

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MONINA J. ARJONA and U.S. POSTAL SERVICE,  
POST OFFICE, San Diego, Calif.

*Docket No. 97-864; Submitted on the Record;  
Issued December 1, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant could not concurrently receive compensation pursuant to a schedule award and compensation for temporary total disability wage loss.

The Board finds that the Office properly determined that appellant may not concurrently receive compensation pursuant to a schedule award and compensation for loss of wages.

In the present case, the Office accepted that appellant, a distribution clerk, sustained a right shoulder strain as a result of a July 16, 1990 employment injury. The Office has also accepted that appellant sustained right shoulder tendinitis as a result of her employment duties on September 13, 1994. On September 20, 1995 the Office granted appellant a schedule award for a 17 percent permanent loss of use of the right upper extremity, which would be payable for the period July 10, 1995 to September 16, 1996. On November 9, 1995 the Office authorized that the remainder of appellant's schedule award be paid in a lump sum. Appellant thereafter filed Form CA-7 requesting temporary total disability wage-loss compensation for the period April 22 to May 31, 1996 and a Form CA-8 requesting wage-loss benefits from June 1 to July 13, 1996, for periods of disability following surgical procedures to her right shoulder. On May 15, 1996 the Office advised appellant that schedule award and temporary total disability benefits were not payable concurrently; however, her period of disability from April 22 to May 31, 1996 would be honored after her scheduled period expired. By decision dated October 11, 1996, the Office denied appellant's claim for wage-loss benefits for the period April 22 to July 13, 1996 because she had received a lump-sum schedule award for benefits payable through July 15, 1996 and no further monetary compensation benefits were payable for the same period of time.

Section 8107 of the Federal Employees' Compensation Act,<sup>1</sup> which provides for schedule awards for permanent loss or loss of use of enumerated members and functions of the body,

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<sup>1</sup> 5 U.S.C. § 8107.

states that schedule awards are “in addition to compensation for temporary total or temporary partial disability.” The Office’s regulations which further interpret the Act state at section 10.304(c)(3)<sup>2</sup> that compensation for schedule awards is “payable in addition to but ... not concurrently with compensation for temporary total or temporary partial disability.”

In *Marie J. Born*,<sup>3</sup> the Board explained that it was well settled that a claimant was not entitled to dual workers’ compensation benefits for the same injury. Thus, a claimant could not receive compensation for temporary total disability and compensation under a schedule award covering the same period of time. The Board noted that this principle is true generally under workers’ compensation law and specifically under the Act. The *Born* decision further noted:

“As Larson points out, generally ‘the schedule award is added to the allowance for temporary total disability.’ 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 statute provides parallel remedies for the same injury, it is not intended that [the] claimant should have both.’”

The Board concluded in *Born* that if an injury caused the employee to be disabled for work, he is entitled to receive compensation for temporary disability until he can return to work or until the commencement of the schedule award, which occurs first. The employee is then entitled, after expiration of the schedule award, to compensation for any subsequent employment-related loss of wage-earning capacity.<sup>4</sup>

The Office erred when it initially advised appellant that her claimed wage-loss benefits for the period April to July 1996 would be payable after the expiration of the period of the schedule award. Clearly to avoid double recovery of wage-loss and schedule award payments, only payment of wage-loss benefits for periods of wage loss subsequent to the period of the schedule award are allowable.

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<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> 27 ECAB 623 (1976).

<sup>4</sup> The Board has explained in other cases that this prohibition against double recover extends to those cases wherein a claimant claims benefits for a loss of wage-earning capacity during a period covered by a schedule award that he received for a permanent impairment resulting from the same injury. *Orlando Vivens*, 42 ECAB 303 (1991).

The decision of the Office of Workers' Compensation Programs dated October 11, 1996 is affirmed.

Dated, Washington, D.C.  
December 1, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member