

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SANDRA D. ROBINSON and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Houston, TX

*Docket No. 99-625; Submitted on the Record;  
Issued December 15, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether, beginning March 18, 1996, the Office of Workers' Compensation Programs paid appellant the proper amount for her loss of wage-earning capacity.

The Office accepted that appellant's January 14, 1994 injury, in which her chair tipped over, resulted in strains of the cervical and thoracic spine and a left shoulder strain. Appellant received continuation of pay from January 15 to February 28, 1994, followed by compensation for temporary total disability until she returned to work on a part-time basis on March 14, 1994. She again stopped work on May 29, 1994 to undergo shoulder surgery on June 3, 1994. The Office resumed payment of compensation for temporary total disability which continued until appellant returned to work on January 9, 1995. This return to work was to the position she held when injured -- contact representative -- and was for five hours per day, four days per week, as recommended by her attending physician. Beginning January 9, 1995, the Office began paying appellant compensation for the 20 hours per week she was unable to work.

In an undated letter received by the Office on April 10, 1996, appellant contended that the Office was paying her at an incorrect pay rate, as her pay scale had increased since January 1995. In a letter dated August 15, 1996, the Office advised appellant that her compensation was based on her rate of pay on January 14, 1994 and did not reflect increases in her salary. By letter dated October 9, 1996, the Office advised appellant that the medical evidence indicated that, for the period March 18 to May 24, 1996, she was capable of working 5 hours per day, 5 days per week and that compensation was paid for only 3 hours per day, 5 days per week, for a total of 150 hours for the 10-week period. By letter dated October 15, 1996, appellant advised the Office that she had not been released for 25 hours per week of work.

By decision dated June 25, 1997, the Office found that the position of modified duty contact representative in which appellant had been employed since January 9, 1995 fairly and reasonably represented her wage-earning capacity. The Office advised appellant that her compensation had been adjusted based on her actual earnings.

By letter dated June 15, 1998, appellant requested reconsideration, contending that she had been paid for an incorrect number of hours and at an incorrect pay rate since March 18, 1996. By decision dated September 1, 1998, the Office found that the medical evidence did not show that appellant was unable to work any less than 20 hours per week, that the Office was not under further obligation to pay her for an additional 5 hours per week and that the proper rate of pay -- the pay she was receiving on the date of her injury -- was used.

The Board finds that the Office used the correct rate of pay to calculate appellant's compensation.

Section 8101(4) of the Federal Employees' Compensation Act,<sup>1</sup> under which the Office determines an employee's rate of pay for the purpose of calculating compensation, states in pertinent part: "'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 resumes regular full-time employment with the United States, whichever is greater." In the present case, appellant's disability began at the time of her injury on January 14, 1994, and she did not sustain a recurrence of disability more than six months after she returned to work. The Office thus properly based appellant's compensation on her rate of pay at the time of her injury on January 14, 1994.

The Board further finds that the Office paid appellant for an incorrect number of hours for at least some of the period beginning March 18, 1996.

As appellant was advised in the Office's October 9, 1996 letter and as shown by the Office's computation log and payment stub, she was paid for only 15 hours per week of time lost from work from March 18 to May 24, 1996. Contrary to the Office's October 9, 1996 letter, the medical evidence did not show that appellant was capable of working 25 hours per week and appellant did not actually work more than 20 hours during any of the weeks of this period. She is thus entitled to additional compensation based on an additional five hours per week of time lost from work during this period. The Office's September 1, 1998 decision reflects an incorrect impression by the Office that appellant was seeking compensation for more than 20 hours per week.

The Office's records reflect that payment for only 15 hours per week continued through September 27, 1996. As for the period from March 18 to May 24, 1996, the medical evidence does not establish that appellant could work more than 20 hours per week, and she did not do so. The case will be remanded for payment of additional compensation for the period from March 18 to September 27, 1996.

For the periods after September 27, 1996, the Board is unable to determine whether appellant was paid for the proper number of hours lost from work each week. The payment for the period from September 30 to December 20, 1996, which is 12 weeks, was for 240 hours, which is correct, but the subsequent payment records do not cover the remainder of the

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<sup>1</sup> 5 U.S.C. § 8101(4).

compensation paid after September 27, 1996 or do not indicate the number of hours paid. The case will be remanded to the Office for investigation into the number of hours per week appellant received payment for each period after September 27, 1996, and for payment of any additional compensation due if payment was for fewer than 20 hours per week.

The decision of the Office of Workers' Compensation Programs dated September 1, 1998 is affirmed, insofar as it determined that the Office used the proper rate of pay to calculate appellant's compensation. Insofar as this decision found appellant was not entitled to any additional compensation, it is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC  
December 15, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member