



Appellant voluntarily retired on December 31, 2003. He elected workers' compensation benefits effective March 10, 2004. The Office paid him compensation beginning that date. On August 19, 2004 and May 13, 2005 appellant submitted claims for compensation (Forms CA-7) contending that he was entitled to premium pay for working on the weekends and holidays. He explained that an August 14, 2000 Memorandum of Understanding established that he was entitled to premium pay on weekends and holidays.<sup>1</sup>

By letter dated January 17, 2006, the employing establishment indicated that appellant received his standard rate of pay and an allowance for subsistence and quarters. His basic rate of pay included other elements such as premium pay.

In a decision dated July 30, 2007, the Office denied appellant's claim for premium pay.

Appellant requested reconsideration on September 3, 2007. He submitted copies of pay stubs containing the Code OON, which he asserted designated premium pay for weekends.<sup>2</sup> Appellant also resubmitted a copy of the August 14, 2000 Memorandum of Understanding. The Memorandum of Understanding provided that employees covered under the agreement would receive pay for eight hours of regular work Monday through Friday, including holidays. Work assigned in addition to the eight hours of regularly scheduled work on Monday through Friday and work performed on weekends and holidays would be paid at the applicable premium pay rate. Appellant maintained that the employing establishment paid him premium pay for weekend work at the time of his November 5, 2002 injury. He also asserted that he was entitled to night differential.

On October 11, 2007 the Office requested that the employing establishment explain the abbreviations on appellant's pay stubs, including Codes GAB, OON, OTN and Code 43. By letter dated October 31, 2007, the employing establishment responded that GAB and Code 43 showed a retention allowance and any code beginning with O designated overtime. The employing establishment asserted that civilian mariners were not paid Sunday premium pay, holiday pay or night differential.

By decision dated December 11, 2007, the Office modified the July 30, 2007 decision to include retention pay in appellant's pay rate for compensation purposes. It denied his claim for holiday pay, night differential and Sunday premium pay.<sup>3</sup>

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<sup>1</sup> The Memorandum of Understanding submitted by appellant with his Forms CA-7 is not legible.

<sup>2</sup> Appellant asserted that he spoke with an individual in payroll who informed him that OON and PTN represented premium pay on weekends, GAB was a bonus pay for civilian workers and OTN designated overtime.

<sup>3</sup> The Office noted that appellant submitted August 2000 Memorandums of Understanding that were either illegible or unsigned.

## LEGAL PRECEDENT

Section 8105(a) of the Federal Employees' Compensation Act<sup>4</sup> 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>5</sup> 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.<sup>6</sup> Pay rate for compensation purposes is defined in section 8101(4) as the monthly pay at the time of injury, the time disability begins or the time disability recurs, if the recurrence is more than six months after returning to full-time work, whichever is greater.<sup>7</sup>

Section 8114(e) of the Act provides that, in addition to annual base pay, certain items will be included in the computation of pay, such as the value of subsistence and quarters, premium pay and any form of remuneration in kind for services.<sup>8</sup> Section 8114(e) specifically provides that overtime pay is excluded in computing an employee's monthly pay for compensation purposes.<sup>9</sup>

When the job held at the time of injury includes elements of pay such as night or shift differential, extra compensation for work on Sundays and holidays or pay for administratively uncontrollable overtime, the Office must include the additional pay in the base pay.<sup>10</sup>

Although it is appellant's burden to establish his claim, the Office is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.<sup>11</sup> The Office shares responsibility to see that justice is done.<sup>12</sup>

## ANALYSIS

The Office accepted that appellant sustained an aggravation of lumbar degenerative disc disease due to a November 5, 2002 work injury. He retired on December 31, 2003 and the

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> 5 U.S.C. § 8105(a).

<sup>6</sup> 5 U.S.C. § 8110(b).

<sup>7</sup> 5 U.S.C. §§ 8101(4); 8114; *see also* 20 C.F.R. § 10.5(s).

<sup>8</sup> 5 U.S.C. § 8114(e).

<sup>9</sup> *Id.*

<sup>10</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.8(b) (December 1995).

<sup>11</sup> *See R.E. 59 ECAB* \_\_\_ (Docket No. 07-1604, issued January 17, 2008); *Claudia A. Dixon*, 47 ECAB 168 (1995).

<sup>12</sup> *Id.*

Office paid him compensation effective March 10, 2004. Appellant contended that he was entitled to premium pay for working on the weekends and holidays. Section 8114(e) of the Act provides that, in addition to annual base pay, certain items will be included in the computation of pay, such as the value of subsistence and quarters, premium pay and any form of remuneration in kind for services.<sup>13</sup> Consequently, when the job held at the time of injury includes elements of pay such as night or shift differential, extra compensation for work on Sundays and holidays or pay for administratively uncontrollable overtime, the Office must include the additional pay in the base pay.<sup>14</sup>

Appellant submitted an August 2000 Memorandum of Understanding which indicated that employees covered under the agreement received premium pay for “[a]ll work assigned and performed in excess of the first [eight] hours of regularly scheduled work Monday thru Friday and work performed on Saturdays, Sundays and [h]olidays....” He also submitted pay stubs containing codes defining pay. By letter dated October 11, 2007, the Office requested that the employing establishment explain the codes on his pay stubs, including Codes GAB, OON, OTN and Code 43. The Office did not ask that the employing establishment explain the provisions of the August 2000 Memorandum of Understanding. The employing establishment, on October 31, 2007, responded that Code GAB and Code 43 showed appellant’s retention allowance and that any code beginning with O designated overtime pay. The employing establishment asserted that civilian mariners did not receive Sunday premium, holiday pay or night differential.

Although it is appellant’s burden to establish his claim, the Office is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.<sup>15</sup> The Office should, on remand, further develop the factual evidence of record by requesting that the employing establishment explain whether the August 2000 Memorandum of Understanding entitled appellant to premium pay for weekend and holiday work. After further development of the evidence, the Office should issue a *de novo* decision.

### CONCLUSION

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

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<sup>13</sup> See *supra* note 8.

<sup>14</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.8(b) (December 1995).

<sup>15</sup> See *R.E.*, *supra* note 11.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 11 and July 30, 2007 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: January 12, 2009  
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