

FACTUAL HISTORY

This is the fourth appeal in this case.¹ By decision dated June 23, 2009, the Board set aside decisions of the Office dated November 20, 2007 and April 24 and August 14, 2008 and remanded the case for further development on the issue of appellant's pay rate. By decision dated July 2, 2007, the Board set aside November 20 and July 19, 2006 decisions of the Office denying appellant's claim for a schedule award. By order dated February 2, 2006, the Board dismissed his appeal at his request. The facts of the previous Board decisions are incorporated herein by reference.

On June 29, 2009 the Office issued a schedule award decision based on a weekly pay rate of \$572.60 for the period January 16 to August 5, 2006. A pay rate calculation was attached to the decision. The calculation reflected that appellant's weekly pay amount was \$572.60, including \$492.90 for 30 hours of work a week, \$29.31 night differential pay and \$50.39 Sunday premium pay, multiplied by his \$16.43 hourly pay rate in effect on his January 16, 2004 date of injury. The Office found that appellant was entitled to additional compensation of \$2,771.37 (\$13,233.60 for the period January 16 to August 5, 2006 less the \$10,462.23 previously paid).

By letter dated June 30, 2009, the Office notified appellant that he should have been compensated for the period March 6 to May 6, 2004 at the weekly rate of \$572.60 rather than \$455.83. It paid him an additional \$760.26 for that period (\$3,713.17 less \$2,922.91 previously paid for March 6 to May 6, 2004).

On July 3, 2009 appellant requested reconsideration and contended that his weekly pay was \$657.20 at the 75 percent augmented compensation pay rate, or \$492.90. He did not explain how he calculated the \$657.20 pay rate.

An August 5, 2009 Office file memorandum explained the \$572.60 weekly pay rate calculation as follows: Appellant averaged 30 hours a week in his part-time position during the year prior to his January 16, 2004 employment injury based on a March 9, 2004 CA-7 claim form. His hourly pay rate was \$16.43 which equaled a weekly pay rate of \$492.90. Added to this weekly amount was \$29.31 a week in night differential pay and \$50.39 in weekly Sunday premium pay for a weekly pay total of \$572.60.

On August 12, 2009 the employing establishment advised the Office that appellant's hourly pay rate on January 16, 2004 was \$16.43. It provided a breakdown of his earnings during the one-year period prior to January 16, 2004. During that period, appellant worked 451 hours over the course of 15 weeks. He earned \$6,687.49 in base pay, \$263.68 in night differential pay and \$352.70 in Sunday premium pay.

By decision dated October 7, 2009, the Office modified the June 29, 2009 schedule award decision based on a weekly pay rate of \$535.09 as documented by the August 12, 2009

¹ See Docket No. 08-2315 (issued June 23, 2009); Docket No. 07-428 (issued July 2, 2007); Docket No. 05-1993 (order dismissing appeal issued February 2, 2006). On January 16, 2004 appellant, then a 40-year-old part-time flexible mail handler, sustained a sprain and strain of the right knee and leg and right plica syndrome of the right knee.

information from the employing establishment. It explained that it calculated his pay rate using section 2.900.10 of the procedure manual as instructed by the Board's June 23, 2009 decision. The Office calculated appellant's pay using the hourly basis method in section 2.900.10.c for postal employees working less than a full schedule. It multiplied appellant's \$16.43 hourly pay rate by the 451 hours he worked in his part-time position during the one-year period prior to January 16, 2004 and divided by the 15 weeks he worked which equaled \$494.00 a week (\$493.99 rounded to \$494.00). Appellant earned \$263.68 in night differential pay (\$263.68 divided by 15 weeks equals \$17.58). He earned \$352.70 in Sunday premium pay (\$352.70 divided by 15 weeks equals \$23.51). Appellant's total weekly pay was \$535.09 (\$494.00 base pay added to \$17.58 night differential and \$23.51 Sunday premium).

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that compensation for a schedule award shall be based on the employee's "monthly pay."² For all claims under the Act, compensation is to be based on the pay rate as determined under section 8101(4) which 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"³

Sections 8114(d)(1) and (2) of the Act⁴ provides methodology for computation of pay rate for compensation purposes by determination of average annual earnings at the time of injury. Sections 8114(d)(1) and (2) specify methods of computation for employees who worked in the employment for substantially the whole year prior to the date of injury and for employees who did not work the majority of the preceding year, but for whom the position would have afforded employment for substantially the whole year if the employee had not been injured.⁵

The Office's procedure manual provides methodology for computing weekly pay on an annual, daily and hourly basis.⁶ Section 2.900.10.c provides that, for postal employees, the employee's hourly pay rate is multiplied by 2,080 (hours), prorated by the percentage of hours worked and then divided by 52 (weeks) to determine the weekly pay rate.

² See 5 U.S.C. § 8107(a).

³ See 5 U.S.C. § 8101(4).

⁴ 5 U.S.C. § 8114(d)(1)-(2).

⁵ The Office defines "substantially the whole year" as "at least 11 months." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.4.a (October 2005).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.10 (October 2005).

ANALYSIS

Section 8107 of the Act provides that compensation for a schedule award shall be based on the higher of the employee's "monthly pay" at the time of injury or the time disability begins or the time of a compensable recurrence of disability. In this case, the applicable pay rate is the pay rate at the time of the January 16, 2004 employment injury.

As noted, sections 8114(d)(1) and (2) of the Act specify methods of computation for employees who worked in the employment for substantially the whole year prior to the date of injury and for employees who did not work the majority of the preceding year, but for whom the position would have afforded employment for substantially the whole year if the employee had not been injured. In this case, sections 8114(d)(1) and (2) do not apply because, although appellant's position would have afforded employment for substantially the whole year prior to the January 16, 2004 employment injury, he did not, in fact, work substantially the whole year in 2003 because he did not work during pay periods 17 to 20 and 25.

The applicable method for determining appellant's weekly pay rate is found in section 2.900.10.c of the Office's procedure manual which provides that, for postal employees working less than a full schedule, the full schedule figure of 2,080 hours should be prorated and then multiplied by the amount shown. The record shows that appellant's hourly pay rate was \$16.43. Multiplying \$16.43 by the 451 hours he worked and dividing by the 15 weeks he worked equals a \$494.00 base weekly pay rate. Dividing the \$263.68 night differential pay he earned by the 15 weeks he worked equals a prorated weekly night differential amount of \$17.58. Dividing the \$352.70 Sunday premium pay he earned by the 15 weeks he worked equals a prorated weekly Sunday premium amount of \$23.51. Combining his prorated weekly base pay, night differential pay and Sunday premium pay equals \$539.09, the amount calculated by the Office in its October 7, 2009 decision. The Board finds that the Office properly calculated appellant's pay rate.

On appeal appellant contends that his weekly pay rate should be \$657.20 because he worked 40 hours a week, a full schedule, prior to removal from his job in 2002. The record establishes, however that he worked only part time during the one-year period prior to his January 16, 2004 employment injury. Therefore the Office correctly based its pay rate calculation on its procedures for determining the pay rate of postal employees working less than a full schedule. Appellant's contention that his pay rate should be based on a 40-hour week is without merit.

CONCLUSION

The Board finds that the Office correctly determined appellant's pay rate in its October 7, 2009 decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 7, 2009 is affirmed.

Issued: July 8, 2010
Washington, DC

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

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

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