



paranoid and passive-aggressive features and paid wage-loss compensation from the time the employee ceased work on December 4, 1987 until his death on December 8, 1997.

On December 29, 1997 appellant filed a claim for survivors' benefits. She also claimed that she was a dependent spouse and requested augmented disability compensation for the period December 4, 1987 through December 8, 1997. The Office denied the survivor's claim and the claim for augmented disability compensation, but later awarded augmented disability compensation for a portion of the period claimed.<sup>1</sup> By decision dated May 22, 2002,<sup>2</sup> the Board affirmed the Office's finding with respect to the period of entitlement to augmented disability compensation but set aside the finding that appellant failed to establish that the employee's death was causally related to his employment and remanded the case to the Office for further development.

On December 10, 2002 the Office accepted appellant's claim for survivor's benefits and provided a breakdown of her entitlement to survivor's benefits over various periods dating back to December 9, 1997. Appellant was also advised that she would have to elect to either receive benefits under the Federal Employees' Compensation Act or continue to receive survivor's benefits from the Office of Personnel Management (OPM). Appellant elected to receive survivor's compensation benefits under the Act effective December 9, 1997 and, on December 20, 2002, the Office paid her \$1,000.00 for funeral and administrative expenses. On March 3, 2003 the Office advised appellant that she would receive monthly compensation in the amount of \$1,503.76 for the period February 23 to March 22, 2003. The compensation was calculated based on the employee's pay rate effective July 18, 1988 and appellant's first check was issued March 22, 2003.

In a letter dated March 13, 2003, the Office advised appellant that, according to OPM, \$36,919.23 should be reimbursed in order to convert appellant's benefits. The Office further advised that after OPM's reimbursement she would be paid approximately \$66,476.99 for the period December 9, 1997 to February 22, 2003. On March 28, 2003 the Office made a partial payment to appellant in the amount of \$40,000.00 for the period December 9, 1997 to March 20, 2003. The payment, however, was based on the employee's pay rate in effect on December 4, 1987 rather than the July 18, 1988 pay rate previously utilized. On April 11, 2003 the Office reimbursed OPM \$36,919.23 on appellant's behalf.

Appellant received an additional payment of \$29,754.65 on May 9, 2003 for the period January 31, 1988 to March 22, 2003. In a May 9, 2003 decision, explaining the reasoning for this \$29,754.65 payment, the Office notified appellant that it had "completed adjustments [in her] late husband's disability claim and [appellant's] claim for death benefits." The Office explained that the employee had previously been paid based on a July 18, 1988 recurrent pay rate of \$28,640.00, but that because his disability had been continuous since January 31, 1988 the correct pay rate for both the employee's disability claim and the survivor's benefits claim was \$28,078.00 per year, the rate in effect on December 4, 1987. It noted that, due to cost-of-living

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<sup>1</sup> The Office awarded augmented disability compensation from March 29 to July 8, 1996 and September 28 to December 8, 1997.

<sup>2</sup> Docket No. 00-1993 (issued May 22, 2002).

increases, the amount of compensation payable would actually be higher than if the July 18, 1988 pay rate had been used.<sup>3</sup> The Office further explained that deductions were made for retroactive premiums for life insurance and health benefits coverage.<sup>4</sup> By decision dated and finalized December 4, 2003, an Office hearing representative affirmed the Office's May 9, 2003 decision.

By decision dated August 25, 2004, the Board found that the Office's previous determinations regarding appellant's entitlement to compensation did not contain sufficient findings, set aside these prior determinations and remanded the case to the Office for further development of the matter. The Board indicated that it was unclear from the Office's decisions, which portion of the funds remitted to appellant was attributable to the employee's disability claim and which portion was attributable to the survivor's benefits claim. It also noted that it was unclear whether the "adjustments" to the employee's claim based upon the incorrect pay rate resulted in an overpayment of compensation. The Board stated that, if an overpayment did arise, the Office could not recoup the overpayment by simply reducing the amount that was otherwise due appellant on the survivor's claim.<sup>5</sup> It also indicated that it was unclear whether the various deductions for past-due premiums were premiums for the benefit of the decedent or premiums owed by appellant relevant to her survivor's benefits claim. The Board also stated that it should be determined whether OPM had previously deducted various premiums such that appellant was charged a double premium for the same period of coverage. It directed the Office, after such development it deemed necessary, to issue a *de novo* decision, which clearly explaining what compensation benefits appellant was entitled to as the employee's surviving spouse.

