



appellant's compensation to zero, effective May 16, 2001, based on its determination that the modified office clerk position represented her wage-earning capacity; (3) whether the Office properly determined that an overpayment of \$2,539.91 was created; (4) whether the Office properly denied waiver of the overpayment; and (5) whether the Office properly found that the overpayment should be repaid by deducting \$206.00 from appellant's continuing compensation benefits every 28 days.

### **FACTUAL HISTORY**

On October 31, 2000 appellant, then a 55-year-old data control operator, filed an occupational disease claim for carpal tunnel syndrome in both wrists and her left elbow which she attributed to her employment duties. Appellant was off work from October 27 to November 1, 2000. She returned to modified duties as a data conversion operator on November 17, 2000 and worked for three hours per day until she stopped working on December 9, 2000. On December 12, 2000 appellant underwent a surgical procedure for her carpal tunnel conditions. The Office accepted the conditions of bilateral carpal tunnel syndrome, cubital tunnel syndrome and thumb carp metacarpal arthritis. Appellant began receiving compensation on December 12, 2000 at a weekly pay rate of \$772.40. She underwent a second surgical procedure for her carpal tunnel conditions in January 2001 and returned to full-time work in her modified position on February 28, 2001. Appellant experienced additional problems with her extremities on May 16, 2001 and filed a new claim which the Office accepted the new claim for bilateral carpal tunnel syndrome and bilateral lesion ulnar nerve. It noted that appellant had sustained a recurrence of temporary total disability on May 16, 2001, and eventually combined the cases into the present claim. The record contains no evidence that appellant returned to work after May 16, 2001, the date of her recurrence. In June 2002, appellant underwent a nonwork-related open heart surgery.

By decision dated February 15, 2002, the Office granted appellant a schedule award for a 24 percent impairment of each upper extremity. The period of the award ran from December 20, 2001 through November 2, 2004 and was paid at a weekly pay rate of \$772.40. In an April 11, 2002 decision, the Office denied appellant's request for reconsideration without a merit review.

In a letter dated April 4, 2003, appellant inquired about her pay rate. By letter dated May 7, 2003, the Office advised that, when appellant first stopped work on October 27, 2000, she was a data control operator, Level 4, Step D, and earned \$36,505.00 per year and \$1.42 per hour in night differential for 27.5 hours worked at night per week. The Office found that her base salary was \$702.02 per week and that she earned a night differential of \$39.05 per week. This amounted to a pay rate of \$741.07 per week. The Office noted that appellant had been paid at the weekly rate of \$772.40. Appellant was requested to provide evidence that she earned more than \$741.07 as of October 27, 2000.

In a May 12, 2003 letter, appellant advised that her union had negotiated a pay increase effective November 18, 2001 and that, since she had returned to work, her pay rate should be based on her new salary. Appellant further advised that her salary in December 2000 was \$36,943.00 per year and that she was entitled to 30 hours per week of night-time differential as opposed to the 27.5 hours the Office calculated.

To clarify the correct pay rate effective date, weekly base pay and night differential amount, the Office conducted a telephonic conference on June 18, 2003 with a representative from the employing establishment. It noted that appellant stopped work on October 26, 2000 and used personal leave. She resumed work on November 1, 2000 and claimed leave without pay on November 3, 2000. As of those dates, her salary was \$36,504.00 per year or \$17.55 per hour, which equaled \$702.00 per week. Appellant had a fixed schedule and was paid for 30 hours of night differential per week at an hourly rate of 10 percent of the base pay per hour, or \$32.63. The Office noted that appellant did not claim any wage loss or leave repurchase before November 3, 2000. Utilizing the information provided by the employer, the Office advised that October 26, 2000<sup>2</sup> was the correct pay rate date for compensation purposes; the correct base pay rate was \$36,504.00, which represented to a base weekly salary of \$702.00; and the correct night differential pay rate was 10 percent of the hourly pay rate of \$17.55, or \$32.63 per week (\$1.7550 times 30 hours). The Office added the weekly base and the night differential to find that the correct pay rate was \$734.63 per week. Appellant was provided 15 days to respond to the information. Appellant did not respond.

