



development on appellant's pay rate.<sup>2</sup> The Board found that the Office did not use a correct pay rate in computing appellant's entitlement to compensation.

In a decision dated May 7, 2009, the Office reissued the May 3, 2007 pay rate determination finding that appellant's weekly pay rate for compensation purposes was \$998.29.

By decision dated May 11, 2009, the Office found that appellant had been employed as a full-time nurse with wages of \$1,203.43 per week. It noted that this employment was effective on January 6, 2009, and the position fairly and reasonably represented her wage-earning capacity. The Office noted that appellant demonstrated the ability to perform the duties of this job for two months or more and the position was considered suitable to her partially disabled condition. It noted appellant's compensation was reduced effective January 6, 2009.

On May 16, 2009 appellant through her attorney requested an oral hearing. On May 29, 2009 appellant appealed her case to the Board.

### **LEGAL PRECEDENT**

The Board has final authority to determine questions of law and fact. Its determinations are binding upon the Office and must, of necessity, be so accepted and acted upon by the Director of the Office. Otherwise, there could be no finality of decisions and the whole procedure would be nullified and questions would remain moot.<sup>3</sup>

Section 501.6(c)-(d) of the Office's implementing federal regulations provides:

"The decisions and orders of the Board are final as to the subject matter appealed, and such decisions and orders are not subject to review, except by the Board. The decisions and orders of the Board will be final upon the expiration of 30 days from the date of issuance unless the Board has fixed a different period of time therein. Following the expiration of that time, the Board no longer retains jurisdiction over the appeal unless a timely petition for reconsideration is submitted and granted."<sup>4</sup>

Section 501.7 of the Office's implementing federal regulations provides:

"Appellant or the Director may file a petition for reconsideration of a decision or order issued by the Board within 30 days of the date of issuance, unless another time period is specified in the Board's order."<sup>5</sup>

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<sup>2</sup> On August 24, 2003 appellant, a 40-year-old registered nurse, injured her right thumb while attempting to restrain a patient. She was hired as a part-time temporary employee and began working on October 20, 2002. The Office accepted that appellant sustained a right thumb sprain and authorized surgery on the first metacarpal of the right hand, which was performed on February 19, 2004.

<sup>3</sup> See *Paul Raymond Kuyoth*, 27 ECAB 498, 503-04 (1976); *Anthony Greco*, 3 ECAB 84, 85 (1949).

<sup>4</sup> 20 C.F.R. § 501.6(c)-(d).

<sup>5</sup> *Id.* at § 501.7.

## ANALYSIS

A copy of the Board's December 23, 2008 decision was sent to the parties, and the case record returned to the Office.<sup>6</sup> The decision set aside a May 3, 2007 Office determination of appellant's pay rate as it pertained to her wage-earning capacity and directed that further action be taken. Under the Board's *Rules of Procedure*, the decision became final as to the subject matter appealed after the expiration of 30 days.<sup>7</sup> The Board has the authority to reopen a decision upon the filing of a petition for reconsideration within the applicable time period.<sup>8</sup>

As no petition for reconsideration was filed from the December 23, 2008 decision, it was incumbent upon the Office to act on appellant's pay rate as directed by the Board. The decision became the law of the case. As stated in *Anthony Greco*:

“The Board has final authority to determine questions of law and fact. Its determinations are binding upon the [Office] and must, of necessity, be so accepted and acted upon by the Director. Otherwise there could be no finality of decisions; the whole appeals procedure would be nullified and questions would remain moot.”<sup>9</sup>

In a May 7, 2009 decision, the Office reissued the May 3, 2007 pay rate determination as it pertained to appellant's wage-earning capacity and did not follow the Board's remand instructions.<sup>10</sup> In a May 11, 2009 decision, it used the pay rate determination of May 7, 2009 in calculating appellant's loss of wage-earning capacity. No new or material evidence was submitted to the record. In such case, the December 23, 2008 determination of the Board was final as to the subject matter appealed.

At oral argument in the present appeal, the Director of the Office contended that there was error in the Board's prior pay rate determination.<sup>11</sup>

As noted above, the Board has final authority to determine questions of law and fact. Its determinations are binding upon the Office and must, of necessity, be so accepted and acted

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<sup>6</sup> *Id.* at § 501.6(a). See *supra* note 1.

<sup>7</sup> *Id.* at § 501.6(d).

<sup>8</sup> *Id.* at § 501.7(a). The Board retains authority to reopen a decision on its own motion within 30 days of the date of the decision.

<sup>9</sup> *Supra* note 3 at 85.

<sup>10</sup> In an August 13, 2009 decision, an Office hearing representative found that the district Office did not adhere to the Board's instructions and remanded it for a redetermination of appellant's wage-earning capacity. Subsequently, in an August 28, 2009 decision, another hearing representative vacated the August 13, 2009 decision and affirmed the May 11, 2009 Office decision. As appellant filed her appeal to the Board on May 29, 2009, the decisions of the hearing representatives are null and void under the principles set forth in *Douglas E. Billings*, 41 ECAB 880 (1990).

<sup>11</sup> Docket No. 08-224 (issued December 23, 2008).

upon by the Director of the Office.<sup>12</sup> The Board finds that the Office failed to undertake development of appellant's pay rate in accordance with the Board's December 23, 2008 decision.

The case will be set aside and remanded to the Office for further development concerning appellant's pay rate in accordance with its December 23, 2008 decision. Following any such further development as deemed necessary, it shall issue an appropriate decision in this case.<sup>13</sup>

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 11 and 7, 2009 decisions of the Office of Workers' Compensation Programs be set aside and the case remanded for further development consistent with this decision.

Issued: March 17, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>12</sup> See *Paul Raymond Kuyoth*, 27 ECAB 498, 503-04 (1976), *Anthony Greco*, *supra* 3. See also *Frank W. White*, 42 ECAB 693 (1991) (Board's order in a prior appeal imposed an obligation on the Director to take particular actions as directed).

<sup>13</sup> The Board finds that it is unnecessary to address whether the Office properly determined appellant's loss of wage-earning capacity on May 11, 2009 in view of the Board's disposition of the first issue.