



On May 19, 2005 appellant asserted his “valid right to damages due as a result of my on-the-job injury.” He based his right to damages, in part, on the following:

“Compensation for pain and reduced social value based on the point valuation of the examining physician indicated on the enclosed copy of the physician’s report dated 3 May 2005. The valuation a total of 770 points, compensation for one point is 100 Czech crowns -- [a] total of 77,000 Czech crowns.”

On May 3, 2005 Dr. Viteslav Sarata, an orthopedist, reported permanent damage to appellant’s right knee: “damaged posterior corner of the interior meniscus -- limited movement of the right knee.” Citing to 440/2001 Sb. (document 440 of the 2001 Collection of Laws or Sbírka zákonů), he reported 70 points for pain and 700 points for “permanent effects after injury to the soft knee,” for a total of 770 points.

On August 31, 2005 the Office accepted appellant’s claim for medial meniscus tear of the right knee and right knee bursitis.

The American Embassy in Prague provided a copy of section 193 of the Czech Republic Labor Code:

“(1) In the case of an employee who sustains an injury at work (an industrial injury) or who has been diagnosed as having an occupational disease, he shall be compensated by his employer to the extent to which the employer is liable; the employer shall compensate such employee (proportionately) for --

- (a) loss of earnings;
- (b) pain and aggravation of social self-assertion (usefulness);
- (c) the purposefully incurred cost of medical treatment;
- (d) material damage; the provisions of section 187(3) shall apply to this case.”

The American Embassy human resources officer confirmed that, in cases of injury at work, the employer shall compensate the employee for, among other things, pain and aggravation. The officer continued: “Pain and aggravation payments are on a point system. His injury has been rated at 70 points x 120 Czech crowns = 8,400 (approximately \$350[.00]).”

The Office determined that appellant was entitled to 34,358 Crowns for wage loss. To this, it added compensation for pain and aggravation: “Medical evidence on file rates the claimant’s ‘pain and aggravation’ at 70 points. These points are multiplied by 120 Czech Crowns (the amount per point as indicated by the State Department) and total 8,400 Crowns.” The Office converted the total, 42,758 Crowns, into \$1,761.16 U.S. using the exchange rate in effect on the date of injury.<sup>1</sup> It paid appellant this amount rounded to the nearest dollar.

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<sup>1</sup> 0.0411893337

In a decision dated February 24, 2006, the Office determined that reimbursement for wage loss under the Federal Employees' Compensation Act would have totaled \$3,344.41 and that appellant was, therefore, entitled to Czech Republic compensation.<sup>2</sup>

On appeal to the Board, appellant argues that the Office should have reimbursed him under the Czech Republic Labor Code for the 700 points his physician reported for "permanent effects after injury to the soft knee." He requested an oral argument, which the Board scheduled for January 18, 2007. On December 18, 2006, however, appellant advised that the Director of the Office had contacted him to point out that his (Form CA-7) did not include a claim for a schedule award, so there was no appealable issue. The Director further advised appellant that he had to file a new Form CA-7 before he could be compensated for the permanent impairment to his knee. On that basis appellant indicated that he was withdrawing his appeal. On January 3, 2007 the Board notified appellant that his oral argument was canceled but that the case would be submitted to the Board for a decision on the record.

### **LEGAL PRECEDENT**

Section 8137 of the Act provides compensation to an employee or a dependent, who is neither a citizen nor a resident of the United States or Canada. Subsection (a) provides that when the Office finds that the amount of compensation payable to such an employee or dependent under the Act is substantially disproportionate to compensation payable in similar cases under local law, the Office may provide for payment of compensation on a basis reasonably in accord with prevailing local payments in similar cases, either by "the adoption or adaption of the substantive features, by a schedule or otherwise, of local workmen's compensation provisions or other local statute, regulation or custom applicable in cases of personal injury or death," or by "establishing special schedules of compensation for injury, death and loss of use of members and functions of the body for specific classes of employees, areas and places."<sup>3</sup>

The Office has determined that the compensation provided under the Act is substantially disproportionate to compensation payable in similar cases under local law.<sup>4</sup> Pursuant to 5 U.S.C. § 8137, therefore, the benefit features of local workers' compensation laws or provisions in the nature of workers' compensation, in effect in areas outside the United States, any territory or Canada shall, effective as of December 7, 1941 and as recognized by the Director, be adopted and apply in the cases of employees of the United States who are neither citizens nor residents of the United States, any territory or Canada, unless a special schedule of compensation for injury or death has been established for the particular locality or for a class of employees in the particular locality.<sup>5</sup>

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<sup>2</sup> The Office determined this amount by multiplying the weekly pay rate by the number of weeks lost. Applying the proper pay rate for a married claimant lowers the figure to \$2,508.31, which is still more than the compensation the Office calculated under the Czech Republic Labor Code. 5 U.S.C. §§ 8105, 8110.

<sup>3</sup> 5 U.S.C. § 8137(a).

<sup>4</sup> 20 C.F.R. § 25.1 (1999).

<sup>5</sup> *Id.* at § 25.2(a).

The special schedule of compensation<sup>6</sup> extends to cover only the Republic of the Philippines, Australia, certain Japanese seamen and certain nonresident aliens in the Territory of Guam.<sup>7</sup>

### ANALYSIS

The Board denies appellant's motion to dismiss the appeal. Although appellant did not check the box for a schedule award on his Form CA-7, his May 19, 2005 letter asserting his "valid right for damages" contains clear words of claim for further compensation. The Board will exercise its jurisdiction to review the Office's February 24, 2006 decision.

Appellant is a citizen and resident of the Czech Republic. As the Office has administratively determined that the compensation provided under the Act is substantially disproportionate to compensation payable in similar cases under local law and as the special schedule of compensation does not extend to the Czech Republic, the Office properly adopted the benefit features of the Czech Republic Labor Code.

The benefit features of the Czech Republic Labor Code are not sufficiently set out in the record. The Department of State, through the American Embassy in Prague, provided a single page showing section 193 of the Czech Republic Labor Code. That information contains no reference to the assignment of "points," the monetary value of "points" or to other provisions that might have guided the disability evaluation performed by Dr. Sarata, appellant's orthopedist. As noted earlier, section 193 of the Czech Republic Labor Code provides compensation for pain and "aggravation of social self-assertion (usefulness)." The Board cannot determine whether this encompasses, in Dr. Sarata's words, "permanent effects after injury to the soft knee." The record is insufficient to allow a review of whether appellant is entitled, under Czech law to compensation for the permanent effects of the injury to his knee and what level of compensation appears reasonable in accord with prevailing local payments in similar cases. The Board will, therefore, set aside the Office's February 24, 2006 decision and remand the case to the Office for further development and an appropriate final decision on his claim for "permanent effects after injury to the soft knee."

### CONCLUSION

The Board finds that this case is not in posture for decision. The record does not sufficiently set out the benefit features of the local workers' compensation law. Further, development is warranted.

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<sup>6</sup> *Id.* at §§ 25.100-25.102.

<sup>7</sup> *Id.* at §§ 25.200-25.203.

**ORDER**

**IT IS HEREBY ORDERED THAT** appellant's motion to dismiss is denied. The February 24, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: January 25, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board