

whether appellant sustained an emotional condition while in the performance of duty.¹ The facts of the case are set forth in the Board's prior decision and incorporated herein by reference. As relevant to this instant appeal, appellant stopped work on October 8, 1991 and retired on September 4, 1992. Following remand, the Office referred appellant for examination by an impartial medical specialist. After further development of the claim, on April 14, 2000 the Office accepted that he sustained a post-traumatic stress disorder as of October 9, 1991.² The record reflects that appellant used leave from October 9, 1991 to January 18, 1992, following which he used leave without pay through September 3, 1992. Appellant started work as a real estate agent on or about May 1, 1993.

The claim proceeded with development on two issues: whether appellant's actual earnings as a real estate agent fairly and reasonably represented his wage-earning capacity and whether the Office properly determined his pay rate for compensation purposes.

By decision dated July 31, 2002, the Office found that appellant's pay rate for compensation purposes was best determined as of the date disability began. As of the date appellant stopped work, a postmaster in his pay rate and step earned \$57,491.00, equivalent to \$1,105.60 a week. The Office found that, based on records from the Social Security Administration, appellant had actual earnings as a real estate agent from January 1, 1994 through December 31, 2000 of \$87,969.00, equivalent to a weekly actual earnings of \$241.01. Applying the *Shadrick* formula, the Office determined that appellant had a 17 percent wage-earning capacity.

By decision dated August 15, 2002, the Office found that appellant's actual earnings as a real estate agent that he had performed since May 1, 1993 fairly and reasonably represented his wage-earning capacity. However, in making the wage-earning capacity determination, the Office failed to incorporate the proper pay rate findings as determined on July 31, 2002. This decision incorrectly incorporated \$1,129.46 as the weekly pay rate as of the disability began. It therefore found actual weekly earnings of \$192.00.

Appellant requested a hearing before an Office hearing representative. In a decision dated April 17, 2003 and finalized April 23, 2003, the hearing representative found that the July 31, 2002 pay rate determination was proper but that the August 15, 2002 wage-earning decision did not incorporate the pay rate determination. It was also found that the Office had used the "current" pay rate of a postmaster in 2002 when comparing actual earnings through December 31, 2000, which was not consistent with Board case precedent. The hearing representative rejected appellant's argument that he was totally disabled for the period and was unable to perform the activities of a real estate agent without assistance. She affirmed the July 31, 2002 pay rate determination and set aside the August 15, 2002 wage-earning capacity determination. On remand, it was directed that the Office contact the employing establishment to determine the "current" pay rate on December 31, 2000 for appellant's former position as

¹ Docket No. 95-2943 (issued September 24, 1998).

² The Office accepted as compensable factors that appellant was threatened by a coworker, who also made intimidating gestures. The impartial medical specialist found that the incidents accepted as compensable contributed to appellant's emotional condition. Appellant last worked on October 8, 1991.

postmaster. It was directed to use the correct date disability began pay rate of \$1,105.60, the correct current “pay rate” as of December 31, 2000 and the correct weekly actual earnings of \$241.01. Following recalculation of appellant’s proper pay rate, the Office was directed to issue a new wage-earning capacity determination.³

On remand, the district Office obtained information from the employing establishment indicating that the pay rate for the postmaster position held by appellant was \$72,151.00 as of December 31, 2000.

By decisions dated August 12 and 13, 2003, the Office denied modification of the April 23, 2003 decision of the Office hearing representative.

LEGAL PRECEDENT

It is well established that appropriate findings of fact are necessary in the Office’s adjudication of a claim for compensation: both for the purpose of enabling the Board to make a proper review and to apprise the claimant in order to afford him an opportunity to address any defects appearing in his claim.⁴ The Office’s implementing code of federal regulations provides in pertinent part:

“What does the decision contain?” The decision shall contain findings of fact and a statement of reasons....”⁵

ANALYSIS

The Board finds that the case is not in posture for decision. The August 12 and 13, 2003 decisions of the Office do not fully comply with the directions contained in the hearing representative’s April 23, 2003 decision nor do they fully apprise appellant of the factual findings of the Office with regard to the determination of his pay rate or wage-earning capacity. With regard to appellant’s pay rate determination, the record contains a Form EN1047 setting forth the computation by the Office of appellant’s rate of pay. However, there were no accompanying factual findings made by the Office to explain the computation by which the pay rate determination was calculated or addressing how each of the elements was determined. The August 13, 2003 memorandum of the claims examiner noted that the EN1047 form was issued as “corrected,” indicating that the prior pay rate determination was affirmed by the hearing representative. The nature of such correction is not readily apparent nor explained with proper factual findings in the most recent decision on this issue. As set forth, the hearing representative noted errors between the rate of pay calculation appearing in the August 15, 2002 decision, which did not accurately reflect the July 31, 2002 rate of pay calculation. However, the hearing representative also noted that further development was required as to determining the “current”

³ The record reflects that on June 30, 2003 appellant, through counsel, requested reconsideration of the April 23, 2003 decision of the hearing representative.

⁴ See *James D. Boller, Jr.*, 12 ECAB 44 (1960).

⁵ 20 C.F.R. § 10.126.

pay rate as of December 31, 2000. The Board finds that the Office did not provide sufficient findings of fact or statement of reasons pertaining to the pay rate calculation in this case.

Moreover, with regard to the wage-earning capacity determination of August 15, 2002, this decision was clearly set aside by the hearing representative and the case remanded for additional development and a new decision on this issue. The August 13, 2003 decision of the district Office merely purports to deny modification of that decision, noting that the evidence submitted was insufficient to modify the April 23, 2003 decision “with respect to actual earnings calculations and your ability to perform the position of [r]eal [e]state agent.” As the prior wage-earning capacity determination had been set aside, it was incumbent upon the district Office to render a new decision on this issue with a full explanation of all findings of facts that were accepted or rejected in making this determination.

CONCLUSION

The Board finds that the August 12 and 13, 2003 decisions of the Office do not provide a proper factual basis for the determination of appellant’s pay rate for compensation purposes or his wage-earning capacity. The case will be remanded to the Office for issuance of a proper decision which provides a full statement of reasons as to the elements considered in determining his pay rate for compensation purposes and which provides full factual findings pertaining to his wage-earning capacity.

ORDER

IT IS HEREBY ORDERED THAT the August 13 and 12, 2003 decisions of the Office of Workers’ Compensation Programs be set aside. The case is remanded to the Office for further action in conformance with this decision of the Board.

Issued: July 15, 2005
Washington, DC

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

David S. Gerson, Judge
Employees’ Compensation Appeals Board

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