of a schedule award that expired on August 10, 2002. On June 30, 1999 he signed another lump-sum settlement agreement:

“To proceed with my claim for a lump sum settlement of my schedule award in accordance with 5 U.S.C. § 8135(a)(3), I wish to enter into the following agreement:

1. That I agree to accept the sum of \$45,457.27, in payment of compensation for the commuted value of further installments of compensation for the remainder of the schedule award payable from August 11, 2002 to January 28, 2006 fraction of a day.
2. That I understand and agree that payment of such lump sum payment will represent full and final settlement of my schedule award [sic] for the period noted above in connection with my injury of November 30, 1992 and that no further monetary compensation benefits will be extended to me for the duration of the schedule award.”

On January 9, 2004 the Office issued a schedule award for an additional nine percent impairment of appellant’s left leg. The period of this award ran from January 28 to July 28, 2006, fraction of a day. The Office reminded appellant of his June 30, 1999 lump-sum settlement agreement:

“Please acknowledge that compensation is not payable at this time. On June 30, 1999 you agreed to accept the sum of \$45,457.27, in payment of compensation for the remainder of the schedule award payable from August 11, 2002 to January 28, 2006, fraction of a day. You agreed that no further monetary compensation benefits will be extended for the duration of the schedule award which would be July 28, 2006, fraction of a day.

“Compensation for the additional 9 percent impairment will commence on July 28, 2006, fraction of a day. Please contact this office 30 days prior to the commencement date to insure that the payment is initiated.”²

On the second page of the January 9, 2004 schedule award decision, the Office advised appellant that, if he was currently working or receiving retirement benefits from the Office of Personnel Management (OPM), he might be entitled to a lump-sum payment of his schedule award: “Please contact the [d]istrict Office at the address listed on the first page of this letter and specifically request information concerning this option.”

Appellant wrote to the Office on January 15, 2004 requesting that he again be permitted to receive a lump-sum payment. He explained that he needed the money to move across country so that he could live with his son and daughter-in-law, who was a registered nurse, rather than stay where he was and enter an assisted-living home. Appellant did not want to wait two and a half years to get the money. He made a second request on February 6, 2004. On February 14, 2004 appellant complained to the Office that it was not responding to his request for reconsideration “of your decision on when I can receive my scheduled (sic) award.” On September 20, 2004 he advised that he was receiving retirement benefits from the OPM and asked whether he was eligible for a lump-sum payment of his June 9, 2004 schedule award.

In a decision dated October 25, 2004, the Office found that appellant could not receive payment for his January 9, 2004 schedule award before January 28, 2006: “According to your request you seek the lump-sum payment to use to make a cross country move. However, this request cannot be processed.” The Office explained that both 5 U.S.C. § 8116 and the terms of the June 30, 1999 lump-sum settlement agreement prohibited appellant from receiving further monetary compensation benefits until January 28, 2006. The Office made clear that it was not denying his entitlement to an additional schedule award and that he might still receive a lump-sum payment for his January 9, 2004 schedule award after the period covered by the current lump-sum settlement agreement expired: “Please note that this decision is not meant to bar you from requesting consideration for a lump-sum payment of the additional award at or after the time the award commences (January 28, 2006).”

LEGAL PRECEDENT

Section 8116(a) of the Federal Employees’ Compensation Act imposes a limitation on an employee’s right to receive compensation:

“While an employee is receiving compensation under this subchapter or if he has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, he may not receive salary, pay or remuneration of any type from the United States, except --

² So after correctly noting that the period covered by the June 30, 1999 agreement expires on January 28, 2006, fraction of a day, the Office twice mistakenly referred to that date as July 28, 2006, fraction of a day. July 28, 2006, fraction of a day is when the January 9, 2004 schedule award expires.

- (1) in return for service actually performed;
- (2) pension for service in the Army, Navy or Air Force;
- (3) other benefits administered by the Department of Veterans Affairs unless such benefits are payable for the same injury or the same death; and
- (4) retired pay, retirement pay, retainer pay or equivalent pay for service in the Armed Forces or other uniformed services, subject to the reduction of such pay in accordance with section 5532(b) of title 5, United States Code.

“However, eligibility for or receipt of benefits under subchapter III of chapter 83 of this title or another retirement system for employees of the [g]overnment, does not impair the right of the employee to compensation for scheduled disabilities specified by section 8107(c) of this title.”³ (Emphasis added.)

ANALYSIS

The issue in this case is not the percentage of additional impairment found or the amount of compensation awarded in the Office’s January 9, 2004 decision. Appellant stated on January 15, 2004 that he felt he received a fair settlement for his disability. The issue is whether the Office abused its discretion in denying a lump-sum payment for this additional award. Section 8135(a) of the Act provides that the liability of the United States for compensation to a beneficiary in the case of death or of permanent total or permanent partial disability may be discharged by a lump-sum payment under certain conditions.⁴ But the Office did not deny a lump-sum payment under this section. Instead, it denied any additional payment, lump sum or otherwise, prior to January 28, 2006, under the limitation imposed by section 8116, which permits no Office discretion in the matter. The Office made clear that its decision did not bar appellant from receiving a lump-sum payment at the appropriate time. So the issue here is not whether he may receive a lump-sum payment for the additional compensation awarded on January 9, 2004. The issue is when he may receive one.

The statute is clear. Because appellant previously received a lump sum in commutation of installment payments, section 8116 of the Act strictly prohibits him from receiving payment for his January 9, 2004 schedule award -- which is “remuneration of any type” from the United States -- until the expiration of the period during which the installment payments would have continued or until January 28, 2006. He may, under this statute, receive retirement benefits during the period covered by his current lump-sum settlement agreement, but he may receive no further compensation until that period expires. The Board will affirm the Office’s October 25, 2004 decision, denying additional compensation before January 28, 2006.

³ 5 U.S.C. § 8116(a) (emphasis added).

⁴ *Id.* at § 8135(a).

Section 8116 of the Act is not the only reason appellant must wait for the additional compensation awarded on January 9, 2004. On June 30, 1999 he signed an agreement whose terms clearly spelled out the limitation on his right to receive further compensation benefits. Appellant received a large sum of money in exchange for his agreement that this payment represented a full and final settlement of the schedule award that ends on January 28, 2006. This agreement is consistent with the limitation imposed by section 8116 of the Act and appellant is bound by those terms. It is no argument that the Office already violated section 8116 when it agreed to pay appellant a second lump sum on June 30, 1999, three years before the expiration of the period during which installment payments would have continued under the previous schedule award. He should not have received that compensation before August 10, 2002; that appellant did so is no justification for violating section 8116, a second time with the payment of additional compensation before January 28, 2006.

CONCLUSION

The Board finds that the compensation awarded on January 9, 2004 is not payable before January 28, 2006, when the period covered by appellant's June 30, 1999 lump-sum settlement agreement expires.

ORDER

IT IS HEREBY ORDERED THAT the October 25, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board