By letter dated July 10, 2003, the Office proposed to reduce appellant's compensation for wage loss and the schedule award as a result of her October 26, 2000 injury on the grounds that she had been overpaid compensation at an incorrect pay rate higher than that to which she was entitled. The Office advised that appellant's correctly calculated pay rate was \$734.63, effective October 27, 2000, the date her disability began. The Office found that, although appellant sustained an accepted recurrence of temporary total disability on May 16, 2001, she was not eligible for the recurrent pay rate on May 16, 2001 as she had returned to work on February 28, 2001 and had not worked more than six months. The Office also noted that appellant had been paid at the incorrect pay rate from December 20, 2001 to the present. The Office advised appellant that, at the end of 30 days, compensation for her schedule award would be reduced to reflect the correct pay rate and an overpayment would be determined for all periods wage loss and schedule award paid at the incorrect pay rate.

In an August 4, 2003 letter, appellant reiterated her original assertion that she was entitled to a higher pay rate as her salary had increased November 18, 2000. She additionally argued that she was entitled to a cost-of-living allowance increase and was entitled to a higher pay rate because her other injury had been incorporated into this claim.

By decision dated August 21, 2003, the Office finalized the proposed reduction of compensation benefits. The Office advised that appellant's information did not alter the pre-reduction and conference conclusions pertaining to whether appellant had been underpaid and found that the date of disability of October 27, 2000 represented the correct pay rate at \$734.63. The Office further advised that appellant was still entitled to cost-of-living allowance, effective March 2002, but it would be based on the lower pay rate of \$734.63.

By decision dated August 22, 2003, the Office determined that appellant's actual earnings in the position of modified office clerk fairly and reasonably represented her wage-earning capacity effective May 16, 2001. The Office found that this employment was effective on

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<sup>2</sup> Appellant stopped work on October 26, 2000. The next day, October 27, 2000, was the date appellant first experienced disability due to her bilateral hand/arm conditions.

February 28, 2001 with weekly wages of \$803.98.<sup>3</sup> The Office determined that this position did not result in a loss of wage-earning capacity as appellant was reemployed with actual earnings exceeding the current wages for the job she held when injured. Accordingly, the Office reduced appellant's wage-loss compensation to zero.

In a September 2, 2003 letter, the Office issued a notice of proposed overpayment in the amount of \$2,539.91 because appellant was paid compensation at an incorrect pay rate for all periods paid from November 3, 2000 through August 9, 2003. The Office found that appellant was not at fault in creating the overpayment and advised that she could request waiver. Appellant did not respond.

By decision dated October 6, 2003, the Office finalized the overpayment determination that a \$2,539.91 overpayment had been created. The Office found that appellant was not entitled to waiver of the overpayment and that the overpayment would be collected by deducting \$206.00 from her continuing compensation payments effective November 1, 2003. The deduction was noted to come out of appellant's schedule award.

### **LEGAL PRECEDENT -- ISSUE 1**

With respect to the calculation of appellant's pay rate for compensation purposes, the Federal Employees' Compensation Act provides for different methods of computation of average annual earnings depending on whether the employee worked in the employment in which she was injured substantially the entire year preceding the injury or would have been afforded employment for substantially the whole year except for the injury.<sup>4</sup> Section 8114(d) of the Act provides:

“Average annual earnings are determined as follows --

“(1) If the employee worked in the employment in which he was employed at the time of injury during substantially the whole year immediately preceding the injury and the employment was in a position for which an annual rate of pay --

(A) was fixed, the average annual earnings are the rate of pay; or

(B) was not fixed, the average annual earnings are the product obtained by multiplying his daily wage for the particular employment or the average thereof if the daily wage has fluctuated, by 300 if he was employed on the basis of a 6-day workweek, 280 if employed on the basis of a 5½-day week and 260 if employed on the basis of a 5-day week.

“(2) If the employee did not work in employment in which he was employed at the time of his injury during substantially the whole year preceding the injury, but

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<sup>3</sup> The Board notes that, although the Office noted that appellant's employment was effective May 16, 2001, the record indicates that appellant returned to work in her modified position on February 28, 2001 and stopped work on May 16, 2001 due to a recurrence of her accepted injury conditions.

