

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM KNAUER and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Orlando, Fla.

*Docket No. 96-1111; Oral Argument Held March 19, 1998;
Issued January 14, 1999*

Appearances: *William Knauer, pro se; Miriam D. Ozur, Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs used the proper rate of pay in computing appellant's compensation for the period beginning May 3, 1992.

Appellant sustained an injury to his right knee on October 28, 1986 while turning over hampers. He first stopped work following this injury on May 2, 1987 and the Office authorized leave buy back during his absence from work from this date until he returned to work on June 1, 1987. Appellant's rate of pay on May 2, 1987 was \$404.94, which included night differential and Sunday premium. In July 1991 the Office accepted that appellant sustained gastritis and esophagitis as a result of medications he was taking for his accepted right knee condition. On May 1, 1992 appellant sustained an esophageal perforation resulting in pericarditis while undergoing an esophageal dilatation. The Office accepted that these conditions were related to his October 28, 1986 employment injury.

As a result of these conditions, the Office began paying appellant compensation for temporary total disability beginning May 3, 1992¹ based on a rate of pay of \$404.94 per week. In letters dated October 18, 1993 and January 11, 1994, appellant contended that his compensation was based on an incorrect rate of pay. By decision dated September 2, 1994, the Office found that it had properly based his rate of pay on the date his disability began, May 2, 1987. This decision was affirmed by an Office hearing representative in a decision dated January 24, 1996.

¹ The Office initially paid appellant for these conditions beginning May 4, 1992, but later paid him for May 3, 1992.

The Board finds that the Office used the proper rate of pay in computing appellant's compensation for the period beginning May 3, 1992.

Section 8105(a) of the Federal Employees' Compensation Act² provides: "If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of his monthly pay, which is known as his basic compensation for total disability." Section 8101(4) of the Act 5 U.S.C. § 8101(4) 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 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater...."

In the present case, appellant was injured on October 28, 1986 and his disability began on May 2, 1987. When appellant again became disabled as a result of a consequential injury related to his October 28, 1986 knee injury, he had no monthly pay, as his last day in a pay status at the employing establishment was October 25, 1991. His disability retirement began effective October 26, 1991. Since appellant had no earnings or salary from federal or civilian employment on May 3, 1992, the Office properly concluded that his highest rate of pay under section 8101(4) of the Act was the rate of pay on the date his disability began, May 2, 1987.³

Appellant did receive compensation from October 26, 1991 to May 3, 1992 that was based on a higher rate of pay than the compensation he received beginning May 3, 1992. This compensation, however, was for a different injury, one sustained on May 9, 1991, and his compensation for that injury was properly based on his monthly pay on October 26, 1991, the date his disability began following the May 9, 1991 injury. Acceptance of this injury was later rescinded by the Office. Appellant's disability beginning May 3, 1992 was related not to the May 9, 1991 injury, but to the injury consequential to the October 28, 1986 employment injury.⁴ The Office used the proper rate of pay in compensating appellant for this consequential injury.

² 5 U.S.C. § 8105(a).

³ *Fernando O. Valles*, 44 ECAB 776 (1993) (The Board stated: "In the present case, appellant had no 'pay rate' as of July 18, 1989, the date of his accepted recurrence of disability, as he had retired and had no earnings or salary from federal or civilian employment. Therefore, the Office properly concluded that the highest rate of pay under section 8101(4) was the rate of pay as of the date of injury....")

⁴ At the time appellant's appeal was filed, the Office, consistent with an Office hearing representative's January 24, 1996 decision, was further developing the evidence to determine whether a July 19, 1991 employment incident had resulted in disability after May 3, 1992.

Insofar as it determined that the Office used the proper rate of pay in computing appellant's compensation for the period beginning May 3, 1992, the decision of the Office of Workers' Compensation Programs dated January 24, 1996 is affirmed.

Dated, Washington, D.C.
January 14, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member