United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
and	)	**Docket No. 07-1058**
	)	**Issued: March 11, 2009**
DEPARTMENT OF THE NAVY, NAVAL SUPPLY CENTER, Oakland, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 12, 2007 appellant filed a timely appeal from the February 22, 2007 merit decision of the Office of Workers' Compensation Programs, which denied an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this denial.[1]

ISSUE

The issue is whether appellant is entitled to an increased schedule award as a result of his accepted employment injury or authorized surgery.

[1] On September 12, 2007 the Board issued an order dismissing this appeal at appellant's request. Subsequently, appellant explained to the Board that he had made a mistake and wanted the appeal reinstated. In an order dated December 11, 2008, the Board vacated its prior order and reinstated the appeal.

FACTUAL HISTORY

On January 11, 1980 appellant, then a 32-year-old warehouseman, was driving a truck and changing gears when the stick shift jumped out of gear and struck him on the palm of his right hand and thumb. The Office accepted his claim for right carpal tunnel syndrome and authorized a surgical release on May 27, 1980. On November 26, 1982 it issued a schedule award for 10 percent permanent impairment of the right upper extremity resulting from the January 11, 1980 injury. The period of the award ran from July 16, 1982 to February 19, 1983. After the schedule award expired, compensation for periods of wage loss resumed. Effective March 15, 1987, the Office terminated appellant's compensation on the grounds that the medical evidence established no continuing disability or impairment causally related to the January 11, 1980 injury.[2]

On April 21, 1998 the Office denied appellant's claim for an increased schedule award. On August 10, 2000 it reviewed the merits of that claim and denied modification of its prior decision. The Board affirmed, finding that appellant had submitted no impairment rating from a qualified physician showing that he had more than 10 percent impairment of his right upper extremity as a result of his January 11, 1980 employment injury or authorized surgery.[3] The facts of this case, as set out in the Board's prior decisions, are hereby incorporated by reference.

On February 11, 2006 appellant filed a claim for an additional schedule award. He informed the Office that it had been over 18 years "since I was terminated from my original schedule award" and he did not know where the employer had relocated. Appellant filed another claim for a schedule award on May 28, 2006 and a third claim on July 1, 2006.

On August 23, 2006 appellant requested the status of "my claim for retroactive pay because of my wrongful termination of my schedule award compensation in 1987. I am not requesting a new schedule award." On October 9, 2006 he advised that he had provided the Office with new medical opinion evidence to support that "my compensation should have continued with the 10 percent rating that I was awarded in 1982."

Appellant directed the Office's attention to an October 19, 2005 report from Dr. Louis P. Valli, an orthopedic surgeon. After reviewing the medical records, Dr. Valli reported that the prognosis of the Office medical consultant seemed appropriate, "and I see no reason to argue with his conclusion of 10 percent permanent impairment of the right upper extremity. I would agree with this assessment."

On October 2, 2006 Dr. Aubrey A. Swartz, an orthopedic surgeon and Office referral physician, examined appellant and reviewed the medical file. He stated that his examination was unremarkable, with no evidence of neurologic injury other than two borderline two-point discrimination findings in the right thumb and right little finger. There were no other findings.

[2] Whether the Office properly denied appellant's January 18, 2008 request for reconsideration of the termination of his compensation is before the Board on a separate appeal, Docket No. 08-1697, and will not be reviewed here.

[3] Docket No. 00-2708 (issued March 6, 2002).

An Office medical consultant reviewed Dr. Swartz's findings and determined that appellant had a five percent impairment of the right upper extremity as a result of having a satisfactory result following surgery. He did not recommend an increase in appellant's previous schedule award:

> "It should be noted the claimant has previously received a schedule award of 10 percent impairment for his right upper extremity. Based on the review of medical records as well as more recent evaluation by Dr. Swartz, it does not appear there has been any significant change in his condition nor worsening and, therefore, I would recommend that his [s]chedule [a]ward remain at 10 percent without increase."

In a decision dated February 22, 2007, the Office denied appellant's claim for an increased schedule award. It found that the evidence failed to establish that he had more than a 10 percent impairment of his right upper extremity, for which he had already received a schedule award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[4] 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. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[5]

A claimant seeking compensation under the Act has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.[6]

ANALYSIS

Appellant filed multiple claims for a schedule award in 2006. On August 23, 2006 he stated: "I am not requesting a new schedule award." This would appear to be at odds with his three new claims for a schedule award. Appellant did refer to a wrongful termination of his schedule award compensation in 1987 and contended that his compensation should have continued with the 10 percent rating that he was awarded in 1982. However, schedule awards made under section 8107 of the Act are limited to the number of weeks of compensation defined for permanent impairment of a member or function of the body.[7] The Board notes that for complete loss of use of an arm, the maximum number of weeks of compensation is 312 weeks.

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[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999).

[6] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[7] *See Linda R. Sherman*, 56 ECAB 127 (2004).

Although a schedule award compensates an employee for a physical impairment that is considered permanent, it does not provide permanent compensation for the remainder of the employee's life. All schedule awards expire after a certain number of weeks. A schedule award for 10 percent impairment of the right upper extremity, as in this case, expires after 31.2 weeks.[8] Appellant's schedule award ran from July 16, 1982 to February 19, 1983. At the expiration of his award on February 19, 1983, appellant received all the compensation he was entitled to for his 10 percent permanent impairment of his right arm.

Any compensation appellant received after February 19, 1983 was for injury-related wage loss and medical benefits, not for his 10 percent permanent impairment. When the Office terminated his compensation effective March 15, 1987, it did not, as appellant suggests, terminate his schedule award compensation. As noted, appellant's entitlement to schedule award compensation expired on February 19, 1983, when he received 31.2 weeks of compensation for the 10 percent impairment of his right upper extremity.

The only way appellant may possibly receive more than 31.2 weeks of compensation for permanent physical impairment is by showing that he has an increased impairment causally related to his January 11, 1980 employment injury and authorized surgery. However, appellant submitted no medical opinion evidence to establish that he has more than 10 percent impairment. Dr. Valli, his orthopedic surgeon, agreed that appellant had 10 percent impairment of his right upper extremity. Dr. Swartz, the Office referral orthopedic surgeon, found that appellant had no more than five percent impairment. An Office medical consultant noted that appellant previously received a schedule award for 10 percent impairment of his right upper extremity and there did not appear to be any significant change in his condition. Therefore, the impairment rating should remain at 10 percent without increase.

The Board finds that appellant has failed to establish that he has more than 10 percent impairment of his right upper extremity. The Board will therefore affirm the Office's February 22, 2007 decision denying appellant's claims for a schedule award.

CONCLUSION

The Board finds that appellant is not entitled to an increased schedule award as a result of his accepted employment injury or authorized surgery. Appellant has submitted no medical evidence showing that he has more than 10 percent permanent impairment of his right upper extremity.

[8] 5 U.S.C. § 8107(c)(1) (providing 312 weeks of compensation for 100 percent loss of an upper extremity), 8107(c)(19) (partial losses are compensated proportionately).

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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