United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 07-2101**
	)	**Issued: August 7, 2008**
PANAMA CANAL COMMISSION,	)	
Gatun Locks, Panama, Employer	)	

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 July 30, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated June 13, 2007. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly denied appellant's claim for an additional schedule award for her left lower extremity.

FACTUAL HISTORY

Appellant, a 38-year-old electrician, injured her arms, her lower back and her buttocks on October 24, 1994 when she stepped on a platform which collapsed underneath her. She filed a claim for benefits on October 26, 1994, which the Office accepted for cervical strain, herniated disc at L4-5. The Office paid appropriate compensation and placed her on the periodic rolls. The claim was expanded to include the conditions of urogenic bladder, urethral weakness, dysthymic disorder and reactive depression.

On December 23, 1999 appellant filed a (Form CA-7) claim for a schedule award based on a partial loss of use of her left lower extremity.

In a report dated January 3, 2000, Dr. Enrique Rodriguez-Alvarez, Board-certified in neurological surgery, diagnosed left S1 radiculopathy.

In an impairment evaluation dated December 14, 2000, an Office medical adviser found that appellant had a five percent permanent impairment of her left lower extremity based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) fifth edition. The Office medical adviser derived a five percent left-sided S1 nerve root impairment based on Table 13, page 130 and Table 11, page 48 of the A.M.A., *Guides*.

On August 3, 2001 the Office granted appellant a schedule award for a five percent permanent impairment of the left lower extremity for the period July 15 to October 23, 2001, for a total of 14.40 weeks of compensation.

In an October 31, 2006 report, Dr. Alvarez stated that appellant had a 15.4 percent left lower extremity impairment. He advised that she reached MMI on December 31, 2005.

By letter dated January 29, 2007, appellant filed a CA-7 claim form for an additional schedule award based on a partial loss of use of her left lower extremity.

By telephone call dated April 25, 2007, the Office advised appellant that she was not entitled to receive compensation for a schedule award and wage loss at the same time.

In a report dated May 12, 2007, Dr. Jason D. Eubanks, Board-certified in orthopedic medicine, determined that appellant had a 17 percent impairment of the left lower extremity. He arrived at this rating based on the following findings: A Grade 2 sensory deficit at L5 pursuant to Figure 15-15 at page 424 of the A.M.A., *Guides*, which yielded a 4 percent left lower extremity impairment when calculated with Figure 15-18 at page 424; a Grade 2 sensory deficit at S1 pursuant to Figure 15-15 at page 424, which yielded a 4 percent left lower extremity impairment when calculated with Figure 15-18 at page 424; a Grade 4 motor weakness at L5 pursuant to Figure 15-15 at page 424, which yielded a 7.4 percent left lower extremity impairment when calculated with Figure 15-18 at page 424; and a Grade 4 motor weakness at S1 pursuant to Figure 15-15 at page 424, which yielded a 1.6 percent left lower extremity impairment when calculated with Figure 15-18 at page 424.

In a decision dated June 13, 2007, the Office denied appellant's claim for an additional award for the left lower extremity. It found that, the medical evidence supported an increase in her schedule award for a left lower extremity impairment to 17 percent; however, the Office noted that the date of maximum medical improvement (MMI) was December 31, 2005 and she had already received temporary total disability payments for the period of the award. The Office further noted that it could not choose a subsequent date for payment of the schedule award because the date of MMI was determined based on the October 31, 2006 report of Dr. Alvarez, her treating physician.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[2] However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides*, fifth edition, as the standard to be used for evaluating schedule losses.[3]

It is well settled that a claimant is not entitled to dual workers' compensation benefits for the same injury. She may not receive compensation for temporary total disability and schedule award benefits covering the same period of time.[4] As Larson points out, generally "the schedule award is added to the allowance for temporary total disability."[5] However, he makes clear that both benefits are not to be paid concurrently. In comparing schedule benefits with other benefits provided under workers' compensation laws for an injury, he notes: "It goes without saying that, when the statue provides parallel remedies for the same injury, it is not intended that claimant should have both."[6]

In line with this general principle, the Board long ago held that, "An employee cannot concurrently receive compensation under a schedule award and compensation for disability for work."[7] The Board fully explained this rationale in *Marie J. Born*.[8] While schedule awards are "in addition" to total or partial disability compensation, they are not payable concurrently with wage-loss benefits.[9]

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[1] 5 U.S.C. §§ 8101-8193*; see* 5 U.S.C. § 8107(c).

[2] 5 U.S.C. § 8107(c)(19).

[3] 20 C.F.R. § 10.404.

