

FACTUAL HISTORY

The case was before the Board on a prior appeal.³ The Board noted that appellant had filed a claim for a traumatic injury on October 12, 1995 from lifting a tray of mail. This claim was accepted for left shoulder sprain and aggravation of degenerative cervical disc disease. On August 21, 2002 appellant filed an occupational illness claim (Form CA-2) alleging injuries resulting from performance of her modified job duties. OWCP accepted the claim for aggravation of degenerative cervical disc disease. The Board remanded the case for further development as to whether appellant had an upper extremity condition causally related to her federal employment. On April 12, 2010 OWCP accepted a lesion of the ulnar nerve root and plexus disorder pursuant to the August 21, 2002 occupational claim.

By report dated July 18, 2011, Dr. David Weiss, an osteopath, stated that he was updating his September 1, 2005 report to rate impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Appellant had a 6 percent right arm impairment and an 18 percent left arm impairment. By report dated January 25, 2012, an OWCP medical adviser opined that appellant had a 6 percent right arm impairment and a 17 percent left arm impairment.⁴

With respect to pay rate, the record contains a memoranda of telephone call (CA-110) dated January 26, 2012 in which the employing establishment reported that appellant had retired on January 7, 2005. A CA-110 dated January 26, 2012 stated that appellant's pay rate was \$33,627.00 annually. The date of the pay rate was not provided.

In a decision dated January 30, 2012, OWCP issued schedule awards for a 6 percent right arm and 17 percent left arm permanent impairment. The period of the awards was 71.76 weeks from September 1, 2005. The pay rate was reported as \$654.44 per week, with a pay rate date of January 7, 2005.

By letter dated March 1, 2012, appellant's representative requested reconsideration. Appellant argued that the pay rate was incorrect and submitted two pay stubs. One pay stub was from 2002 and listed that appellant had an annual salary of \$42,635.00. A pay stub from January 2005 noted that appellant's salary was \$46,460.00 annually.

In a decision dated April 9, 2012, OWCP stated that the pay rate was based on a date of recurrence and was correct. It did not specifically identify the date of recurrence of disability used.

Pursuant to the occupational claim, appellant resubmitted the July 18, 2011 report from Dr. Weiss on January 17, 2012. An OWCP medical adviser submitted an April 20, 2012 report reiterating that appellant's impairment was 6 percent to the right arm and 17 percent for the left

³ Docket No. 06-1070 (issued August 2, 2006).

⁴ The medical adviser indicated that appellant had received a schedule award for five percent left arm impairment in 1999.

arm. By decision dated April 25, 2012, OWCP found that appellant was not entitled to an additional schedule award.

LEGAL PRECEDENT

Under 5 U.S.C. § 8101(4), “monthly pay” means 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 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater” With respect to schedule awards, the pay rate is the greater rate determined under 5 U.S.C. § 8101(4).⁵

ANALYSIS

On appeal, appellant’s representative stated that appellant does not contest the percentages of impairment: 6 percent to the right arm and 17 percent to the left arm. The issue raised on appeal is the pay rate used by OWCP of \$654.44 per week. In this regard, the Board finds that OWCP did not properly explain how the pay rate was determined.

A January 26, 2012 memorandum from the employing establishment reported appellant’s pay rate was \$33,627.00 annually (a weekly pay rate of \$646.67), without listing the date used to calculate the pay rate. The January 30, 2012 OWCP decision states that the date used for the pay rate determination was January 7, 2005, the date that appellant retired. In the April 9, 2012 OWCP decision, the date used was the date of recurrence of disability, without further explanation.

To the extent that OWCP was determining the pay rate based on a pay rate on January 7, 2005, the record does not establish that \$654.44 was the correct pay rate. The traumatic injury claim contains a compensation payment for December 15, 2004 which uses a pay rate of \$654.44 per week, but states that the pay rate date was September 8, 1999. Appellant submitted pay rate information advising of a pay rate in 2002 (when the occupational claim was filed) of \$42,635.00 annually (\$819.90 per week) and \$46,460.00 (\$893.46 per week) in January 2005.

The case will be remanded to OWCP for proper findings as to the applicable pay rate pursuant to 5 U.S.C. § 8101(4). OWCP should explain the date used to determine the pay rate and the evidence supporting the amount of the weekly pay rate. The Board notes that appellant filed an appeal of the April 25, 2012 OWCP decision on the pay rate issue. Although this decision did not directly address the pay rate issue, it does find that appellant is not entitled to additional compensation with respect to a schedule award. To the extent that the April 25, 2012 decision affirms the prior pay rate used in the January 30, 2012 decision, the Board will set aside the January 30, April 9 and 25, 2012 decisions and remand the case to OWCP for an appropriate decision that properly resolves the pay rate issue.

⁵ *Robert A. Flint*, 57 ECAB 369 (2006).

CONCLUSION

The Board finds that OWCP did not make adequate findings with respect to the applicable pay rate. The case is remanded to OWCP for further development on the issue.

ORDER

IT IS HEREBY ORDERED THAT the decisions dated April 25 and January 30, 2012 are affirmed with respect to the degree of permanent impairment. The April 25 and 9 and January 30, 2012 decisions are set aside and remanded to OWCP for further action on the pay rate issue consistent with this decision of the Board.

Issued: January 2, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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