

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN J. MILLS and U.S. POSTAL SERVICE,
POST OFFICE, Tulsa, Okla.

*Docket No. 97-1657; Submitted on the Record;
Issued April 8, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs paid appellant the correct amount for her schedule award for a 14 percent permanent impairment of the left leg.

Appellant sustained an injury to her left knee in a slip and fall injury on July 10, 1990. She returned to light-duty work the following day, and was separated by the employing establishment when her temporary appointment expired on September 30, 1990. The Office paid appellant compensation for temporary total disability beginning September 30, 1990, interrupted this compensation for payment of a schedule award from March 1, 1991 to June 6, 1992 for a 23 percent permanent impairment of the left leg, and thereafter resumed payment of compensation for temporary total disability.

On December 10, 1996 appellant filed another claim for a schedule award. The Office determined that she had a 37 percent, equal to a 14 percent additional, permanent impairment of the left leg. On January 22, 1997 the Office issued appellant a schedule award for an additional 14 percent permanent impairment of the left leg. The amount of the first check, covering the period from January 5 to February 1, 1997, was \$859.00, which was also listed as the amount of the continuing payments each four weeks.

On February 20, 1997 the Office issued an amended schedule award for this 14 percent additional permanent impairment of the left leg. The amount of the first, and each continuing four-week check, was listed as \$617.00.¹ An Office memorandum stated that the number of days to be paid under the schedule award, 282.24, was inadvertently keyed in as the pay rate of \$282.24, and that the correct pay rate was \$202.93. On appeal, appellant questions why her compensation payment was reduced from \$859.00 to \$617.00.

The Board finds that the case is not in posture for a decision.

As noted above, appellant received compensation, either for temporary total disability or pursuant to a schedule award, from the date she stopped work, September 30, 1990, until the

¹ The Office also declared an overpayment of compensation in the amount of \$242.00, but it later waived recovery of this overpayment.

commencement of her second schedule award on January 5, 1997. The Office's records indicate that in 1996 appellant received compensation in the amount of \$857.00 each four weeks, and that this payment was based on appellant's pay rate on July 10, 1990 of \$202.93.² The Office indicated that its amended schedule award was based on this same rate of pay.

Although the Office's records do not provide enough information for the Board to make a definitive determination, it appears that the Office, in its amended schedule award paying appellant \$617.00 each four weeks, did not include cost-of-living increases applicable since appellant stopped work. Section 8146a of the Federal Employees' Compensation Act³ provides that compensation payable on account of disability or death which occurred more than one year before March 1 of each year shall be increased by an amount representing the percent change in the price index for the previous year. The term "disability," as used in the schedule award provision of the Act,⁴ has been construed as meaning "physical impairment" and section 8146a applies to such awards.⁵ Appellant is entitled, in payment of her additional schedule award beginning January 5, 1997, to all cost-of-living increases effective more than one year after her entitlement to compensation which began on September 30, 1990. The case will be remanded to the Office for recalculation of appellant's payments under this schedule award.

The decision of the Office of Workers' Compensation Programs dated February 20, 1997 is set aside with regard to the amount of payments to be made⁶ and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
April 8, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

² Appellant's rate of pay was the same on the date of the injury as on the date she stopped work.

³ 5 U.S.C. § 8146a.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.314; *Franklin Armfield*, 29 ECAB 500 (1978).

⁶ On appeal, appellant does not contend that she has greater than a 37 percent permanent impairment of the left leg.