



as a result of gunshot wounds. In a May 11, 2012 statement, it indicated that the employee was a confidential source who had been killed during a drug enforcement operation on November 21, 2011. The employing establishment noted that the employee also worked as a truck driver in private employment. There were additional financial documents submitted, including a 2010 joint tax return from appellant and the employee, as well as W-2 tax form and other income documents for 2011 from several employers.

By decision dated July 12, 2012, OWCP determined that the evidence was insufficient to establish entitlement to survivor benefits. On August 9, 2012 appellant submitted a claim for compensation by widower (Form CA-5) alleging that the death of the employee on November 21, 2011 was causally related to federal employment. She reported no children or other dependents. Appellant submitted a reconsideration request on October 1, 2012. In a letter dated November 19, 2012, the employing establishment indicated that the employee had been paid \$5,000.00 in 2008 and \$11,500.00 in 2011 as a confidential source.

By decision dated January 8, 2013, OWCP vacated the July 12, 2012 decision. It found that the evidence was sufficient to establish the employee's death was causally related to federal employment.

By letters dated May 10, 2013, OWCP requested pay information from five different employers with respect to the employee. On May 21, 2013 one employer provided a "payroll transaction detail" commencing July 21, 2011, and another employer indicated that the employee was employed from June 23 to October 17, 2011. The record contains a brief "pay rate memo[redacted]" dated September 24, 2013 indicating that the employee's pay rate was \$43,176.88. No additional explanation was provided.

In a decision dated September 25, 2011, OWCP found that appellant was entitled to survivor benefits under 5 U.S.C. § 8133. It found she was entitled to 50 percent of the employee's pay and the 28-day amount was \$1,689.23. The decision indicated that appellant would be paid a lump sum of \$39,946.07 for the period November 21, 2011 to September 21, 2013.

### **LEGAL PRECEDENT**

With respect to compensation in the case of death, 5 U.S.C. § 8133 provides that, if the death results from an employment injury, "the United States shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee..." For a widow with no children, the percentage is 50. The monthly pay of an employee is determined by 5 U.S.C. § 8114, which provides a methodology for determining average annual earnings.

### **ANALYSIS**

In the present case, OWCP found appellant was entitled to survivor benefits under 5 U.S.C. § 8133. Since appellant reported no children on the CA-5 claim form, she is entitled to 50 percent of the employee's monthly pay.

The September 25, 2013 decision states that appellant would be paid \$1,689.23 every 28 days. There is no explanation as to how this figure was calculated, no reference to 5 U.S.C. § 8114, the financial evidence of record or other relevant information.

Appellant is entitled to a decision with adequate findings of fact and a statement of reasons.<sup>2</sup> It appears that the employee had earnings in the year prior to November 21, 2011 from several private employers, as well as the employing establishment. The case will be remanded to OWCP for proper findings as to the employee's pay rate. OWCP should address the provisions of 5 U.S.C. § 8114 and the specific evidence used to determine earnings in the year prior to November 21, 2011. After such further development as OWCP deems necessary, it should issue an appropriate decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 25, 2013 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: April 22, 2014  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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

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<sup>2</sup> *M.E.*, Docket No. 06-55 (issued October 5, 2006); 20 C.F.R. § 10.126.