

**United States Department of Labor
Employees' Compensation Appeals Board**

J.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Denver, CO, Employer**

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**Docket No. 08-1178
Issued: December 22, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 13, 2008 appellant filed a timely appeal from the February 26, 2008 merit decision of the Office of Workers' Compensation Programs which denied compensation for wage-loss compensation during the period of a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this decision.

ISSUE

The issue is whether the Office properly denied compensation for wage loss for a period in which appellant was in receipt of a schedule award under a different Office claim.

FACTUAL HISTORY

On October 18, 2007 appellant, then a 51-year-old rural carrier, alleged that she injured her left shoulder during the performance of her duties on October 17, 2007. The Office assigned the claim, file number xxxxxx327, and accepted her claim for left biceps subluxation and left rotator cuff strain. On January 22, 2008 appellant underwent surgery for her left biceps

tendinosis. She filed claims for wage loss from December 29, 2007 through February 1, 2008 under file number xxxxxx327.

In a decision dated February 26, 2008, the Office denied appellant's claim for wage loss in file number xxxxxx327 on the grounds that she was currently receiving a schedule award involving the same part of the body under her other case file and, therefore, she was not entitled to concurrent payments for wage loss.

Relevant to the Office's February 26, 2008 adjudication in file number xxxxxx327, the record reflects that appellant has three prior claims with the Office. Under file number xxxxxx710,¹ the Office accepted that as of January 1, 1998 appellant developed bilateral carpal tunnel syndrome and right shoulder impingement syndrome due to work activities. In June 2001, appellant underwent an authorized right carpal tunnel release. In August 2007, the Office accepted a recurrence of appellant's left carpal tunnel syndrome and authorized left carpal tunnel release. On March 12, 2001 a schedule award was awarded for 11 percent right arm impairment for the period December 15, 2000 through August 12, 2001.

Under file number xxxxxx665, the Office accepted that appellant sustained a left superior glenoid labrum lesion, right knee contusion and aggravation of right knee osteoarthritis on February 6, 2004. Appellant received two schedule awards in conjunction with this claim. On January 4, 2005 she received a schedule award for 11 percent left arm impairment for the period November 27, 2004 to July 25, 2005. On August 8, 2005 appellant received a schedule award for 16 percent right leg impairment for the period July 26, 2005 through June 13, 2006.

Under file number xxxxxx853, the Office accepted that, as of August 1, 2006, appellant sustained other affections of left shoulder and adhesive capsulitis of left shoulder. On July 16, 2007 appellant received a schedule award for an additional 24 percent impairment of the left arm for the period April 3, 2007 through September 8, 2008. The Office noted that appellant had a 35 percent total permanent impairment of the left arm, which was comprised of the previously awarded 11 percent permanent impairment of the left arm under file number xxxxxx565 and the current 24 percent permanent impairment of the left arm. By letter dated August 1, 2007, the Office offered appellant a lump-sum payment for her remaining schedule award in the amount of \$35,504.84 as of September 2, 2007. It advised:

“Any lump-sum payment will represent full and final compensation payment for the period of the award even if you suffer a recurrence of total disability. If you elect to receive your schedule award in this form, please sign the attached agreement and return it to this Office as soon as possible.”

On August 7, 2007 appellant agreed to accept \$35,504.84 in payment of compensation for the commuted value of further installments of compensation for the remainder of the schedule award to her left arm payable from September 2, 2007 through September 8, 2008. On August 14, 2007 the Office paid appellant \$35,504.84 as a lump-sum payment for the remainder of the schedule award for September 2, 2007 through September 8, 2008.

¹ File number xxxxxx710 is the master file for appellant's current claims.

LEGAL PRECEDENT

As used in the Federal Employees' Compensation Act,² the term disability means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.³

Section 8107 of the Act⁴ authorizes the payment of schedule awards for the loss or loss of use, of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment.⁵

Disability is not synonymous with physical impairment, which may or may not cause incapacity to earn wages.⁶ An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to compensation for loss of wage-earning capacity.⁷ When, however, the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁸ Compensation for loss of wage-earning capacity is based upon loss of the capacity to earn, not upon actual wages lost.⁹

A schedule award is payable consecutively but not concurrently with an award for wage loss for the same injury.¹⁰ A schedule award for one injury may be paid concurrently with compensation for wage loss paid for another injury, as long as the two injuries do not involve the same part of the body.¹¹

² 5 U.S.C. §§ 8101-8193.

³ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ See *Fred Foster*, 1 ECAB 21 at 24-25 (1947) (finding that the Act provides for the payment of compensation in disability cases upon the basis of the impairment in the employee's capacity to earn wages and not upon physical impairment as such).

⁷ See *Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained an impairment of his legs because of work-related thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury).

⁸ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

⁹ *George W. Coleman*, 38 ECAB 782 (1987).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5.(a)(3) (March 1995).

¹¹ *Id.* at Chapter 2.808.5(a)(4). See *Michael J. Biggs*, 54 ECAB 595, 596-97 (2003).

ANALYSIS

After the Office accepted appellant's October 17, 2007 claim for left shoulder injuries, appellant claimed for compensation alleging disability for work from December 29, 2007 through February 1, 2008. The record indicates, however, that she was receiving a schedule award covering this period in file number xxxxxx853. On August 14, 2007 the Office paid appellant \$35,504.84 as the lump sum of the remainder of the schedule award for September 2, 2007 through September 8, 2008. In its letter dated August 1, 2007, it explicitly informed appellant that, because she was receiving a lump-sum payment, she would not be entitled to further compensation.¹² As both injuries involved the left upper extremity, the Board finds that the Office may not pay compensation for wage loss resulting from appellant's October 17, 2007 injury concurrently with the schedule award for her August 1, 2006 injury, which covered the period September 2, 2007 through September 8, 2008.

CONCLUSION

The Board finds that the Office properly denied compensation for wage loss while appellant was in receipt of a schedule award under a different claim number.

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2008
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

¹² See *Edward W. Spohr*, 57 ECAB 287, 291 (2005) (noting that the terms of a lump sum agreement for payment of a schedule award "clearly spelled out the limitation" on the claimant's right to receive further compensation benefits).