

**United States Department of Labor  
Employees' Compensation Appeals Board**

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C.L., Appellant )

and )

DEPARTMENT OF JUSTICE, EXECUTIVE )  
OFFICE OF IMMIGRATION REFORM, )  
Miami, FL, Employer )

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**Docket No. 07-1573  
Issued: October 22, 2008**

*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  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On May 14, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 26, 2007 merit decision. 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 used the proper rate of pay for appellant's compensation for the period May 28 to November 30, 2006.

**FACTUAL HISTORY**

On August 21, 2002 appellant, a 59-year-old legal assistant, injured her right knee, right hip and lower back when she slipped and fell to the floor. She filed a claim for benefits, which the Office accepted for lumbar sprain/strain, sprain/strain of the sacroiliac ligament and contusions of the back, right hip and right knee.

On May 7, 2003 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her right leg.

On June 6, 2003 the Office granted appellant a schedule award for a 17 percent permanent impairment to her right leg for the period April 24, 2003 to March 31, 2004, for a total of 48.96 weeks of compensation. On November 1, 2005 it granted appellant an additional 20 percent schedule award, which amounted to a total 37 percent permanent impairment of the right leg. The award covered the period August 18, 2005 to September 26, 2006, for a total of 57.6 weeks of compensation. Appellant returned to full duty on August 1, 2005.

On February 25, 2006 appellant filed a Form CA-2a claim for a recurrence of her work-related disability, effective February 13, 2006. On April 6, 2006 the Office accepted appellant's claim and awarded her compensation for a recurrence of disability effective February 19, 2006. To avoid simultaneous payments, it interrupted her schedule award, beginning February 19, 2006, to permit payment of wage-loss compensation. At that time 182 of the 403.20 days of compensation had been paid, leaving 221.2 days of compensation to be paid. The Office informed appellant that she would be paid compensation based on her salary of \$46,159.00, or compensation at the rate of \$887.67 per week for temporary total disability beginning February 19, 2006.

On December 1, 2006 appellant returned to work on as a modified legal assistant with the Executive Office for Immigration Review, at a weekly salary of \$887.67.

By decision dated February 1, 2007, the Office reduced appellant's compensation to zero pursuant to sections 8106 and 8115 based on her actual wages as a modified legal assistant.

On February 13, 2007 appellant filed a Form CA-2a claim for recurrence of disability. She stated on the form that her accepted, work-related condition was "fine"; however, she advised that she was filing the claim to change her retroactive pay/salary, increase as of May 28, 2006. Appellant stated that she did not file this claim earlier because of "an error."

By letter dated February 15, 2007, appellant contended that her compensation was based on an incorrect rate of pay. She requested a "corrected" retroactive increase in her compensation payments from May 28 to November 30, 2006 based on a retroactive salary increase she received effective May 28, 2006.

By decision dated February 26, 2007, the Office found that it had properly based her rate of pay on the date her most recent recurrence of disability began, February 13, 2007, based on section 8101(4).<sup>1</sup>

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<sup>1</sup> By letter dated March 7, 2007, the Office informed appellant that because she had recently returned to work and was therefore no longer receiving wage-loss compensation, it was reinstating her schedule award payments as of December 7, 2006 to July 16, 2007, for the remaining period of 221.2 days of her schedule award.

### **LEGAL PRECEDENT**

Section 8101(4) of the Federal Employees' Compensation Act<sup>2</sup> provides:

“‘Monthly pay’ means the monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee.’”

### **ANALYSIS**

The Board finds that the Office used the proper rate of pay for appellant's compensation for the period May 28 to November 30, 2006.

In the present case, appellant was injured on August 21, 2002. The Office accepted her claim and authorized payment for temporary total disability compensation as of November 1, 2002. Appellant returned to full-time work on August 1, 2005. The Office accepted that appellant sustained a recurrence of disability due to her August 21, 2002 right knee injury as of February 13, 2006 and based her weekly compensation for temporary total disability on the weekly rate in effect as of February 13, 2006, \$887.67. Appellant subsequently received a retroactive pay increase as of May 28, 2006 and claimed that she was entitled to retroactive payments based on this increase. The Office, however, rejected this argument in its February 26, 2007 decision. It properly determined that her rate of pay under section 8101(4) of the Act was based on the rate of pay on February 13, 2006, the date of her recurrence of disability, which began more than six months after she returned to full-time work. The Office noted that the Act makes no provision for increasing the amount of compensation due to an increase in salary after the compensation rate has already been established. As it properly relied on the provisions of section 8101(4), the Board affirms the February 26, 2007 Office decision.

### **CONCLUSION**

The Board finds that the Office of Workers' Compensation Programs used the proper rate of pay for appellant's compensation for the period May 28 to November 30, 2006.

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<sup>2</sup> 5 U.S.C. § 8101(4).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 26, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 22, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board