[4] *Benjamin Swain*, 39 ECAB 448, 454 (1988); *Robert T. Leonard*, 34 ECAB 1687, 1690 (1983); *Marie J. Born*, 27 ECAB 623, 628.

[5] A. Larson, *The Law of Workers' Compensation* § 58.15 (1992).

[6] *Id*. at § 58.20.

[7] *Andrew B. Poe*, 27 ECAB 510, 512 (1976).

[8] *See Marie J. Born supra* note 4.

[9] *See Joseph R. Waples*, 44 ECAB 936, 939 (1994) (finding that as appellant received temporary total disability benefits from the date of MMI to the date of the Office schedule award determination, the Office properly converted, retroactively, payments for that period of time to schedule award compensation).

ANALYSIS

In the present case, the Office properly found that appellant was not entitled to an additional award for the left lower extremity because she had already received temporary total disability payments for the period of the award. It noted that the date of MMI was December 31, 2005 and she had already received temporary total disability payments for the period of the award. In addition, the Office found that it could not choose a subsequent date for payment of the schedule award because Dr. Alvarez, her treating physician, had chosen the date of MMI in his October 31, 2006 report.

Dr. Eubanks found in his May 12, 2007 report, that appellant had a 17 percent impairment of the left lower extremity based on sensory deficits and motor weaknesses at L5 and S1. The A.M.A., *Guides* sets out the method by which impairments are rated for these conditions at Chapter 15, subsection 12, at page 423, which states:

"If any neural impairment is identified, proceed with the following evaluation--

> 1. Identify the nerve(s) involved, based on the clinical evaluation and the dermatome distribution charts for the lower (Figure 1) … extremity;
>
> 2. Determine the extent of any sensory and motor loss due to nerve impairment, based on Tables 15-15 and 15-16;
>
> 3. Find the maximum impairment due to nerve dysfunction in Table 15-18 for the lower extremity;
>
> 4. Multiply the severity of the sensory or motor deficit by the maximum value of the relevant nerve (Tables 15-17, 15-18). If there is both sensory and motor impairment of a nerve root, the impairment percents are combined (Combined Values Chart, p[age] 604) to determine the extremity impairment."

Dr. Eubanks correctly adhered to the method outlined above by calculating a Grade 2 sensory deficit at L5 pursuant to Table 15-15 at page 424 of the A.M.A., *Guides*, then utilizing Table 15-18 at page 424, which reflected a 4 percent left lower extremity impairment for nerve dysfunction; a Grade 2 sensory deficit at S1 pursuant to Table 15-15 at page 424, then using this figure at Table 15-18 at page 424 to rate a 4 percent left lower extremity impairment when calculated with Table 15-18 at page 424; a Grade 4 motor weakness at L5 pursuant to Table 15-15 at page 424, which yielded a 7.4 percent left lower extremity impairment when calculated with Table 15-18 at page 424; and a Grade 4 motor weakness at S1 pursuant to Table 15-15 at page 424, which yielded a 1.6 percent left lower extremity impairment when calculated with Table 15-18 at page 424. The Office found that Dr. Eubanks properly arrived at his 17 percent impairment rating by taking findings on examination and making calculations based on these findings, pursuant to the applicable standards and tables of the A.M.A., *Guides*. The Board affirms the Office's finding of a 17 percent impairment rating, as it was rendered in conformance with the A.M.A., *Guides*.

In addition, the Board finds that the Office properly found that appellant was not entitled to a schedule award for a 17 percent impairment because she already received compensation for temporary total disability during this period. The period covered by a schedule award begins on the date that the employee reaches MMI from the residuals of the accepted employment injury. The Board has explained that MMI means that the physical condition of the injured member of the body has stabilized and will not improve further. The determination of whether MMI has been reached is based on the probative medical evidence of record and is usually considered to be the date of the evaluation by the attending physician which is accepted as definitive by the Office.[10] As Dr. Alvarez, appellant's treating physician, found in his October 31, 2006 report that the date of MMI was December 31, 2005, the Board finds that the Office properly determined that appellant's schedule award was to begin on December 31, 2005. However, as noted above, appellant was already receiving temporary total disability compensation for the period December 31, 2005 and continuing for 241.92 days, the period encompassing a 12 percent schedule award (the 17 percent impairment minus the 5 percent schedule award appellant already received in December 2000). Therefore, the Office properly found that appellant was not entitled to an additional schedule award. As it is well settled under Board law that an employee cannot concurrently receive compensation under a schedule award and compensation for wage loss, the Board will affirm the Office's June 13, 2007 decision.

CONCLUSION

The Board affirms the Office's determination that appellant is not entitled to any additional award based on impairment to her left lower extremity.

[10] *Mark A. Holloway*, 55 ECAB 321 (2004).

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 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