United States Department of Labor
Employees' Compensation Appeals Board

APRIL J. DYE, Appellant	)	
and	)	**Docket No. 05-364**
	)	**Issued: September 30, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Hobe Sound, FL, Employer	)	

Appearances:
April J. Dye, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On November 30, 2004 appellant filed a timely appeal from a November 10, 2004 merit decision of the Office of Workers' Compensation Programs, terminating her compensation benefits, the Office's determination of her pay rate for the period December 4, 2002 to October 16, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to justify termination of all appellant's benefits for her accepted lumbar strain effective October 16, 2003; (2) whether appellant established that she had any continuing disability after October 16, 2003; and (3) whether the Office determined the proper pay rate for compensation benefits for the period December 4, 2002 to October 16, 2003.

FACTUAL HISTORY

On November 26, 2001 appellant then a 45-year-old clerk, filed a traumatic injury claim alleging that on November 23, 2001[1] she twisted her body and injured her lower back. The Office accepted her claim for lumbar strain and paid appropriate compensation. The record reveals that appellant had sustained a nonwork-related back injury on April 1, 2001 and returned to work in a limited-duty position, six hours per day on September 10, 2001. She did not stop work immediately following the injury but lost time intermittently from April 20 to May 18, 2002. Effective May 18, 2002 appellant stopped work and returned to work four hours per day on December 4, 2002.[2] The pay rate effective May 18, 2002 was $41,679.00.

Appellant came under the treatment of Dr. David Campbell, a Board-certified orthopedic surgeon, who noted treating her for a nonwork-related injury of April 11, 2001 and subsequent lumbar fusion. On February 14, 2002 he noted that she underwent a successful lumbar fusion in April 2001. Dr. Campbell advised that appellant sustained a temporary aggravation of her injury at work in November 2001; however, she continued to be symptomatic due to a delayed union at L5-S1. He noted that from March 28 to November 15, 2002 appellant continued to experience persistent back and leg pain and attributed this condition to a lumbar nonunion at L5-S1. In a report dated November 15, 2002, Dr. Campbell advised that appellant had reached maximum medical improvement with regard to her lumbar strain. On January 7, 2003 she returned to work four hours per day and increased her schedule to six hours per day and was having difficulty tolerating the additional hours. Dr. Campbell diagnosed lumbar strain with persistent back pain.

Appellant was also treated by Dr. Melisa K. Estes, Board-certified in physical medicine and rehabilitation, who noted treating her for her work-related injury. In reports dated May 3 to July 24, 2002, she noted performing trigger point injections to relieve low back and diagnosed low back pain with myofascial dysfunction and possible L5-S1 nonunion. A magnetic resonance imaging (MRI) scan revealed postoperative bone dowel placement L3-4 or L5-S1, with no evidence of recurrent disc herniation or abnormal enhancement to suggest inflammatory process. A computer assisted tomography (CAT) scan dated May 2, 2002 revealed postoperative changes at L3-4 and L5-S1 with satisfactory position of bone dowels, no evidence of foraminal stenosis but there was a mild bulging disc at L3-4 and L4-5. A functional capacity evaluation dated November 21, 2002 revealed that appellant could return to work in a sedentary postal clerk position with occasional lifting up to 10 pounds.

On December 4, 2002 the employing establishment offered appellant a limited-duty part-time position as a control point supervisor for four hours per day. The position was in compliance with the work restrictions set forth by her treating physician Dr. Estes. Appellant accepted the position and returned to work on December 4, 2002. The record reflects that she received disability compensation based on a 40-hour work week.

[1] The record reflects that the annual pay rate at the time of injury was $40,472.00.

[2] On May 2, 2002 appellant filed a CA-7, claim for compensation, for leave without pay for the period April 20 to May, 2002 and subsequently file CA-7's for the period through December 4, 2002.

The Office referred appellant for a second opinion to Dr. Lawrence Blumberg, a Board-certified orthopedic surgeon, to determine whether she had any residuals of her work-related lumbar strain. The Office forwarded her medical records, a statement of accepted facts and a description of appellant's employment duties. In a medical report dated February 18, 2003, Dr. Blumberg reviewed the records and performed a physical examination of her. He noted a history of her condition. Dr. Blumberg diagnosed status post multilevel anterior lumbar fusion, musculoligamentous-type sprain/strain of the lumbosacral spine. He found that appellant's current complaints are related to the nonwork-related surgery of April 2001 and advised that she could return to her date-of-injury job. Dr. Blumberg noted that there were no objective physical findings and that diagnostic studies did not reveal any significant process. He advised that appellant reached maximum medical improvement in relation to the injury of November 23, 2001 and could resume work 8 hours per day with restrictions on lifting no more than 20 pounds on an occasional basis and 10 pounds on a repetitive basis.

