

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERESA L. BASHORE and U.S. POSTAL SERVICE,
POST OFFICE, Galvin, WA

*Docket No. 99-1590; Submitted on the Record;
Issued July 27, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined the rate of pay to be used in calculating appellant's compensation.

On December 2, 1997 appellant, then a 47-year-old postmaster, sustained an employment-related lumbar strain and herniated disc at L5-6 which required surgery. She did not immediately stop work but missed intermittent periods thereafter, for which she submitted CA-8 forms, claims for compensation.¹ She was paid compensation beginning March 15, 1998 at a weekly rate of \$713.58. On May 19, 1998 appellant submitted a Form CA-8 for 32 hours of leave buy back for the period December 23, 1997 to March 13, 1998. On January 15, 1999 appellant was paid compensation for the period January 2 to March 9, 1998 at a weekly rate of \$699.58, and by letter dated January 26, 1999, she was placed on the periodic rolls, effective January 3, 1999, at a weekly rate of \$699.58. The instant appeal follows.

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

Initially, the Board finds that the January 26, 1999 decision of the Office constitutes a final decision which can be appealed to the Board. The record in this case indicates that appellant was adversely affected by the Office finding that her effective pay rate was \$699.58 when it had been paying her at a rate of \$713.58.²

Under section 8101(4) of the Federal Employees' Compensation Act,³ the monthly pay to be used in computing compensation is to be the greater of either appellant's monthly pay at the

¹ The record indicates that appellant was not entitled to continuation of pay because her claim was not filed until January 28, 1998, more than 30 days after the date of injury, December 2, 1997.

² 20 C.F.R. § 501.3 provides that any person adversely affected by a final decision may file an application for review of such decision by the Board.

³ 5 U.S.C. § 8101(4).

time of injury, at the time disability begins or at the time compensable disability recurs, if it recurs more than six months after the injured employee resumes regular full-time employment. In this case, appellant was injured on December 2, 1997. The term “disability” has been defined as the inability to earn the wages that the employee was receiving at the time of the injury.⁴

The record in this case indicates that on the date of injury until January 2, 1998 appellant’s pay rate was \$36,378.00 per year which would yield a weekly rate of \$699.58. Effective January 3, 1998, her pay rate increased to \$37,106.00 which would yield a weekly rate of \$713.58.

While appellant claimed some periods of disability beginning December 23, 1997 and she was paid compensation beginning January 2, 1998, the Office decision dated January 26, 1999 provides no explanation for its finding regarding appellant’s pay rate. It is an elementary principle of workers’ compensation law that the Office is required to make findings of fact and a statement of reasons regarding the material facts of the case,⁵ and the Board has emphasized the importance of the Office giving the claimant a correct description of the basis of its decision so that the parties in interest will have a clear understanding of the precise defect of the claim and the kind of evidence that would tend to overcome it.⁶ The case will therefore be remanded to the Office for clarification of appellant’s pay rate and, after such development as deemed necessary, the Office shall issue a *de novo* decision.

⁴ See *Frazier V. Nichol*, 37 ECAB 528 (1986).

⁵ 5 U.S.C. § 8124(a); see *Beverly Dukes*, 46 ECAB 1014 (1995).

⁶ See *Fidel E. Perez*, 48 ECAB 663 (1997); *Elaine Pendleton*, 40 ECAB 1143 (1989).

The decision of the Office of Workers' Compensation Programs dated January 26, 1999 is hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.
July 27, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member