On remand, the Office issued a January 3, 2005 decision, in which it further explained its rationale for calculating the compensation benefits appellant was entitled to as the employee's surviving spouse. The Office stated:

"First, as noted in Mr. Hurd's May 9, 2003 letter, all payment have been calculated using the pay rate which was effective on the date of injury, December 4, 1987. That pay rate was \$28,078.00 per year. That figure was divided by 52 (the number of weeks in a year) to arrive at the weekly pay rate of \$539.96. For all periods prior to [appellant's] passing, compensation was recalculated using the compensation rate of 75 percent, which is paid to claimants with a spouse or other eligible dependents.

"Second, for the periods beginning on the day after [appellant's] passing, the pay rate which was used was \$2,339.83 per month, which is \$28,078.00 divided by 12 months. Payments to eligible survivors are based on monthly pay rates rather than weekly pay rates. For a sole surviving spouse, benefits are paid at the rate of

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<sup>3</sup> The Office stated that appellant should have noticed an increase in her monthly checks beginning March 23, 2003 and that the retroactive compensation paid was more than \$3,000.00 higher than originally estimated on March 13, 2003.

<sup>4</sup> The Office attached a number of worksheets and printouts regarding pay matters.

<sup>5</sup> The Board noted that the Office's regulations provided a procedural framework for adjudicating overpayment issues that must be applied.

50 percent of that pay rate. In addition, our program provides for cost[-]of [-]living raises. For the past several years, those increases have become effective on March 1.... However, due to the cost[-]of[-]living increases which have accrued, you are currently receiving \$1,702.15 in gross compensation each 4 weeks, which is \$1,844.00 on a monthly basis.

“Third, I have recalculated the amount of compensation which was due to [appellant] during the period from January 31, 1988 through December 8, 1997. That amount is \$221,194.70. He was actually paid \$214,880.96. Those figures represent gross compensation. After [appellant’s] passing, [we] were advised by the [OPM] that he had elected the post-retirement life insurance option effective October 13, 1996. We never deducted those premiums. We, therefore, calculated the amount which should have been deducted for that option from October 13, 1996 through December 8, 1997 and reduced the net amount of compensation which was due by that amount, \$749.58. No additional deductions were required for health benefit premiums or any other type of life insurance. The net compensation due was \$5,564.16.

“Fourth, I have also recalculated the amount of compensation which was payable to you as the eligible survivor. The period involved is from December 9, 1997 through March 22, 2003. All payments made since that time have used the correct pay rate and percentage, as shown above. The total which should have been paid is \$107,083.66. Of that amount, we paid the [OPM] \$36,919.23, which is the amount they advised us was the amount they paid to you during the period for which you elected our benefits. We made a payment to you on March 28, 2003 in the amount of \$40,000.00. We reduced the gross amount by the amount of the payment which was made to you on March 22, 2003, \$1,595.08, because that amount was included in the amount which was calculated as being due and by the amount of the health benefit premiums (self only Blue Cross/Blue Shield, code 104) which had not been deducted for the period from December 9, 1997 through March 22, 2003, \$4,378.36. The net amount due for this period is, therefore, \$24,190.49.

“Finally, you will recall that our office made one additional retroactive payment to you, in the amount of \$29,754.65. That is the exact total of the two amounts which I have described in the letter, \$24,190.49 and \$5,564.16, so despite the intermingling of the payments which were previously made, the correct amount of retroactive compensation was paid. No additional compensation is due, other than the ongoing benefits which you are receiving from our Office.”<sup>6</sup>

By letter dated May 5, 2005, appellant requested a review of the written record by an Office hearing representative.