<sup>4</sup> 5 U.S.C. § 8114(d)(1), (2); *see Billy Douglas McClellan*, 46 ECAB 208, 212-13 (1994).

the position was one which would have afforded employment for substantially a whole year, the average annual earnings are a sum equal to the average annual earnings of an employee for the same class working substantially the whole immediately preceding year in the same or similar employment by the United States in the same or neighboring place as determined under paragraph (1) of this subsection.”<sup>5</sup>

Section 8114(d)(3) of the Act provides an alternative method for determination of pay to be used for compensation purposes when the methods provided in the foregoing sections of the Act cannot be applied reasonably and fairly.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

In this case, appellant worked in her position with the employing establishment during substantially the whole year immediately preceding her injury on October 27, 2000 and the position had average annual earnings of \$36,504.00. Therefore, section 8114(d)(1) is applicable in determining appellant’s rate of pay for compensation purposes.

Section 8105(a) of the Act provides: “If the disability is total, the United States shall pay the employee during the disability monthly compensation equal to 66 2/3 percent of [her] monthly pay, which is known as [her] basic compensation for total disability.”<sup>7</sup> Section 8101(4) of the Act 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.”<sup>8</sup> This section applies to compensation benefits paid pursuant to a schedule award and compensation in disability cases.<sup>9</sup>

The Office determined appellant’s pay rate for compensation purposes based on her employment as a data control/conversion operator, Level 4, Step D, with an annual salary of \$36,504.00 under section 8114(d)(1). The Office utilized the date disability began, October 27, 2000, as the date to establish appellant’s pay rate for compensation purposes. Appellant contended that the retroactive adjustment of her salary effective November 18, 2000 should be the pay rate for compensation purposes. The Board notes, however, that appellant did not return to her full-time regular duties as a data control/conversion operator, but rather worked for three hours a day in a modified position until she stopped working on December 9, 2000. Thus, although appellant had returned to work, she would not be entitled to a pay rate based on her

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<sup>5</sup> *Id.*

<sup>6</sup> 5 U.S.C. § 8114(d)(3).

<sup>7</sup> 5 U.S.C. § 8105(a); *see id.* at § 8110(b) (a disabled employee with one or more dependents is entitled to have her basic compensation for disability augmented at the rate of 8 1/3 percent of her monthly pay if that compensation is payable under section 8105 or 8107(a)).

<sup>8</sup> 5 U.S.C. § 8101(4).

<sup>9</sup> *See Sherron A. Roberts*, 47 ECAB 617 (1996).

retroactive increase in pay effective November 18, 2000 as she was still disabled from her full-time regular work effective October 27, 2000, the date of disability.<sup>10</sup>

Appellant is also not eligible for a recurrent pay rate as of May 16, 2001, the date of her recurrence. Appellant returned to full-time modified work on February 28, 2001. As the May 16, 2001 recurrence was less than six months after appellant resumed her full-time modified employment on February 28, 2001, she is not eligible for a recurrent pay rate under section 8101(4)(c).<sup>11</sup> The Board finds that the date disability began, October 27, 2000, is the appropriate pay rate for compensation purposes as that was the date appellant first stopped work for conditions in this claim.

On the date of disability, the employing establishment indicated that appellant's salary was \$36,504.00 per year. This is equivalent to a weekly salary of \$702.00 or \$17.55 per hour.<sup>12</sup> The employing establishment also indicated that appellant had a fixed schedule and earned 30 hours of night differential per week at an hourly rate of 10 percent of the base hourly pay of \$17.55. The night differential amounts to \$32.63 a week.<sup>13</sup> The weekly salary of \$702.00 plus the weekly night differential of \$32.63 amounts to a weekly pay rate of \$734.63. Accordingly, the Board finds that the Office properly determined that the correct pay rate was \$734.63 per week based on the date of disability.<sup>14</sup> The record is devoid of any evidence to the contrary.

