



## **FACTUAL HISTORY**

OWCP accepted that appellant sustained a left knee anterior cruciate ligament (ACL) tear and left knee patellofemoral arthritis in the performance of duty on July 2, 1992.<sup>3</sup> Appellant received compensation for wage loss through January 15, 2011, when OWCP determined he no longer had a loss of wage-earning capacity.

With respect to permanent impairment to the left leg, OWCP issued schedule awards for a 16 percent impairment on January 23, 1998, a 17 percent impairment on January 19, 2003 and a 4 percent impairment on December 13, 2004. By decision dated January 25, 2011, it found that appellant was entitled to an additional 30 percent permanent impairment to the left leg. The period of the award was 86.40 weeks from January 16, 2011.

By letter dated February 22, 2011, appellant requested a lump-sum payment of the schedule award or five months in advance. In a letter dated March 7, 2011, OWCP advised appellant that a determination of a lump-sum payment was based on whether such a payment would be in his best interest. It indicated that appellant should submit evidence showing that the schedule award was not a substitute for wages.

By letter dated March 23, 2011, appellant again stated that he would like to receive a lump sum or a five-month advance. On April 1, 2011 OWCP responded that if he had returned to work or was receiving a retirement annuity, then a lump sum may be in his best interest as it would not be a substitute for lost wages. It advised appellant that he had an additional 30 days to submit relevant evidence. On April 25, 2011 OWCP received a Form EN1032 dated April 9, 2011.<sup>4</sup> Appellant indicated that he had no employment for the 15-month period covered by the form, nor had he received federal benefits or payments.

In a decision dated May 5, 2011, OWCP denied appellant's request for a lump-sum payment. It found the evidence did not establish that a lump sum was in his best interest.

## **LEGAL PRECEDENT**

Section 8135(a) of FECA,<sup>5</sup> which allows for the discharge of the liability of the United States by payment of lump sums, affords the Secretary of Labor discretionary authority to use lump sums as a means of fulfilling the responsibility of OWCP in administering FECA. OWCP's regulations provide that there is "no absolute right to a lump-sum payment" with respect to a schedule award.<sup>6</sup> A lump-sum payment may be made to an employee entitled to a

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<sup>3</sup> An April 12, 2010 memorandum to an OWCP medical adviser stated that the accepted conditions were a medial meniscus tear, complications of internal prosthetic device, left knee ankylosis and left knee osteoarthritis. The accepted conditions, according to a January 22, 2010 statement of accepted facts (SOAF), were left knee ACL tear and patellofemoral arthritis.

<sup>4</sup> The EN1032 form requests information regarding employment, volunteer work, dependents and receipt of other federal benefits or payments.

<sup>5</sup> 5 U.S.C. § 8135.

<sup>6</sup> 20 C.F.R. § 10.422(b).

schedule award “where OWCP determines that such a payment is in the employee’s best interest.”<sup>7</sup> The regulations provide that a lump-sum payment “generally will be considered in the employee’s best interest only where the employee does not rely upon compensation payments as a substitute for lost wages (that is, the employee is working or receiving annuity payments).”<sup>8</sup>

### ANALYSIS

Appellant received a schedule award for 86.40 weeks of compensation commencing January 16, 2011. He requested a lump-sum payment or an advance of five months of payments. There is no provision for an advance payment of a portion of a schedule award. As noted, OWCP does have discretionary authority to grant a single, lump-sum payment for a schedule award if it is determined to be in the employee’s “best interest.”

The record reveals that appellant is not currently working or receiving annuity payments or other benefits. The EN1032 form received on April 25, 2011 did not report any employment or receipt of retirement annuity payments. Based on the evidence of record, appellant was relying on the schedule award payments as a substitute for lost wages. He provided no evidence that he was working or receiving a regular income. Based on the standard set forth at 20 C.F.R. § 10.422(b), OWCP found there was no evidence that a lump-sum payment would be in his best interest.

The Board finds that OWCP did not abuse its discretion in denying the request for a lump-sum payment. OWCP explained its finding to appellant and the evidence of record supports the finding that a lump-sum payment was not in appellant’s best interest. Pursuant to 20 C.F.R. § 10.422(b), OWCP properly denied the request for a lump-sum payment.

On appeal, appellant refers to a travel refund not being reimbursed, and that he was told “those claims” would be paid. The only final OWCP decision before the Board on this appeal is the denial of the lump-sum request regarding his schedule award. Appellant must pursue other issues with OWCP in an appropriate manner.

### CONCLUSION

The Board finds that OWCP properly denied the request for a lump-sum payment of the July 25, 2011 schedule award.

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 5, 2011 is affirmed.

Issued: June 8, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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