

FACTUAL HISTORY

This case has previously been before the Board. In a March 11, 2005 order remanding case,² the Board directed the Office to conduct a merit review on the issue of whether appellant slipped and fell while trying to exit a gas chamber during training on August 1, 2002.³ On remand, the Office issued a decision dated September 26, 2005, finding that appellant sustained a low back contusion causally related to the accepted August 1, 2002 employment incident. By letter dated September 26, 2005, it accepted appellant's claim for low back contusion.

On March 2, 2006 appellant filed a claim for a schedule award. On the form, the employing establishment stated that appellant's base pay on August 1, 2002 was \$64,944.00 per year.

By decision dated June 13, 2007, the Office granted appellant a schedule award for a 28 percent impairment of the bilateral lower extremities.⁴ The period of the schedule award was from December 1, 2005 through June 18, 2007 for a total of 80.64 weeks of compensation based on his weekly pay rate of \$936.69 effective August 1, 2002, the date of injury. The Office noted that the weekly pay rate was calculated at \$1,248.92 per week multiplied by the augmented, three-quarters, compensation rate for a weekly pay rate of \$936.69.

In a February 5, 2008 letter, appellant, through his attorney, requested reconsideration. Counsel contended that the Office used an incorrect pay rate as it did not include appellant's housing allowance and premium pay. An accompanying leave and earnings statement stated that appellant's gross biweekly pay rate as of August 21, 2002 was \$3,861.18 or \$100,390.68 per year. His gross pay included \$34,004.88 for a living quarters allowance and \$1,656.20 for a post allowance. Citing 5 U.S.C. § 8114, counsel contended that appellant's correct weekly pay rate should be calculated at \$3,861.18 divided by two for a weekly pay rate of \$1,930.59 multiplied by the augmented, three-fourths, compensation rate for a weekly pay rate of \$1,447.94. He multiplied \$1,447.94 by 80.64 weeks to calculate \$116,761.88 for schedule award compensation. Counsel subtracted \$75,534.68, the compensation appellant received, from \$116,761.88, the compensation he should have received to calculate an underpayment of \$41,227.20 plus any additional cost-of-living-adjustment (COLA) increases that may have occurred and were available during the period of the underpayment by the Office.

² Docket No. 04-1880 (issued March 11, 2005).

³ On August 6, 2002 appellant, then a 52-year-old budget officer, filed a traumatic injury claim alleging that on August 1, 2002 he sustained back and left foot and leg injuries when he slipped and fell during nuclear, chemical and biological training at work.

⁴ The Office granted the schedule award based on a December 12, 2005 medical report of Dr. John W. Ellis, a Board-certified family practitioner, who opined that appellant reached maximum medical improvement in early December 2005. Dr. Ellis determined that appellant sustained a 16 percent impairment of the left lower extremity and a 12 percent impairment of the right lower extremity, totaling a 28 percent impairment of the bilateral lower extremities based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

By decision dated May 8, 2008, the Office denied modification of the June 13, 2007 decision. It found that, although appellant submitted pay rate evidence, it was obligated to use the pay rate on the date of injury, \$64,944.00, as provided by the employing establishment.

LEGAL PRECEDENT

The terms of the Federal Employees' Compensation Act are specific as to the method and amount of payment of compensation; neither the Office nor the Board has the authority to enlarge terms of the Act nor to make an award of benefits under any terms other than those specified in the statute. Unless the statute authorizes the inclusion of a housing allowance when determining rate of pay, the Office's exclusion of such must be affirmed.⁵

Section 8114(e) of the Act provide that, in addition to annual base pay, certain items will be included in the computation of pay, such as the value of subsistence and quarters, premium pay and any form of remuneration in kind for services.⁶

The Office's procedure manual provides:

"It has been determined administratively that the following elements will be included in computing an employer's pay rate:

"(10) *Quarters allowances* for personnel serving overseas, paid pursuant to [s]ection 901(1) of the Foreign Service Act of 1946 and Executive Order No. 10011, dated October 22, 1948...."

"(18) *Post differential* paid under Title II, Part D of the Overseas Differential and Allowances Act (Pub. Law 86-707). This is regarded as a special recruitment and retention allowance granted because of the overall environmental conditions or rigors of the particular post. It is not a cost-of-living differential or economic equalization factor, which would be excluded from pay rate for compensation purposes...."⁷

ANALYSIS

On appeal, appellant, through counsel, contends that the pay rate for his schedule award should have included his housing allowance and premium pay in his overseas employment. The Board finds that the case is not in posture for decision. In determining appellant's schedule award pay rate, the Office utilized the pay rate effective August 1, 2002, the date of injury, \$64,944.00 annually or \$936.60 per week, which was provided by the employing establishment. A leave and earnings statement indicated that appellant's basic pay on August 24, 2002 was \$64,944.00 annually but, it also indicated that he received \$2,489.00 for a living quarters allowance and \$1,307.88 for a post allowance. In the May 8, 2008 decision, the Office

⁵ See *Helen A. Pryor*, 32 ECAB 1313 (1981).

⁶ 5 U.S.C. § 8114(e).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.7(b) (April 2002).

determined that housing and post allowances were not included in the computation of appellant's pay rate for schedule award compensation based on its obligation to use the pay rate information provided by the employing establishment. However, the Board finds that the Office did not address the administrative inclusions provided in its procedure manual. This case will be remanded to the Office for reevaluation of appellant's rate of pay.⁸ After such further development as the Office deems necessary, it should issue an appropriate decision with regard to the calculation of appellant's pay rate for schedule award compensation purposes.

CONCLUSION

The Board finds that the case is not in posture for decision regarding the schedule award pay rate issue.

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2008 decision of the Office of Workers' Compensation Programs is set aside with regard to the pay rate determination and the case is remanded for further consideration consistent with this decision of the Board.

Issued: April 22, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁸ *Cynthia A. Barnes*, 54 ECAB 414 (2005).