### **LEGAL PRECEDENT -- ISSUE 2**

Once the Office has made a determination that a claimant is totally disabled as a result of an employment injury, it has the burden of justifying a subsequent reduction of compensation

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<sup>10</sup> Compensation in disability cases is computed based on pay rates in effect on the date of injury, the date disability began or the date of recurrence of disability if the recurrence of disability began at least six months after the worker returned to regular, full-time employment. The dates when "disability began" or "compensable disability recurred" are the dates the employee stopped work, not the dates pay stopped. An increase of pay during the continuation of pay (COP) period does not change the pay rate for compensation purposes. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Pay Rates*, Chapter 2.900.5a(1) (April 1995).

<sup>11</sup> 5 U.S.C. § 8101(4)(c).

<sup>12</sup> \$36,504.00 yearly salary divided by 52 weeks/year equals \$702.00 weekly rate. \$36,504.00 divided by 2080 hours per year equals \$17.55 hourly rate.

<sup>13</sup> 10 percent times \$17.55 equals \$1.755. \$1.755 times 30 hours equals \$32.63.

<sup>14</sup> The Office had noted that appellant's entitlement to cost-of-living allowance was effective March 2002 and would be based on the pay rate of \$734.63 per week.

benefits.<sup>15</sup> Section 8115 of the Act,<sup>16</sup> titled “Determination of wage-earning capacity,” states in pertinent part:

“(1) In determining compensation for partial disability, ... the wage-earning capacity of an employee is determined by his actual earnings if his earnings fairly and reasonably represent his wage earning....”

Generally, wages actually earned are the best measure of a wage-earning capacity, and in the absence of evidence showing they do not fairly and reasonably represent the injured employee’s wage-earning capacity, must be accepted as such measure.<sup>17</sup>

The Office’s procedure manual provides that a retroactive wage-earning capacity determination may be made when a claimant has worked in an alternative position for at least 60 days, the Office has determined that the employment fairly and reasonably represented the wage-earning capacity and the work stoppage did not occur because of any change in the claimant’s injury-related condition affecting his or her ability to work. The procedures further indicate that an assessment of suitability need not be made since the employee’s performance of the duties is considered the best evidence of whether the job is within the employee’s physical limitations.<sup>18</sup> The Board has concurred that the Office may perform a retroactive wage-earning capacity determination in accordance with its procedures.<sup>19</sup>

### **ANALYSIS -- ISSUE 2**

Under Office procedures, a retroactive wage-earning capacity determination may not be performed if a work stoppage occurs because of any change in an employee’s injury-related condition that affects the ability to work.<sup>20</sup> In this case, the Office advised that the wage-earning capacity decision was based on appellant’s modified employment. The record reflects that appellant returned to full-time work in her modified position on February 28, 2001 but stopped work again on May 16, 2001 due to a recurrence of temporary total disability. The Office additionally accepted the condition of bilateral lesion ulnar nerve to appellant’s already accepted conditions of bilateral carpal tunnel syndrome, cubital tunnel syndrome and thumb CMC arthritis. Since the record clearly reflects that appellant’s work stoppage from her modified position on May 16, 2001 was due to a change in her injury-related condition which affected her ability to work, the Board finds that the Office erroneously issued a retroactive wage-earning

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<sup>15</sup> *Gregory A. Compton*, 45 ECAB 154 (1993).

<sup>16</sup> 5 U.S.C. § 8115.

<sup>17</sup> *Elbert Hicks*, 49 ECAB 283, 284 (1998).

<sup>18</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7 (May 1997).

<sup>19</sup> *See Tamra McCauley*, 51 ECAB 375 (2000).

<sup>20</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7(e)(3) (May 1997).

capacity determination based on her February 28, 2001 modified position.<sup>21</sup> Accordingly, the Board finds that the Office did not properly issue a retroactive wage-earning capacity decision in this case.

