

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WANDA M. COLVIN and U.S. POSTAL SERVICE,  
POST OFFICE, Chattanooga, TN

*Docket No. 00-510; Submitted on the Record;  
Issued August 28, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant was not entitled to a recurrent pay rate.

On May 12, 1987 appellant, then a 37-year-old relief rural carrier, was involved in a motor vehicle accident while in the performance of duty when her motor vehicle ran off the road and down an embankment hitting a power pole and a pine tree. The Office accepted the claim for a fracture of the third rib, fractures of the C2 and T11 vertebrae, and a right leg (tibia) fracture. Appellant was authorized to undergo a lumbar fusion on May 26, 1987 and an internal fixation with Lotte's nail of the right tibia on August 11, 1989. The Office later expanded the claim to include osteoarthritis of the left knee as a consequential work-related injury. Appellant was released on modified light-duty work effective July 25, 1990.

On August 16, 1999 the Office issued a schedule award for 20 percent permanent impairment of the left knee. The period of the award was March 9, 1999 to April 15, 2000, or 57.60 weeks, the weekly pay rate was \$294.84, the percentage of pay rate was 75 percent for a weekly compensation of \$221.13.

In a letter received by the Office on August 26, 1999, appellant alleged that the August 16, 1999 schedule award was based on an incorrect pay rate date. She noted that the schedule award was for a consequential left knee injury and should be paid on her "present pay scale which is \$668.88 per week, at 75 [percent] and weekly compensation is \$501.66."

In a September 29, 1999 letter, appellant alleged that she had missed 225 hours for physical therapy in 1998 related to her consequential left knee injury and that she therefore should be entitled to a schedule award based on her 1998 pay rate.

In a decision dated October 14, 1999, the Office refused to modify appellant's schedule award with respect to the pay rate date. The Office noted that the correct pay rate date was May 12, 1987 and that the correct rate of pay was calculated as \$294.84 as previously stated in

the schedule award decision. The Office advised appellant that she was not entitled to a pay rate date based on recurrent disability because the file did not substantiate that she was totally disabled for work. It was noted that time off from work for physical therapy was not considered to be a complete work stoppage for purposes of total wage-loss disability.

The Board finds that the Office properly determined that appellant was not entitled to a recurrent pay rate.

In all situations under the Federal Employees' Compensation Act, compensation is to be based on the pay rate as determined under section 8101(4) which defines "monthly pay" as:

"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..."<sup>1</sup>

In this case, appellant did not resume regular full-time employment after her work injury, rather she returned to a modified position on a full-time basis. Furthermore, after she returned to work, she did not sustain a recurrence of disability as defined in the regulations. Although appellant missed time from work intermittently for medical treatment and physical therapy, this does not constitute total disability from work such that would entitle her to receive a schedule award based on a recurrent pay rate. A recurrence of disability is defined as a total work stoppage,<sup>2</sup> but appellant has not shown that there was a total work stoppage related to her consequential left knee condition. Based on a review of the record, the Board concludes that appellant's schedule award for the consequential left knee condition was correctly based on the rate of pay she was receiving when she was injured on May 12, 1987.

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<sup>1</sup> 5 U.S.C. § 8101(4).

<sup>2</sup> The Federal (FECA) Procedure Manual, Chapter 2.1500, section 3 (January 1995) defines a recurrence as "a work stoppage which occurs after an employee has returned to work following a period of disability."

The decision of the Office of Workers' Compensation Programs dated October 14, 1999 is hereby affirmed.

Dated, Washington, DC  
August 28, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member