

He received treatment at a Somalian hospital, then went to a refugee camp and eventually immigrated to the United States in 1993. The Office determined in a March 11, 2004 decision that appellant was entitled to wage-loss compensation from April 14, 1998 to April 19, 2002, and that, under Somali law, he was entitled to \$3,361.00. The Board remanded the case for further development on several issues. The medical evidence did not clearly establish the period of employment-related disability. In addition, there remained the issue as to the amount of compensation. Appellant was not a resident of the United States on December 14, 1990, but had immigrated to the United States and apparently became a resident in 1995. If appellant was owed compensation for a period when he was not a U.S. citizen or resident, it may be appropriate to pay benefits under local law pursuant to 5 U.S.C. § 8137. The complete history of the case is contained in the Board's prior decision and is incorporated herein by reference.

The Office referred appellant to Dr. Edward Kelly, an orthopedic surgeon, for a second opinion examination. In a report dated April 28, 2005, Dr. Kelly provided a history and results on examination. He diagnosed status post gunshot wounds of the right forearm and left upper arm, with fracture of the right proximal radius. Dr. Kelly indicated that appellant was permanently disabled. With regard to the period of disability, Dr. Kelly stated, "He has not worked since 1998 and I do not believe he was able to work in his position as a chauffeur or any other driving occupation. That type of work demands full use of forearm rotation that he does not have."

In a letter dated June 28, 2005, appellant's representative stated that appellant last worked in February 1998. He indicated that appellant did not remember the specific date. The Office advised appellant by letter dated July 28, 2005 that he would be entitled to compensation for wage loss from the last day he worked, if he provided the specific date.

By decision dated September 13, 2005, the Office determined that appellant was entitled to compensation for wage loss from April 14, 1998. The Office found that, since appellant became as U.S. resident in 1995, he would not be paid compensation pursuant to Somali law. According to the Office, the pay rate on the date of injury was \$21.81 per week. With respect to a schedule award, the Office made additional findings.

Appellant requested a hearing before an Office hearing representative, which was held on January 19, 2006. He indicated that after he was injured he did not return to work and the American Embassy evacuated on January 27, 1991. After appellant left the hospital, he went to Kenya and lived in a refugee camp. He then came to the United States in 1993, and in 1994 he began working in various jobs, including meat packing, cashier and small truck driver. Appellant indicated that the last job he had in 1998 was as an automobile mechanic; he underwent surgery in 1998 and his condition deteriorated.

By decision dated April 20, 2006, the hearing representative affirmed the September 13, 2005 decision with respect to the period of disability and pay rate. The case was remanded for further development on the schedule award issues.

LEGAL PRECEDENT

The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.² When the Office refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, the Office should secure an appropriate report on the relevant issues.³

ANALYSIS

With respect to the period of disability claimed in this case, the Office relied on the opinion of Dr. Kelly, the second opinion examiner. Dr. Kelly, however, provided only a brief statement that appellant "has not worked since 1998 and I do not believe he was able to work" as a driver. He did not discuss appellant's work history or provide additional explanation. The history of the case indicated that appellant received gunshot wounds, was hospitalized, then immigrated to Kenya and eventually came to the United States and began working in 1994. A physician's opinion on the total period or periods of disability must address the factual and medical history and clearly explain whether appellant was disabled during the period December 14, 1990 through 1998. It is understood that under the circumstances of this case there is little medical evidence prior to appellant's treatment in 1998, but the issue is a medical issue and a physician must provide a rationalized medical opinion based on the available evidence.

The case will be remanded for the Office to secure a supplemental report from Dr. Kelly on the issue of disability for the date-of-injury position. The statement of accepted facts should reflect the testimony of appellant regarding the factual history after December 14, 1990 and his work history in the United States. The Board notes that, if appellant had disability prior to becoming a U.S. resident in 1995, this would again raise the issue of compensation pursuant to local law as opposed to benefits under the Federal Employees' Compensation Act. The Office should make appropriate findings in this regard as discussed in the Board's prior decision.

It is also noted that the date disability began is relevant to the issue of pay rate for compensation purposes. The September 13, 2005 decision found that the pay rate was based on the date of injury, although at the same time it found the date disability began was April 14, 1998. Section 8101(4) provides monthly pay is the pay at the time of injury or the date disability began, whichever is greater. On remand the Office should ensure that findings regarding pay rate are consistent with section 8101(4) and the relevant medical evidence, and are documented by the evidence of record.

² *Anna M. Delaney*, 53 ECAB 384 (2002).

³ See *Robert Kirby*, 51 ECAB 474, 476 (2000); *Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

CONCLUSION

The case is remanded to the Office for additional development of the medical evidence regarding the total period of disability.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 20, 2006 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: March 15, 2007
Washington, DC

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

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

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