### **LEGAL PRECEDENT -- ISSUE 3**

Section 8129(a) of the Act provides that where an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made by decreasing later payments to which the individual is entitled.<sup>22</sup>

### **ANALYSIS -- ISSUE 3**

The Office originally paid compensation and issued a schedule award based on an erroneously weekly pay rate of \$772.40. After conducting an investigation into her pay rate, the Office determined that the proper weekly pay rate, including a night differential, was \$734.63. As previously noted, the Board affirms the weekly pay rate of \$734.63. The Office determined that an overpayment in the amount of \$2,539.91 existed as appellant was paid at an incorrect higher pay rate for all periods of compensation based on both intermittent hours and calendar days between November 3, 2000 and August 9, 2003.

The record indicates that appellant was entitled to the compensation below at the correct pay rate:

“November 3 through December 11, 2000 (37 intermittent hours) \$453.00; December 12, 2000 through February 27, 2001 (77 calendar days) \$5,387.25; February 28 through March 9, 2001 (28 intermittent hours) \$342.83; April 3 through December 19, 2001 (56 intermittent hours) \$685.65; December 20, 2001 through February 28, 2002 (71 calendar days) \$4,967.46; March 1, 2002 through February 28, 2003 (365 calendar days) \$25,862.86; March 1 through August 9, 2003 (162 calendar days) \$11,756.57; Total entitlement from November 3, 2000 through August 9, 2003 \$49,455.64; Less amount actually paid \$51,995.55; Total amount of overpayment \$ 2,539.91.”

Appellant should have been paid \$49,455.64 for the above periods, but was paid \$51,995.55. The difference from the amount paid, \$51,995.55, from the amount to which appellant was entitled under the proper pay rate, \$49,455.64, results in an overpayment of \$2,539.91 for the period November 3, 2000 through August 9, 2003. The Office correctly determined that appellant was paid at the higher pay rate of \$772.40 for the above periods, resulting in an overpayment of \$2,539.91. Therefore, an overpayment of compensation in the amount of \$2,539.91 was created from November 3, 2000 to August 9, 2003 for intermittent time

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<sup>21</sup> *Id.* Compare *Tamra McCauley*, *supra* note 19 (where there was no indication that the work stoppage occurred due to a change in the accepted condition).

<sup>22</sup> See 5 U.S.C. § 8129(a).



and calendar days as the Office had paid at an incorrect higher rate of pay than which appellant was entitled.<sup>23</sup>

#### **LEGAL PRECEDENT -- ISSUE 4**

Section 8129(b) provides that adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience.<sup>24</sup>

The Office may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.<sup>25</sup> If the Office finds that the recipient of an overpayment was not at fault, repayment will still be required unless: (1) adjustment or recovery of the overpayment would defeat the purpose of the Act; or (2) adjustment or recovery of the overpayment would be against equity and good conscience.<sup>26</sup>

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.<sup>27</sup> Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.<sup>28</sup>

#### **ANALYSIS -- ISSUE 4**

The Office found that appellant was without fault in creating the overpayment. The Office sent appellant its September 2, 2003 notice of proposed overpayment and advised appellant that if she wanted to request waiver she needed to provide the necessary financial

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<sup>23</sup> *Id.*

<sup>24</sup> *See* 5 U.S.C. § 8129(b).

<sup>25</sup> 20 C.F.R. § 10.433(a).

<sup>26</sup> *Id.* at § 10.434. Recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the beneficiary from whom the Office seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses; and (b) the beneficiary's assets do not exceed a specified amount as determined by the Office from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents. *Id.* at § 10.436. Recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt. *Id.* at § 10.437(a). Recovery of an overpayment is also considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse. *Id.* at § 10.437(b).

<sup>27</sup> *Id.* at § 10.438(a).

<sup>28</sup> *Id.* at § 10.438(b).

information by completing the overpayment recovery questionnaire issued on September 2, 2003. Appellant, however, did not complete the overpayment recovery questionnaire or provide any financial information. As a result, the Office did not have the necessary financial information to determine whether recovery of the overpayment would defeat the purpose of the Act.<sup>29</sup> Thus, the Office acted properly in refusing to waive the recovery of the overpayment on this ground.