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<sup>6</sup> In an accompanying January 3, 2005 memorandum, the Office indicated that the various payments appellant received and the insurance premiums, which were retroactively deducted equaled the total amount of compensation to which she was entitled.

By decision dated August 30, 2005, the Office hearing representative denied appellant's request for a review of the written record.<sup>7</sup> He found that appellant's request was untimely as it was not filed within 30 days of the Office's January 3, 2005 decision and, therefore, he was not entitled to a review as a matter of right. The Office hearing representative exercised his discretion and indicated that appellant's request was denied as the issue of the case could be equally well addressed by requesting reconsideration and submitting new evidence concerning her receipt of compensation as the employee's surviving spouse.

### **LEGAL PRECEDENT**

Section 8105(a) of the Act provides: "If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of his monthly pay, which is known as his basic compensation for total disability."<sup>8</sup> Section 8101(4) of the Act 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...."<sup>9</sup>

Section 8133 of the Act provides:

"(a) If death results from an injury sustained in the performance of duty, the United States shall pay monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule --

- (1) To the widow or widower, if there is no child, 50 percent.
- (2) To the widow or widower, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the widow or widower and children."<sup>10</sup>

In determining whether a claimant has discharged her burden of proof and is entitled to compensation benefits, the Office is required by statute and regulation to make findings of fact.<sup>11</sup> Section 8124(a) of the Act provides: "The [Office] shall determine and make a finding of facts

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<sup>7</sup> The Office hearing representative made reference to a request for an oral hearing, but his decision actually constitutes a denial of a request for review of the written record.

<sup>8</sup> 5 U.S.C. § 8105(a). Section 8110(b) of the Act provides that total disability compensation will equal three fourths of an employee's monthly pay when the employee has one or more dependents. 5 U.S.C. § 8110(b).

<sup>9</sup> 5 U.S.C. § 8101(4). In an occupational disease claim, the date of injury is the date of last exposure to the employment factors which caused or aggravated the claimed condition. *Patricia K. Cummings*, 53 ECAB 623, 626 (2002).

<sup>10</sup> 5 U.S.C. § 8133.

<sup>11</sup> *Robert L. Johnson*, 51 ECAB 480, 481 (2000).

and make an award for or against payment of compensation.”<sup>12</sup> The Office’s regulations provide in relevant part that the decision of the Office “shall contain findings of fact and a statement of reasons.”<sup>13</sup> Office procedure further specifies 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.”<sup>14</sup> These requirements are supported by Board precedent.<sup>15</sup>

### ANALYSIS

The Office accepted that the employee sustained aggravation of personality disorder with paranoid and passive-aggressive features and paid wage-loss compensation from the time the employee ceased work on December 4, 1987 until his death on December 8, 1997. The Office accepted appellant’s claim to receive compensation benefits as the employee’s surviving spouse and paid her compensation benefits relating to both the employee’s disability payments, which were due prior to his death and the death benefits which were due after the employee’s death.

By decision dated August 25, 2004, the Board remanded the case to the Office and directed the Office to provide a more complete description of its rationale for calculating the compensation benefits due appellant as the employee’s surviving spouse. In a decision dated January 3, 2005, the Office determined that it had previously paid appellant an appropriate amount of compensation and provided some more discussion of its rationale for these calculations.

The Board finds that, while the Office has provided additional helpful information in its January 3, 2005 decision, the Office’s determinations need further clarification in order to fully advise appellant regarding the amount of compensation benefits she is due as the employee’s surviving spouse.

In its January 3, 2005 decision, the Office responded to the Board’s request for clarification by separately discussing which portion of the funds remitted to appellant was attributable to the employee’s disability claim and which portion was attributable to the survivor’s benefits claim. The Office concluded that appellant’s total entitlement to compensation in the former category equaled \$221,194.70 and that her total entitlement to compensation in the latter category equaled \$107,083.66. It then posited that the various prior payments appellant had received and the retroactive deductions that were made for insurance premiums equaled these compensation amounts.

