

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL KOSTISHAK and FEDERAL JUDICIARY,
U.S. BANKRUPTCY COURT, Baltimore, MD

*Docket No. 01-1142; Submitted on the Record;
Issued June 17, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant was paid the maximum compensation under 5 U.S.C. § 8112.

The Office accepted that appellant sustained a depressive disorder causally related to his federal employment. Appellant stopped working in May 1992 and received compensation for temporary total disability. By decision dated December 12, 2000, the Office determined that appellant's compensation was correctly calculated at the maximum compensation rate, pursuant to 20 C.F.R. § 10.406.

The Board finds that the Office properly determined that appellant had received the maximum compensation under the Federal Employees' Compensation Act.

The Act, at 5 U.S.C. § 8112(a), states:

“Except as provided by section 8138 of this title [regarding minimum limits of noncitizens and aliens], the monthly rate of compensation for disability, including augmented compensation under section 8110 of this title but not including additional compensation under section 8111 of this title, may not be more than 75 percent of the monthly pay of the maximum rate of basic pay for GS-15 [General Schedule], and in case of total disability may not be less than 75 percent of the monthly pay of the minimum rate of basic pay for GS-2 or the amount of the monthly pay of the employee, whichever is less.”

With respect to maximum compensation, section 10.406(a) of the Office's regulations, effective January 4, 1999, provide:

“Compensation of total or partial disability may not exceed 75 percent of the basic monthly pay of the highest step of Grade 15 of the General Schedule. (Basic monthly pay does not include locality adjustments).”¹

Appellant argues that his maximum amount of compensation should be based on the monthly pay of a GS-15, step 10 employee, including locality pay for the Washington/Baltimore area. With respect to the maximum compensation that may be paid, however, section 10.406(a) clearly and unequivocally provides that locality pay is not used to determine the basic monthly pay of the highest step for a GS-15 employee. Under this method the maximum compensation is the same for all federal employees for any particular year.

To determine whether 5 U.S.C. § 8112(a) and the implementing regulations at 20 C.F.R. § 10.406 are applicable, the Office first determines appellant's pay rate for compensation purposes using established procedures, including locality pay, night differential or other relevant factors.² Based on the pay rate for compensation purposes, the Office then calculates the compensation rate.³

After the Office determines appellant's compensation, it is compared to the maximum allowable under section 10.406(a) for that year. In determining the maximum amount, the Office first determines the pay rate for the highest step of a GS-15 employee, without locality pay. For the year 2000, this would be \$100,897.00.⁴ The maximum compensation allowed for the year 2000 is 75 percent of that figure, or \$75,672.75 annually (\$6,306.06 monthly, or \$5,820.98 every 28 days).

If the compensation rate is greater than the maximum compensation, it is reduced to the maximum amount. The record indicates that appellant received the maximum compensation allowable under the Act. In the year 2000, for example, appellant received \$5,820.98 every 28 days. In 1999 appellant received the maximum of \$5,607.76. As appellant received the maximum compensation allowable, he is not entitled to additional compensation in this case.

¹ 20 C.F.R § 10.406(a) (1999).

² 5 U.S.C. § 8114; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rate*, Chapter 2.900 (December 1995).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901 (December 1995).

⁴ For 1999, the amount was \$97,201.00. *See* Office of Personnel Management General Schedule tables.

The decision of the Office of Workers' Compensation Programs dated December 12, 2000 is affirmed.

Dated, Washington, DC
June 17, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member