With respect to whether recovery would be against equity and good conscience, the Board notes that appellant has not alleged and the evidence does not demonstrate that she relinquished a valuable right or changed her position for the worse in reliance on the erroneous amount of compensation benefits received in this case. The Office did not have the necessary financial information to determine whether recovery of the overpayment would cause financial hardship or that she changed her position for the worse. Additionally, appellant has not submitted any evidence to show that she is entitled to waiver of recovery of the overpayment on the grounds that recovery would be against equity and good conscience. The Office, therefore, properly denied appellant's request for waiver of recovery of the overpayment on this ground.

As previously noted, appellant did not submit the financial information required by section 10.438 which was necessary to determine whether she detrimentally relied on the overpayment.<sup>30</sup> As such, the Office acted properly in refusing to waive the recovery of the overpayment on this ground.

As appellant has not shown that recovery would "defeat the purpose of the Act" or would "be against equity and good conscience," the Board finds that the Office properly denied waiver of recovery of the overpayment.

#### **LEGAL PRECEDENT -- ISSUE 5**

The method by which the Office may recover overpayments is defined by regulation. The applicable regulation, 20 C.F.R. § 10.441(a), provides as follows:

"Whenever an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to [the Office] the amount of the overpayment as soon as the error is discovered or his or her attention is called to the same. If no refund is made, [the Office] shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize hardship."<sup>31</sup>

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<sup>29</sup> *Id.* at § 10.438 (1999) (which provides that, if additional financial information is not submitted or a preresoupment hearing is not requested, within 30 days of the Office's preliminary overpayment determination, the Office will issue a final decision based on the available evidence and will initiate appropriate collection action. The overpaid individual has the responsibility for providing the financial information as the Office may require); *see Robert B. Hutchins*, 52 ECAB 344 (2001); *John B. Moore*, 41 ECAB 804 (1990).

<sup>30</sup> *Id.*

<sup>31</sup> 20 C.F.R. § 10.441(a).

### ANALYSIS -- ISSUE 5

The Office found that recovery of the overpayment would be made by an adjustment against continuing compensation at the rate of \$206.00 per payment. Appellant did not present any financial information to enable the Office to determine appellant's financial circumstances such that recovery of the overpayment from her continuing compensation would cause her undue financial hardship.<sup>32</sup> Office procedures note that if a claimant is being paid compensation or is due accrued benefits from the Office and does not respond to the preliminary overpayment decision, the debt should be recovered from such benefits as quickly as possible.<sup>33</sup> The Board, therefore, finds that the Office did not abuse its discretionary authority in determining that the overpayment sum of \$2,539.91 would be deducted from appellant's compensation benefits at the rate of \$206.00 every four weeks.<sup>34</sup>

### CONCLUSION

The Board finds that the Office properly computed appellant's compensation rate effective October 27, 2000, the date of disability, at a weekly rate of \$734.63. The Board reverses the Office's determination that appellant's modified position fairly and reasonably represented her wage-earning capacity. The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$2,539.91 for intermittent time and calendar days during the period November 3, 2000 through August 9, 2003 based on an incorrect higher rate of pay. The Board further finds that the Office properly denied waiver of the overpayment of compensation. Lastly, the Board finds that the Office did not abuse its discretionary authority in determining that the overpayment sum of \$2,539.91 could be deducted from appellant's due and accrued compensation benefits.

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<sup>32</sup> In establishing the initial collection strategy, the Office must weigh the individual's income, ordinary and necessary expenses and assets in a manner similar to the waiver considerations. When an individual fails to provide requested information on income, expenses and assets, the Office should follow minimum collections guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly. *Gail M. Roe*, 47 ECAB 268 (1995); *see Nina D. Newborn*, 47 ECAB 132 (1995).

<sup>33</sup> Federal (FECA) Procedure Manual, Part 6 -- *Debt Management*, Chapter 6.200.4(c)(2) and 6.200.4.d(1)(b) (September 1994).

<sup>34</sup> The Board notes that compensation under the schedule award runs until November 2, 2004.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 6 and August 21, 2003 be affirmed. It is further ordered that the Office's decision dated August 22, 2003 be reversed.

Issued: August 23, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member