The Board notes, however, that some details of the Office’s description of appellant’s entitlement to compensation remain unclear, including the documentary bases for a number of the figures used by the Office. The Office did not provide any supporting documents in

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<sup>12</sup> 5 U.S.C. § 8124(a).

<sup>13</sup> 20 C.F.R. § 10.126.

<sup>14</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

<sup>15</sup> See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

conjunction with its January 3, 2005 decision. Although the record contains a number of documents which ostensibly lend support for some of the figures used by the Office, these documents do not fully support the Office's conclusions and the Office did not make direct reference to these documents to explain how they supported its conclusions.

For example, the Office indicated with respect to the portion of appellant's compensation, which was attributable to the employee's disability claim that \$749.58 in post-retirement insurance premiums had not been deducted from the employee's pay for the period October 13, 1996 through December 8, 1997. The record contains a worksheet, presented in association with the Office's May 9, 2003 decision, that contains the \$749.58 figure, but it remains unclear what documents support the Office's assertion that the premiums should have been retroactively deducted. The Office has not identified the documents which show when the employee elected post-retirement insurance, which establish that the premiums had not been deducted during the period in question and which identify the amount of the premiums per month (including how they might have changed over time).

With respect to the Office's calculation of the \$221,194.70 figure for the employee's disability compensation, the record contains a worksheet, as well as some pay history printouts, which also were presented in association with the Office's May 9, 2003 decision. While the worksheet lists amounts due the employee for various periods between January 31, 1988 and December 8, 1997, the limited calculations contained in the worksheet do not fully explain how the figures were obtained. Moreover, the Office did not fully explain its calculation that the employee had already been paid \$214,880.96 for the period January 31, 1988 and December 8, 1997.<sup>16</sup>

There are similar deficiencies with respect to the Office's calculation of the portion of appellant's compensation which was attributable to her survivor's benefits claim. The Office indicated that \$4,378.36 of appellant's health benefit premiums were not deducted between December 9, 1997 and March 22, 2003. While the record contains a worksheet that lists the \$4,378.36 figure, the record does not contain documents which show when appellant elected health benefits, which establish that the premiums had not been deducted during the period in question and which identify the amount of the premiums per month. The Office indicated that appellant was entitled to \$107,083.66 in survivor's benefits from December 9, 1997 through March 22, 2003, but the record does not contain documentation that explains the basis for this calculation.<sup>17</sup>

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<sup>16</sup> The Office correctly noted that the employee's pay rate for disability prior to his December 8, 1997 death was \$28,078.00 per year or \$539.96 per week, which was derived from his pay at the time he was disabled, *i.e.*, December 4, 1987. Appellant did not sustain a recurrence of disability because he remained continuously disabled and, therefore, it was not appropriate to pay him a recurrent pay rate. *See supra* note 9 and accompanying text.

<sup>17</sup> The record only contains a computerized worksheet, which was produced at the time of the Office's May 9, 2003 decision that lists the \$107,083.66 figure without elaboration. The Office correctly noted that appellant would be entitled to receive survivor's benefits which equaled 50 percent of the employee's pay (using a date of disability pay rate), as she did not have a child within the meaning of the Act during this period. *See supra* note 9 and accompanying text.

Given these deficiencies the Office has not provided adequate findings such that appellant would fully understand the precise defect of her claim and the kind of evidence which would tend to overcome it. Therefore, the case should be remanded to the Office for further development regarding appellant's entitlement to compensation benefits as the employee's surviving spouse to be followed by a detailed decision which fully describes appellant's entitlement to such compensation.

**CONCLUSION**

The Board finds that the case is not in posture for decision regarding whether the Office properly calculated appellant's compensation benefits as the employee's surviving spouse.<sup>18</sup> The case is remanded to the Office for further development as described above to be followed by the issuance of an appropriate decision regarding appellant's entitlement to compensation benefits.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' August 30 and January 3, 2005 decisions are set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: October 5, 2006  
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

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<sup>18</sup> Given the Board's disposition of the merit issue of this case it is not necessary to consider the nonmerit issue of whether the Office properly denied appellant's request for a review of the written record.