Appellant submitted reports from Dr. Estes dated February 4 to March 4, 2003, which diagnosed chronic back pain exacerbated by the incident of November 23, 2001. On February 4, 2003 Dr. Estes advised that appellant could work four hours per day for two weeks and increase her work to six hours for two weeks and then eight hours per day with appropriate rest breaks. She was also treated by Dr. Jay Kuchera, a Board-certified anesthesiologist, who noted in reports dated February 20 to May 14, 2003, diagnosed lumbar postlaminectomy syndrome, lumbar disc displacement, sacroilitis and intractable pain with opioid tolerance.

On February 28, 2003 the Office issued a notice of proposed termination of compensation on the basis that Dr. Blumberg's report established no ongoing residuals of the accepted back strain injury.

On March 19, 2003 the Office found that a conflict of medical opinion existed between Dr. Campbell, who indicated that appellant had residuals of her lumbar strain and Dr. Blumberg, who determined that she did not have residuals of her accepted back strain.

To resolve the conflict the Office referred appellant to Dr. Leon J. Abram, a Board-certified orthopedic surgeon. In a report dated April 2, 2003, he reviewed the records provided and performed a physical examination. Dr. Abram noted a history of appellant's work-related injury. He advised that she sustained an acute lumbar strain/sprain on November 23, 2001 which had completely resolved and that she had reached maximum medical improvement. Dr. Abram referenced Dr. Campbell's report of November 15, 2002 advising that appellant reached maximum medical improvement and that there was evidence of prior lumbar fusion surgery with possible occult nonunion or fibrous union which was felt to be minimally symptomatic. He noted that in the five months that transpired since reaching maximum medical improvement, appellant had further decline of her status regarding the spinal fusion. Dr. Campbell indicated that she had no objective findings or any specific residuals from the injury on November 23, 2001 and her current complaints were related to the prior surgery of April 10, 2001. Dr. Abram opined that appellant could return to her date-of-injury position as per the functional capacity evaluation subject to restrictions which were related to the spinal disorder and subsequent surgical treatment and healing. He indicated that there were no residual restrictions related to the November 23, 2001 injury.

Appellant disagreed with the proposed termination of compensation and submitted the April 16, 2003 medical report from Dr. Jonathan S. Schroeder, a Board-certified anesthesiologist, who noted treating her for pain and diagnosed lumbar postlaminectomy syndrome, lumbar disc displacement, myofascial pain syndrome, lumbar radiculopathy and intractable pain with opioid tolerance. Dr. Schroeder recommended a lumbar transforaminal injection. Other reports from Dr. Kuchera dated June 11 and August 6, 2003 noted treating appellant for translumbar pain with radiation into both legs. He diagnosed lumbar postlaminectomy syndrome, lumbar disc displacement, lumbar radiculopathy and intractable pain with opioid tolerance. In an October 1, 2003 report, Dr. Nathaniel R. Drourr, a Board-certified anesthesiologist, noted treating appellant for severe lumbar pain with radiation into both legs. He diagnosed lumbar postlaminectomy syndrome, lumbar disc displacement, lumbar radiculopathy, myofascial pain syndrome, sacroilitis and intractable pain with opioid tolerance.

In a letter dated April 17, 2003, appellant notified the Office that she was entitled to receive compensation for an eight-hour workday. She advised that after her nonwork-related surgery of April 2001 she returned to work four hours per day in September 2001 and increased to six hours per day in October 2001. Appellant advised that she would have increased to eight hours daily had she not sustained the work-related injury of November 23, 2001. She stated that she was a full-time regular clerk and was guaranteed eight hours per day.

By letter dated June 24, 2003, the Office advised that, at the time of appellant's work-related injury, she was working six hours per day and was not entitled to compensation for more than six hours per day. The Office indicated that she was entitled to compensation based upon her earnings at the time of injury, 23.02 hours per week. The day disability began on May 18, 2002 appellant was working 23.62 hours per week. The Office indicated that, since appellant was working six hours per day at the time disability began, she would not be entitled to an additional two hours of compensation per day.

By decision dated October 16, 2003, the Office terminated appellant's compensation benefits finding that the weight of the medical evidence rested with Dr. Abram, the impartial medical specialist.

