

On February 5, 2009 the Director filed a motion to remand the case. The Director determined that the Office had incorrectly calculated the compensation rate in its October 11, 2007 decision since it had determined the rate of pay based on the date the schedule award was issued instead of the period of the award, which was set to run during the employee's lifetime, commencing on the date of maximum medical improvement. As the Director noted in its pleading, the date the schedule award was "payable" began on June 24, 2004, which was two years prior to the employee's death. Thus, appellant was entitled to the augmented compensation rate of 3/4 as the "schedule award was 'payable for a period preceding the death' of the employee" during which he had qualified dependents and was entitled to augmented compensation. On remand, the Director stated that the Office would be instructed to recalculate the compensation rate for the period of the award, *i.e.*, June 24, 2004 to August 1, 2005, to reflect the augmented rate of 3/4.

The Board has duly considered the matter and concludes that, in light of the reasons contained in the Director's motion to remand, the motion should be granted.

IT IS HEREBY ORDERED THAT the motion to remand filed by the Director of the Office of Workers' Compensation Programs is granted. The decision of the Office dated October 11, 2007 is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: May 6, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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