

**United States Department of Labor
Employees' Compensation Appeals Board**

S.C., Appellant

and

**DEPARTMENT OF THE ARMY, ARMY
NATIONAL GUARD, Montgomery, AL,
Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 10-1290
Issued: April 7, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On April 6, 2010 appellant filed an application for review of a March 18, 2010 merit decision of the Office of Workers' Compensation Programs that terminated his schedule award compensation. The appeal was docketed as No. 10-1290.¹

On August 8, 2008 he was granted a schedule award for a 77 percent bilateral hearing loss, or 154 weeks of compensation, to run from October 7, 2007 to September 18, 2010, at the 75 percent augmented compensation rate of \$365.13, based on a weekly pay rate of \$486.83 with an effective date of pay of September 5, 1992.² By decision dated March 18, 2010, the Office terminated appellant's schedule award compensation. It noted that his weekly pay rate for compensation purposes was increased due to National Guard pay from \$486.83 to \$585.25 but that his schedule award was terminated to avoid an overpayment because he had been paid cost-of-living increases in error. He was paid \$345.03 in final schedule award compensation.

¹ On October 24, 2007 the Office accepted that appellant, then a 70-year-old automotive worker, sustained an employment-related bilateral hearing loss. On March 13, 2008 he filed a schedule award claim.

² An Office memorandum indicated that appellant had an hourly pay rate of \$12.13 which, when multiplied by 2087, yielded an annual pay rate of \$25,315.32 which, when divided by 52, yielded a weekly pay rate of \$486.83.

The Board has duly considered the matter and finds that the case is not in posture for decision because the March 18, 2010 decision does not fully explain how the pay rate for schedule award purposes was calculated and thus does not contain sufficient factual findings to support its termination of appellant's schedule award compensation. In determining whether a claimant has discharged his or her burden of proof and is entitled to compensation benefits, the Office is required by statute and regulation to make findings of fact.³ Office procedures further specify that a final decision of the Office must include findings of fact and provide clear reasoning which allows the claimant to "understand the precise defect of the claim and the kind of evidence which would tend to overcome it."⁴ These requirements are supported by Board precedent.⁵

The record supports that appellant earned \$12.18 an hour on the date disability began on September 5, 1992, or the date he retired, and that he was entitled to include \$98.41 received each week for National Guard pay because this was a requirement of his federal employment.⁶ In calculating the rate of schedule award compensation, there is nothing of record that fully explains how his pay rate for schedule award compensation purposes was determined.

A March 18, 2010 pay rate memorandum indicates that appellant's weekly pay rate for compensation purposes was \$585.25, based on a weekly base pay of \$486.83 plus additional weekly pay of \$98.41 for National Guard service. Adding \$486.83 and \$98.41 yields a total of \$585.24, not \$585.25. The record indicates that appellant received gross compensation of \$2,145.00 every four weeks but does not provide any explanation as to how this amount was computed.⁷ Printouts also describe the total schedule award compensation received by appellant, and a compensation adjustment form dated March 18, 2010 noted that he received compensation of \$67,678.79 for the period October 7, 2007 to March 14, 2010 when his correct entitlement for the period October 7, 2007 to September 18, 2010 was \$68,023.82, yielding a net difference of \$345.03 still due on the schedule award. Again, no explanation was provided as to how the pay rate was determined.⁸

As the record contains an insufficient factual findings as to how appellant's schedule award compensation was calculated, the March 18, 2010 decision will be set aside for further development on this issue.

³ 5 U.S.C. § 8124(a) provides: "The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of the Office "shall contain findings of fact and a statement of reasons."

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4(e) (March 1997).

⁵ See *James D. Boller, Jr.*, 12 ECAB 45 (1960).

⁶ *Id.*

⁷ Computing compensation based on a \$585.24 weekly pay rate yields monthly compensation of \$1,755.72.

⁸ The Board notes that the February 11, 2010 notice of proposed termination, acknowledged by appellant in March 2, 2010 correspondence, is not of record. On appeal appellant generally challenged the schedule award itself. The Board does not have jurisdiction over that decision as the schedule award was issued on August 8, 2008, more than one year prior to the filing of this appeal. 20 C.F.R. § 501.3(d)(2) (2008).

IT IS HEREBY ORDERED THAT the March 18, 2010 decision of the Office of Workers' Compensation Programs be set aside and the case remanded to the Office for further proceedings consistent with this order of the Board.

Issued: April 7, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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