In a decision dated November 25, 2003, the Office determined that the pay rate at which appellant's compensation payments were based was incorrectly calculated based on a 40-hour work week. The Office determined that she was only entitled to a 30-hour work week. The Office noted that appellant's effective pay rate for the period December 4, 2002 to October 16, 2003 was $601.20. The Office indicated that, on November 23, 2001, the date of injury, she was working six hours per day due to a nonwork-related injury and, therefore, earning pay for six hours per day. April 20, 2002 was the first date appellant lost time for her accepted condition of lumbar strain.[3] The Office found that this was the date disability began and the effective pay rate date. The Office calculated the pay rate as follows: the annual salary of $41,679.00, was divided by 52 weeks to equal $801.52 per week for a full-time employee. The Office divided the weekly pay of $801.52 by 40 hours per week to establish an hourly pay of $20.04. The hourly pay rate of $20.04 was multiplied by 30 hours per week to equal a weekly pay rate of $601.20.

[3] The record reveals that appellant first lost time from work for her accepted condition on April 20, 2002 and worked intermittently thereafter until stopping on May 18, 2002.

Appellant requested an oral hearing before an Office hearing representative, which was held on July 21, 2004. She testified that she was hired as a full-time career employee and was guaranteed eight hours per day. Appellant acknowledged that at the time of her injury on November 26, 2001 she was working six hours per day.

On April 17, 2003 Dr. Campbell noted that appellant had been progressing from spinal surgery when she sustained an injury in "November 2002." He advised that appellant would have continued to progress and return to full-time work were it not for the accident of "November 2002." Other reports from Dr. Schroeder dated October 29, 2003 and February 17, 2004 noted appellant's continued treatment for translumbar pain. On December 23, 2003 Dr. Kuchera noted limited range of motion of the spine and diagnosed lumbar postlaminectomy syndrome, lumbar disc displacement, lumbar radiculopathy, myofascial pain syndrome and intractable pain with opioid tolerance. Dr. William J. Grogan, a Board-certified orthopedist, submitted reports dated March 30 to July 20, 2004, which noted a history of appellant's surgical procedure in April 2001 and subsequent work injury of November 23, 2001. On July 20, 2004 he noted that appellant stopped working in May 2002 and returned on December 4, 2002 and continued to work until March 25, 2004 when she again stopped. Dr. Grogan noted that appellant had a major surgical procedure that was exacerbated by a minor trauma. He opined that the work injury was the reason she was not working.

In a decision dated November 10, 2004, the hearing representative affirmed the Office decisions dated October 16 and November 25, 2003.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[4] After it has determined that an employee has disability causally related to his or her federal employment the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[5] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.[6]

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for lumbar strain. The Office found that a conflict of medical opinion existed between the second opinion physician, Dr. Blumberg, a Board-certified orthopedic surgeon, who opined that her lumbar strain injury had resolved and noted that appellant's ongoing symptoms are related to the nonwork-related surgery of April 2001 and the attending physician, Dr. Campbell, a Board-certified orthopedist, who opined that she still

[4] *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

[5] *Mary A. Lowe*, 52 ECAB 223 (2001).

[6] *Id.; Leonard M. Burger*, 51 ECAB 369 (2000).

had residuals of the accepted lumbar strain injury. As there was a conflict in the medical opinion evidence, the Office properly referred appellant for an impartial medical examination by Dr. Abram, a Board-certified orthopedic surgeon.[7]

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[8]

On April 2, 2003 Dr. Abrams reviewed the entire case record and statement of accepted facts. He examined appellant thoroughly and related his clinical findings. Dr. Abram advised that upon examination of her there were no objective findings or any specific residual from the lumbar strain/sprain on November 23, 2001 and her current complaints were related to the prior surgery of April 10, 2001. He advised that based on a careful and comprehensive review of appellant's record and his physical examination she sustained an acute lumbar strain/sprain on November 23, 2001 which has completely resolved and that she has reached maximum medical improvement. Dr. Abram opined that she could return to her date-of-injury position as per the functional capacity evaluation subject to restrictions which were related to the spinal disorder and subsequent surgical treatment. He indicated that there were no residual restrictions related to the November 23, 2001 injury.

The Board finds that the opinion of Dr. Abram is sufficiently well-rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related lumbar strain has ceased. He had reviewed the entire case record and statement of accepted facts and had examined her. Dr. Abram additionally provided well-reasoned rationale as to why appellant current medical condition of lumbar strain was not causally related to her accepted work injuries. The Board finds that Dr. Abram's opinion represents the weight of the medical evidence.

