

injury and pain and swelling of her left wrist due to repetitive work activities. OWCP accepted the claim for tenosynovitis of the left hand and wrist and right carpal tunnel syndrome. She stopped work on December 7, 2005.

Appellant had a previously accepted claim for right wrist sprain and right hand tenosynovitis under OWCP File No. xxxxxx248. Under that file number, in November 2000 OWCP granted her a schedule award for a 36 percent permanent impairment of the right upper extremity.

By decision dated March 24, 2008, OWCP reduced appellant's compensation effective March 24, 2009 based on its finding that she had the capacity to perform the selected position of customer complaint clerk.² It deduced health benefit premiums of \$145.52, basic life insurance premiums of \$14.40 and optional life insurance premiums of \$41.40 from her wage-earning compensation payments.

In a decision dated July 21, 2009, OWCP granted appellant a schedule award for a one percent permanent impairment of the right upper extremity and a three percent permanent impairment of the left upper extremity. Following a preliminary review, by decision dated October 29, 2009, an OWCP hearing representative set aside the July 21, 2009 decision and remanded the case for appellant's upper extremity claims to be combined, for an OWCP medical adviser to recalculate the extent of impairment and for OWCP to consider her prior 36 percent right upper extremity award.

By decision dated January 20, 2010, OWCP granted appellant a schedule award for a 12 percent permanent impairment of the left upper extremity.³ It noted that it had already paid an award for a four percent impairment of the left upper extremity.

In a decision dated July 8, 2010, the hearing representative vacated the January 20, 2010 decision and remanded the case for OWCP to combine the medical records for all of appellant's claims and further develop the medical evidence.

By decision dated September 16, 2010, OWCP granted appellant a schedule award for an additional seven percent impairment of the left upper extremity. The period of the award ran for 21.84 weeks at a pay rate of \$642.00 per week after cost-of-living adjustments. OWCP adjusted the starting date for the schedule award to August 29, 2010, noting that appellant received compensation for disability from May 21 to August 28, 2010.

A computerized payment sheet dated September 14, 2010 indicated that OWCP stopped paying appellant for her loss of wage-earning capacity (LWEC) as of August 29, 2010 and began

² In an order dated March 6, 2009, the Board dismissed appellant's appeal of a February 13, 2008 decision after finding that OWCP had not issued a final decision on that date. *Order Dismissing Appeal*, Docket No. 08-1083 (issued March 6, 2009).

³ OWCP noted that it had previously paid appellant for a one percent right upper extremity impairment and a three percent left upper extremity impairment. It added the one percent right upper extremity impairment paid erroneously to the three percent left upper extremity paid to show a previously awarded four percent left upper extremity impairment.

paying her compensation for the schedule award. OWCP paid her gross compensation of \$2,568.00 per week. From this amount, it deducted health benefit premiums of \$183.30 per week, basic life insurance premiums of \$14.40 per week and optional life insurance premiums of \$41.40 per week, which yielded net compensation of \$2,328.90. OWCP paid her net schedule award compensation of \$2,328.90 for the periods August 29 to September 24, 2010, September 26 to October 23, 2010, October 24 to November 20, 2010, November 21 to December 18, 2010 and December 19, 2010 to January 15, 2011. It further paid appellant gross compensation for her schedule award from January 16 to 28, 2011 of \$1,181.22, from which it deducted \$106.70 for health benefits, \$6.69 for basic life insurance and \$19.22 for optional life insurance, for net compensation of \$1,048.61.

On September 24, 2010 appellant, through her attorney, requested a telephone hearing. At the telephonic hearing, held on January 14, 2011, counsel indicated that she was not appealing the percentage of award but instead questioning the amount that she received. The attorney related that appellant should have received \$642.00 per week for 21.84 weeks, for a total of \$14,021.28. Instead, based on what appellant had received to date, OWCP would pay her around \$3,000.00 less than \$14,021.28.

By decision dated March 28, 2011, the hearing representative affirmed the September 16, 2010 decision. He found that OWCP properly paid compensation on the September 16, 2010 schedule award. The hearing representative determined that appellant would receive gross compensation payments of \$14,021.28 but that deductions for basic and optional life insurance and health benefits would reduce the net total payment to \$12,693.11. He concluded that “the total schedule award due was paid, with the apparent difference being the deductions for health and life insurance deductions.” The hearing representative advised that any error in the amount deducted for health and life insurance premiums should be raised before OWCP.

