U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND K. BLACK and U.S. POSTAL SERVICE,
POST OFFICE, Blacksburg, SC

Docket No. 00-1490; Submitted on the Record;
Issued May 15, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established entitlement to compensation for eight hours per week commencing October 25, 1991.

On October 25, 1991 appellant, a 39-year-old part-time flexible letter carrier, filed a claim alleging that he sustained injury in the performance of duty when he stepped off a porch. The Office of Workers' Compensation Programs accepted the claim for cervical and lumbar strain. Appellant began working in a light-duty position. The record indicates that appellant was off work from August 8, 1992 to October 11, 1993; he also claimed intermittent dates of disability and was paid compensation.

On January 31, 2000 appellant filed a Form CA-7 (claim for compensation), claiming eight hours a week of compensation from October 25, 1991. By decision dated February 29, 2000, the Office denied the claim.

The Board finds that appellant has not established entitlement to compensation for eight hours a week commencing October 25, 1991.

The term "disability" as used under the Federal Employees' Compensation Act, means the incapacity, because of injury in employment, to earn the wages which the employee was receiving at the time of injury.[1] Once a period of disability is established, an employee is paid compensation for wage loss based on his monthly pay. Under 5 U.S.C. § 8101(2), "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 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater.…" The determination of the amount of monthly pay is made pursuant to the provisions of 5 U.S.C. § 8114.

[1] *Donald Johnson*, 44 ECAB 540, 548 (1993); 20 C.F.R. § 10.5(f).

According to the record, on October 25, 1991 appellant was a part-time flexible employee with no regular schedule. In September 1996, appellant was offered a light-duty job at 32 hours per week. It appears to be appellant's contention that he should receive an additional 8 hours of compensation for every week since his injury, because his injury has prevented him from working a 40-hour week. He states that other part-time employees have been working 40 hours or more per week.

As noted above, appellant must first establish that he is "disabled" under the Act. At the time of injury, he was a part-time flexible employee. According to the record, he was earning approximately $443.00 per week at that time. He continued to work as a part-time flexible and in August 1992 he was earning $458.00 per week. Appellant did not show any loss of wage-earning capacity until he stopped work in August 1992 and then he was properly paid compensation in accord with sections 8101(2) and 8114. The wages of other employees are not relevant to the issue presented. Appellant must establish the incapacity to earn the wages *he* was earning at the time of the injury. He is then paid compensation based on the pay rate as determined under section 8114, at the time specified under section 8101(2). Appellant has not provided evidence to establish any additional periods of disability in addition to those for which he has already received compensation.

With respect to periods for which compensation has already been paid, appellant has not provided evidence to establish that the compensation actually paid was improperly calculated. Part-time flexible employees who work substantially the whole year have a pay rate computed under section 8114(d)(1)(B).[2] There is no probative evidence of record indicating that the pay rate was incorrectly calculated in this case. When appellant stopped working in August 1992, for example, his pay rate for compensation purposes was based on his monthly pay at that time, in accord with sections 8114 and 8101(2). Accordingly, the Board finds that the Office properly denied the claim for additional compensation in this case.

[2] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rate*, Chapter 2.900.4(c)(2) (December 1995). 5 U.S.C. § 8114(d)(1)(B) provides that the daily wage is multiplied by an appropriate number, based on the number of days in the work week, to determine average annual earnings.

The decision of the Office of Workers' Compensation Programs dated February 29, 2000 is affirmed.

Dated, Washington, DC
May 15, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member