After issuance of the pretermination notice, appellant submitted a report from Dr. Schroeder, who diagnosed lumbar postlaminectomy syndrome, lumbar disc displacement, myofascial pain syndrome, lumbar radiculopathy and intractable pain with opioid tolerance. He recommended a lumbar transforaminal injection. Dr. Kuchera noted treating appellant for translumbar pain. He diagnosed lumbar postlaminectomy syndrome, lumbar disc displacement, lumbar radiculopathy and intractable pain with opioid tolerance. Dr. Drourr treated her for lumbar pain and diagnosed lumbar postlaminectomy syndrome, lumbar disc displacement, lumbar radiculopathy, myofascial pain syndrome, sacroilitis and intractable pain with opioid tolerance. However, none of these reports provided a rationalized opinion regarding the causal relationship between appellant's lumbar strain and her accepted work-related injury of November 23, 2001 and did not contain new findings or rationale upon which a new conflict might be based.[9]

[7] 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

[8] *Solomon Polen*, 51 ECAB 341 (2000).

[9] *See Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

Dr. Abram's opinion represents the weight of the medical evidence establishing that appellant's lumbar strain resolved. Therefore, the Board finds that the Office properly terminated her benefits effective October 16, 2003.

LEGAL PRECEDENT -- ISSUE 2

If the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she had continuing disability causally related to her accepted employment injury.[10] To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence based on a complete factual background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[11]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing residuals of her lumbar strain causally related to her accepted employment injury on or after October 16, 2003. She submitted a report from Dr. Campbell who stated that appellant was progressing from spinal surgery when she sustained an injury in November 2002.[12] He advised that appellant would have continued to progress and return to full-time work were it not for the employment injury. While Dr. Campbell stated that appellant's current conditions were causally related to her accepted work injuries, he did not provide medical rationale supporting the conclusion.[13] Additionally, Dr. Campbell's report is similar to his prior reports and is insufficient to overcome that of Dr. Abram or to create a new medical conflict as Dr. Campbell was on one side of the conflict that Dr. Abram resolved.[14]

---

[10] *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

[11] *See Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

[12] Dr. Campbell refers to appellant's injury of November 2002; however, this appears to be a typographical error and should be November 2001.

[13] *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[14] *See Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, *supra* note 9; *Dorothy Sidwell*, *supra* note 9. The Board notes that Dr. Campbell's reports do not contain new findings or rationale upon which a new conflict might be based.

Appellant also submitted reports from Dr. Kuchera and Dr. Schroeder which noted her continued treatment for translumbar pain. They noted diagnoses and recommended physical therapy and trigger point injections. However, none of the reports submitted included a rationalized opinion regarding the causal relationship between appellant's ongoing back condition and her accepted work-related injury in 2001.[15]

Dr. Grogan indicated that appellant had a major surgical procedure which was exacerbated by a minor work trauma on November 23, 2001 and opined that this work injury was the reason she was not working at this time. While Dr. Grogan stated that appellant's current conditions were causally related to her accepted work injuries, he did not explain or provide medical rationale explaining the reasoning that supported his conclusion. As his reports were merely conclusory, they are of diminished probative value and insufficient to show how appellant's current conditions were caused, precipitated, accelerated or aggravated by the accepted work injuries.[16] Thus, Dr. Grogan's reports are insufficient to overcome that of Dr. Abram or to create a new medical conflict.[17]

LEGAL PRECEDENT -- ISSUE 3

The terms of the Federal Employees' Compensation Act[18] are specific as to the method and amount of payment of compensation; neither the Office nor the Board has the authority to enlarge the terms of the Act, nor to make an award of benefits under any terms other than those specified in the statute. The applicable provisions of the Act[19] specify that compensation for disability shall be computed on the basis of the employee's monthly pay as defined in the Act.[20]

Section 8101(4) of the Act[21] defines "monthly pay" for purposes of computing compensation benefits as follows: "[T]he 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...."[22]

---

[15] *See Jimmie H. Duckett*, *supra* note 13.

[16] *See Ricky S. Storms*, 52 ECAB 349 (2001).

[17] *See Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, *supra* note 9; *Dorothy Sidwell*, *supra* note 9.

[18] 5 U.S.C. §§ 8101-8193.

[19] *Id.*

[20] 5 U.S.C. §§ 8101-8193; *Gerald A. Karth*, 48 ECAB 194, 197 (1996).

[21] *Id.*

[22] 5 U.S.C. § 8101(4), *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.0900 (April 2002).

