



## **FACTUAL HISTORY**

On March 17, 2004 appellant, a 76-year-old painter, filed an occupational disease claim for an employment-related binaural (both ears) loss of hearing.<sup>1</sup> The Office accepted the claim for a binaural sensorineural hearing loss. On September 14, 2004 appellant filed a Form CA-7 claim for a schedule award. On the back of the form, the employing establishment noted that appellant was earning \$13.15 per hour as of July 26, 1991.

The record contains a March 7, 2005 schedule award payment form and a memorandum to file which note a weekly pay rate of \$527.77. Both forms indicate the pay rate date as July 26, 1991.

In an August 29, 2005 memorandum, the Office noted the correct pay rate date should be August 10, 2004, which was the date of maximum medical improvement and the audiogram, and not July 26, 1991. The Office noted: “[o]nce the pay rate is adjusted, a Form CA-181 will be released and the claimant informed of the discrepancy” and that an overpayment action would follow.

By decision dated May 5, 2005, the Office issued a schedule award for an 81 percent binaural sensorineural hearing loss based on the February 18, 2005 report of its Office medical adviser. The period of the award was from August 10, 2004 to September 17, 2007, or 162 weeks of compensation. The Office reported the weekly pay rate as \$527.77, indicating that it was effective July 26, 1991. The Office informed appellant that he would receive \$14,508.43 for the “period covered” and a total of \$2,094.00 every four weeks thereafter until the schedule award ended.

On May 5, 2005 the Office issue a proposed reduction of appellant’s schedule award on the grounds that it was calculated using an incorrect pay rate. The Office noted August 4, 2004 was the correct effective pay rate date, as it was the date of maximum medical improvement. The Office found it had incorrectly entered July 25, 1991 as the effective pay rate date, adding 14 cost-of-living increases to the computation formula which resulted in an overpayment. The Office allotted appellant 30 days to submit any evidence.

By decision dated June 27, 2005, the Office finalized the reduction of appellant’s schedule award benefits effective June 12, 2005. By decision dated June 29, 2005, the Office issued an amended schedule award for an 81 percent binaural sensorineural hearing loss. The period of the award was from August 10, 2004 to September 17, 2007, which represented 162 weeks of compensation and a weekly pay rate of \$527.77. The Office informed appellant that he would receive a payment of \$1,583.31 effective June 12, 2005 every four weeks.

On August 1, 2005 the Office made a preliminary determination that appellant received an overpayment of \$5,845.97, from August 10, 2004 to June 11, 2005 because an incorrect pay rate was used for compensation purposes. The Office found that he was without fault in the matter because there was no way he should have known the Office had applied an incorrect pay rate. The Office asked appellant to complete an overpayment recovery questionnaire and submit

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<sup>1</sup> Appellant retired from the employing establishment effective July 26, 1991.

financial documents to support any request for waiver. The Office notified him of the importance of this financial information:

“This information will help us decide whether or not to waive the overpayment. If waiver is not granted, the information will be used to decide how to collect the overpayment. We will not try to collect the overpayment until we reach a final decision on your request for waiver.

“Also please note that, under 20 C.F.R. § 10.438, we will deny waiver if you fail to furnish the information requested on the enclosed Form OWCP-20 (or other information we need to address a request for waiver) within 30 days. We will not consider any further request for waiver until the requested information is furnished.”

Appellant did not respond within the allotted time.

In a decision dated March 20, 2006, the Office finalized its preliminary determination, finding that appellant received an overpayment of \$5,845.97, because of an incorrect pay rate. The Office denied waiver and advised appellant that \$315.00 would be deducted from his continuing monthly compensation checks until the amount was repaid.

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

Under the Federal Employees' Compensation Act, monetary compensation for total or partial disability due to an employment injury is paid as a percentage of monthly pay.<sup>2</sup> When compensation is paid on a weekly basis, the weekly equivalent of the monthly pay is deemed one-fifty-second of the average annual earnings.<sup>3</sup> The pay rate shown on Form CA-7 may be used in computing the average annual earnings. When it is reported on an hourly basis, the amount shown is multiplied by the hours worked per day, thus arriving at the daily pay rate which is in turn converted to a weekly basis.<sup>4</sup>

The Office regulations found at 20 C.F.R. § 10.126 provide that a decision shall contain findings of fact and a statement of reasons.<sup>5</sup> The Office procedures provide that a decision should contain a discussion of the issues, requirements for entitlement, a background framework so that the reader can understand the issues at hand, a discussion of the relevant evidence, a basis for the decision and a conclusion.<sup>6</sup> Thus, a final decision must include findings of fact and a

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<sup>2</sup> 5 U.S.C. §§ 8105, 8106.

<sup>3</sup> *Id.* at § 8114(c).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.900.9.a.1(c) (September 1990).

<sup>5</sup> 20 C.F.R. § 10.126; *see Teresa A. Ripley*, 56 ECAB \_\_\_\_ (Docket No. 05-189, issued May 9, 2005).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (March 1997).

description of the basis for the findings so that the parties of interest will have a clear understanding of the reasoning behind the decision.<sup>7</sup>

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

The Office found that an overpayment was created because an incorrect pay rate was used in determining appellant's schedule award payment covering the period August 10, 2004 to June 11, 2005. There were, however, no factual findings or explanations provided as to how the pay rate was calculated. The initial step is to determine the date that monthly pay will be determined pursuant to section 8101(4). This requires a determination as to the date of injury, the date disability began and the time compensable disability recurs if more than six months after resuming regular full-time work.

The Office apparently determined that the date of injury was July 26, 1991, without explaining how section 8101(4) was applied. It is an elementary principle of workers' compensation law, which the Board has often reiterated, that the Office is required to make findings of fact and a statement of reasons regarding the material facts of the case.<sup>8</sup> In this case, the Office's failure to explain the basis for its findings on appellant's rates of pay preclude the Board's review of this decision. The case will, therefore, be remanded for the Office to provide factual findings for determining the rate of appellant's pay for purpose of the schedule award compensation. Once the proper date is determined, the Office should discuss the information received from the employing establishment and explain how the pay rate for compensation purposes was calculated under 5 U.S.C. § 8114. After such further development as the Office deems necessary, it should issue an appropriate decision. In view of the Board's findings, the waiver issue will not be addressed.

### **CONCLUSION**

The Board finds that the Office did not adequately explain how the pay rate for compensation purposes was determined and therefore the fact and the amount of overpayment are not in posture for decision.

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<sup>7</sup> *Paul M. Colosi*, 56 ECAB \_\_\_\_ (Docket No. 04-1042, issued February 3, 2005).

<sup>8</sup> *See Beverly Dukes*, 46 ECAB 1014, 1017 (1995).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 20, 2006 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: October 11, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board