LEGAL PRECEDENT

For all claims under FECA, compensation is to be based on the pay rate as determined under section 8101(4), which defines monthly pay as: “[The] 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.”⁴

The Board has held that rate of pay for schedule award purposes is the highest rate which satisfies the terms of section 8101(4).⁵

OWCP procedures manual provides that “The inability to return to duty is not a condition of receiving compensation for schedule awards. Therefore, it must be determined whether the claimant is or was unable to ‘return to duty’ during the period of the schedule award in order for life insurance eligibility to continue.”⁶ Additionally, “claimants who continue to receive

⁴ 5 U.S.C. § 8107.

⁵ See *Robert A. Flint*, 57 ECAB 369 (2006).

⁶ Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, 5.401.6(b) (August 2004).

compensation for even a minor LWEC do not lose [life insurance] coverage, even though they are able to work part-time or to perform light-duty work.”⁷

Regarding health benefits, OWCP procedure manual provides:

“In most claims where schedule awards are being paid, the claimant is either working or receiving an annuity from [Office of Personnel Management] (OPM). Therefore, although OWCP is paying compensation, the health benefits withholdings are the responsibility of the employing agency or OPM.”⁸

“Claimants receiving compensation benefits for partial disability remain entitled to [Federal Employee’ Health Benefits] coverage....”⁹

ANALYSIS

OWCP accepted that appellant sustained tenosynovitis of the right and left hand, right carpal tunnel syndrome and right wrist sprain due to work injuries. In a decision dated March 24, 2008, it reduced her compensation beginning March 24, 2009 after determining that she could work as a customer complaint clerk.

Appellant received schedule awards totaling a 36 percent permanent impairment of the right upper extremity and a 12 percent permanent impairment of the left upper extremity. By decision dated September 16, 2010, OWCP granted her a schedule award for an additional seven percent impairment of the left upper extremity. It determined that the award should run for 21.84 weeks with a pay rate of \$642.00 per week and compensation every four weeks of \$2,328.90.

Appellant, through her attorney, concurred with the amount of the impairment rating but questioned why her compensation every four weeks was less than \$642.00 per week multiplied by the number of weeks of compensation. The record indicates that beginning August 29, 2010 OWCP stopped her payments for partial disability based on her loss of wage-earning capacity and began paying her compensation for a schedule award. It calculated that appellant was entitled to \$2,568.00 in gross compensation. From this amount OWCP deducted \$183.30 in health benefits premiums, \$14.40 in basic life insurance premiums and \$41.40 for optional life insurance premiums, for total net compensation of \$2,328.90. For each period August 29 to September 25, 2010, September 26 through October 23, 2010, October 24 to November 20, 2010, November 21 to December 18, 2010, December 19, 2010 through January 15, 2011, OWCP paid appellant \$2,568.00 in gross compensation and \$2,328.90 in net compensation. From January 16 through 28, 2011, OWCP paid appellant gross compensation of \$1,181.22 and net compensation of \$1,048.61 after deductions for health benefits premiums of \$106.70, basic

⁷ *Id.* at 5.401.5(c).

⁸ *Id.* at 5.400.3(c).

⁹ *Id.* at 5.400.6(e).

life insurance premiums of \$6.69 and optional life insurance premiums of \$19.22. It thus paid her a total amount of gross compensation of \$14,021.22 and net compensation of \$12,693.11.

In paying schedule award compensation OWCP will not deduct life insurance premiums unless a claimant is unable to return to duty during the period of the award.¹⁰ Life insurance coverage also continues for claimants who have been receiving compensation under a LWEC.¹¹ Health benefits are not deducted from schedule awards if the claimant is working or receiving benefits through OPM. Health benefit coverage continues for claimants receiving compensation for partial disability.¹²

Appellant received compensation beginning March 24, 2009 for partial disability based on the March 24, 2008 wage-earning capacity determination. An employee cannot concurrently receive compensation under a schedule award and compensation for wage loss.¹³ In paying appellant compensation for her loss of wage-earning capacity, OWCP deducted premiums for health benefits, basic life insurance and optional life insurance. It stopped paying appellant compensation for partial disability and began paying her for her schedule award on August 29, 2010. As she had been receiving compensation from OWCP based on an LWEC prior to her schedule award, she remained entitled to health and life insurance benefits. OWCP, consequently, deducted premiums for health benefits and life insurance as her coverage continued during the period of the schedule. The Board finds that it thus properly paid appellant's net compensation every four weeks of \$2,328.90 for the schedule award after deducting the premiums for health benefits and life insurance.

CONCLUSION

The Board finds that OWCP properly deducted premiums for health benefits and life insurance from appellant's schedule award compensation.

¹⁰ *Id.* at 5.401.6(b).

¹¹ *Id.* at 5.401.5(c).

¹² *Supra* note 10.

¹³ *See S.W.*, Docket No. 10-2071 (issued July 11, 2011); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a)(3) (January 2010).

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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