The Act provides for different methods of computation of average annual earnings depending on whether the employee worked in the employment, in which he was injured substantially for the entire year immediately preceding the injury and would have been afforded employment for substantially a whole year, except for the injury.[23] Section 8114(d) of the Act provides in part:

"(d) Average annual earnings are determined as follows --

> (1) If the employee worked in the employment in which he or she was employed at the time of injury during substantially the whole year immediately preceding the injury and the employment was in a position for which an annual rate of pay --
>
> > (A) was fixed, the average annual earnings are the rate of pay; or
> >
> > (B) was not fixed, the average annual earnings are the product obtained by multiplying his daily wage for the particular employment or the average thereof if the daily wage has fluctuated, by 300 if she was employed on the basis of a 6-day workweek, 280 if employed on the basis of a 5½-day week and 260 if employed on the basis of a 5-day week.[24]

ANALYSIS -- ISSUE 3

The record reflects that appellant was employed as a window clerk, a full-time career employee eight hours per day.[25] On April 1, 2001 she sustained a nonwork-related back injury while on her farm and returned to work in a limited-duty position, approximately six hours per day on September 10, 2001.[26] Appellant continued to work this position until her employment injury on November 23, 2001. These facts are established through her statement dated April 17, 2003, employing establishment records from August 14, 2001 and a medical certification signed on November 29, 2001. Therefore, at the time of injury on November 23, 2001 appellant was working six hours per day. She did not stop work immediately following the injury but lost time intermittently from April 20 to May 18, 2002. Effective May 18, 2002 appellant stopped work

[23] 5 U.S.C. §§ 8114(d)(1)-(2); *see Billy Douglas McClellan*, 46 ECAB 208 (1994).

[24] 5 U.S.C. § 8114(d)(1), (2).

[25] In the hearing transcript dated July 21, 2004, appellant testified that she was hired as a full-time career employee with the postal service and was guaranteed eight hours per day. She further testified that at the time of her injury in November 2001 she was working six hours per day.

[26] In correspondence dated June 24, 2003, the Office noted that appellant was working a limited-duty, part-time position and at the time of her injury in November 2001 she worked approximately 23.02 hours and at the time disability began on May 18, 2002 appellant was working 23.62 hours.

completely and thereafter returned to work part-time limited-duty four hours per day on December 4, 2002.[27] The record reflects that the annual pay rate as noted on a CA-7 dated May 16, 2002 was $41,679.00[28] and the record reflects that the pay rate as of the time of injury on November 23, 2001 was $40,472.00.

The Board finds that the Office properly calculated appellant's pay rate based on her average annual earnings under 8114(d)(1) of the Act.[29] The record supports this determination as she was employed as a window clerk at the time of injury and was a full-time career employee during substantially the whole year immediately preceding the injury for which the annual rate of pay was fixed. The Board further finds that the Office properly determined that appellant's pay rate should be calculated with reference to her pay at the time her work-related disability began, *i.e.*, April 20, 2002. As noted above, monthly pay is calculated with reference to the greater of the monthly pay at the time of injury, at the time disability begins or at the time compensable disability recurs, if the recurrence begins more than six months after the employee resumes regular federal employment on a full-time basis.[30] Appellant did not sustain a recurrence of disability pursuant to 8101(4) and her earnings were greater at the time disability began, April 20, 2002, than at the date of injury, November 23, 2001. The Board finds that the Office properly calculated her pay rate as of the date disability began on April 20, 2002. As a clerk she received a base pay of $41,679.00, which represented an hourly rate of $20.04. The record reflects that the date of injury appellant was working 30 hours per week, reduced from 40 hours due to a nonwork-related injury for weekly pay rate of $601.20. Based on this information the Office properly calculated that she was entitled to a weekly pay rate effective the date disability began of $601.20.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate all of appellant's benefits for her lumbar strain on October 16, 2003. The Board further finds that she failed to establish that she has a continuing condition or disability causally related to her employment injuries of her neck and back strain on or after October 16, 2003. Finally, the Board finds that the Office properly determined appellant's pay rate for the period December 4, 2002 to October 16, 2003.

[27] On May 2, 2002 appellant filed a CA-7, claim for compensation, for leave without pay for the period April 20 to May, 2002.

[28] The Office noted that the pay rate in April 2002 was the same as on May 18, 2002.

[29] 5 U.S.C. § 8114(d)(1),

[30] 5 U.S.C. § 8101(4).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 10, 2004 is affirmed.

Issued: September 30, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board