

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**MATTIE B. EVANS, Appellant**  
**Claiming as Widow of CHARLES E. EVANS**

**and**

**DEPARTMENT OF THE ARMY, CORPS OF  
ENGINEERS, Los Angeles, CA, Employer**

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**Docket No. 04-1023**  
**Issued: August 25, 2004**

*Appearances:*  
*Mattie B. Evans, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On March 8, 2004 appellant filed a timely appeal of the December 4, 2003 merit decision of the Office of Workers' Compensation Programs, which determined the applicable pay rate and the amount of retroactive benefits due appellant. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.

**ISSUE**

The issue is whether the Office properly calculated appellant's compensation benefits as the employee's surviving spouse.

**FACTUAL HISTORY**

This case has previously been before the Board. The decedent was employed as a sociologist at the time he filed his 1987 claim for an employment-related emotional condition.

The Office accepted the claim for aggravation of personality disorder with paranoid and passive-aggressive features. The Office 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, the decedent's surviving spouse, 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 as well as the claim for augmented disability compensation. An Office hearing representative affirmed the denial of survivor's benefits and modified the decision with respect to entitlement to augmented disability compensation. However, the hearing representative did not award augmented benefits for the entire period claimed. Appellant subsequently requested reconsideration and in a decision dated February 28, 2000, the Office denied modification.

By decision dated May 22, 2002, the Board affirmed the February 28, 2000 finding with respect to the period of entitlement to augmented disability compensation. However, the Board set aside the finding that appellant failed to establish that the employee's death was causally related to his employment. The Board remanded the case with instruction to further develop the medical record and issue a *de novo* decision addressing whether the employee's December 8, 1997 death was causally related to his accepted psychiatric condition.<sup>1</sup>

After further development of the record, the Office advised appellant on December 10, 2002 that her claim for survivor's benefits had been approved. The December 10, 2002 letter provided a breakdown of appellant's entitlement 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. On December 20, 2002 the Office paid appellant \$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 decedent'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 the 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 decedent employee's pay rate in effect on December 4, 1987 rather than July 18, 1988 pay rate previously utilized. On April 11, 2003 the Office reimbursed OPM \$36,919.23 on appellant's behalf.

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<sup>1</sup> Docket No. 00-1993. The Board's May 22, 2002 decision is incorporated herein by reference.

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 decision also dated May 9, 2003, 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 decedent had previously been paid based on a July 18, 1988 recurrent pay rate of \$28,640.00. However, because his disability had been continuous since January 31, 1988, the correct pay rate for both the decedent employee’s claim and the survivor’s claim was the rate in effect on December 4, 1987, which was \$28,078.00. The Office further explained that, due to cost of living increases, the amount of compensation payable would actually be higher than if the July 18, 1988 pay rate had been used. 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. Additionally, the Office indicated that it enclosed approximately 40 pages of worksheets and other information regarding compensation history that was utilized in calculating the benefits due. Lastly, the Office explained that deductions were made for retroactive premiums for life insurance and health benefits coverage.

On June 9, 2003 appellant requested a review of the written record. Appellant raised a number of concerns regarding the Office’s May 9, 2003 determination. She noted that the Office failed to provide a detailed breakdown of the computations. She noted that while the Office provided loose documents on May 9, 2003 it neglected to provide a statement of explanation as to how compensation was calculated. She also inquired about the propriety of deducting approximately \$13,000.00 of health and life insurance premiums. Additionally, appellant indicated that she could not determine why the Office deducted \$2,393.80 for the period December 5, 1987 to January 30, 1988.

In a decision dated December 4, 2003, the Office hearing representative affirmed the Office’s May 9, 2003 determination. The hearing representative found that the Office properly calculated benefits based on the pay rate in effect on December 4, 1987. She did not otherwise address appellant’s contentions regarding the alleged questionable deductions and the lack of an adequate explanation in the May 9, 2003 notification.

### **LEGAL PRECEDENT**

In determining whether a claimant has discharged his or her burden of proof and is entitled to compensation benefits, the Office is required by statute and regulation to make findings of fact.<sup>2</sup> Section 8124(a) of the Act provides: “The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation.”<sup>3</sup> The Office’s regulation provides in relevant part that the decision of the Office “shall contain findings of fact and a statement of reasons.”<sup>4</sup>

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<sup>2</sup> *Robert L. Johnson*, 51 ECAB 480, 481 (2000).

<sup>3</sup> 5 U.S.C. § 8124(a).

<sup>4</sup> 20 C.F.R. § 10.126.

## ANALYSIS

Appellant argued that the Office failed to adequately explain the basis for the May 9, 2003 award of compensation. The Board finds that the Office hearing representative's December 4, 2003 decision does not contain sufficient findings of fact and a statement of reasons. The hearing representative limited her review to the question of the appropriate pay rate. Appellant, however, raised a number of other concerns regarding the Office's May 9, 2003 award of compensation, which the hearing representative failed to address.

It is unclear from the initial May 9, 2003 award what part of the funds remitted to appellant were attributable to the decedent's disability claim and which portion were attributable to the survivor's claim. Also, it is unclear whether the "adjustments" to the decedent's claim based upon the incorrect pay rate resulted in an overpayment of compensation. If an overpayment did arise, the Office cannot recoup the overpayment by simply reducing the amount that was otherwise due appellant on the survivor's claim. The Office's regulation provides a procedural framework for adjudicating overpayment issues that must be applied.<sup>5</sup> Additionally, it is 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 claim. Appellant also claimed that OPM had previously deducted various premiums such that it appeared she was being charged a double premium for the same period of coverage.

While the Office provided numerous pages of documents to assist appellant in understanding its calculations, the information provided is not self-explanatory. The May 9, 2003 disbursement to appellant spanned a period of 15 years from January 31, 1988 to March 22, 2003. By commingling appellant's entitlement with periods of entitlement prior to the employee's December 8, 1997 death, the Office has made it impossible for the Board to ascertain whether the appropriate amounts of compensation have been paid. Furthermore, neither the May 9, 2003 award letter nor the hearing representative's December 4, 2003 decision provide adequate findings of fact and a statement of reasons that would permit a proper review of the award. Accordingly, the Board finds that the case is not in posture for decision regarding the amount of benefits appellant was entitled to as the employee's surviving spouse.

On remand, the Office should issue a *de novo* decision clearly explaining what, if any, benefits are owed on the decedent's disability claim. Additionally, the Office should clearly delineate the amount of benefits appellant to which is entitled as a surviving spouse retroactive to December 9, 1997. The decision should also include a full explanation of the pay rate applicable and any required deductions for life and health insurance premiums.

## CONCLUSION

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

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<sup>5</sup> See *Diana L. Booth*, 52 ECAB 370, 373 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 4, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: August 25, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member