

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MERLE L. THELEN and U.S. POSTAL SERVICE,
POST OFFICE, Omaha, NE

*Docket No. 01-153; Submitted on the Record;
Issued April 2, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly chose September 28, 1999 as the date to begin payment of appellant's most recent schedule award of compensation.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office hearing representative dated June 13, 2000 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.¹

On appeal appellant argues that the date of maximum medical improvement should be January 19, 1999, the date he returned to limited duty, and not the date of his treating physician's report, which was January 9, 1999, or the date as determined by the Office referral physician. Appellant also argues that the time value of money today which is worth more than money paid out in the future, and that, if appellant died before completion of the schedule award, the benefits would cease and remain unpaid.

The Board notes that Dr. Douglas P. Tewes, a Board-certified orthopedist, in his January 9, 1999 report, opined, without explanation or medical rationale, that appellant had reached maximum medical improvement regarding his right-sided carpal tunnel release and his right shoulder rotator cuff arthropathy only. However, no specific medically determined date of maximum medical improvement was included. He did not discuss maximum medical improvement or degree of permanent impairment with respect to appellant's right leg condition. Dr. Tewes did not provide any objective assessment or measurement quantifying appellant's impairments, and he did not refer to or apply the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, in making this conclusory determination. He further

¹ The schedule award on January 20, 2000 was for a 32 percent impairment of the right arm and an additional 9 percent impairment of the right leg for a total award of 41 percent.

stated that this permanent impairment was best assessed through a functional capacity evaluation to determine the extent of appellant's residual weakness in his right arm and shoulder, and he recommended that such evaluation be performed. Dr. Tewes also qualified his opinion on maximum medical improvement of appellant's right shoulder by stating, "If [appellant] has decided not to proceed with surgery at this point, then I would say that he has reached maximum medical improvement relative to this shoulder." Dr. Tewes concluded his report by stating that, while a functional capacity evaluation was a significant portion of the impairment rating, until this is completed and he had a chance to review it, he would not issue a permanent impairment.

The Board notes that the Federal Employees' Compensation Act Procedure Manual² states that to support a schedule award, the file must contain competent medical evidence which:

"(1) Shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred ('date of maximum medical improvement' or DMI);

"(2) Describes the impairment in sufficient detail for the CE [claims examiner] to visualize the character and degree of disability; and

"(3) Gives a percentage evaluation of the impairment (in terms of the affected member or function, not the body as a whole, except for impairment to the lungs). In members with dual functions, the physician should address both functions according to the A.M.A., *Guides*."

In this case, Dr. Tewes did not specifically indicate a date of maximum medical improvement in his report, such that January 19, 1999 was not a medically determined date, did not describe the impairment in sufficient detail, supported by objective evidence, and did not give a percentage evaluation of the impairment according to the A.M.A., *Guides*.

Dr. David Diamant, a Board-certified physical medicine and rehabilitation specialist, however, provided an extensive narrative report including multiple objective measurements establishing the nature and extent of appellant's permanent impairment, with a rationalized medical opinion regarding the date of maximum medical improvement of all of appellant's impairments, including his right lower extremity. As his report was complete, comprehensive and well rationalized, it constitutes the weight of the medical evidence in establishing appellant's date of maximum medical improvement for all of his impairments as September 28, 1999.

The Board also notes that beginning appellant's schedule award on January 19, 1999 instead of on September 28, 1999 would deny him 5.71 weeks of compensation at the increased rate effective March 1, 1999 due to a consumer price index increase.

² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(b)(1)-(3) (1995).

The Board further notes that, if appellant died before completion of the schedule award, the benefits would be paid to his dependents or to his estate as specified in 5 U.S.C. § 8109.³

As appellant has presented no colorable argument to support January 19, 1999 as the date of his maximum medical improvement, and as he would lose money if such date were adopted, the Board finds that the hearing representative's June 13, 2000 decision is correct and proper.

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 13, 2000 is hereby affirmed.

Dated, Washington, DC
April 2, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(6) (1995).