

FACTUAL HISTORY

This case has previously been on appeal before the Board with respect to the termination of appellant's compensation benefits.² In a February 14, 2013 decision, the Board reversed an August 31, 2012 OWCP decision terminating benefits effective February 21, 2012. The Board found an unresolved conflict in medical opinion regarding whether appellant had any continuing employment-related residuals or disability causally related to his accepted December 4, 1996 employment-related injuries and whether the accepted injuries caused his headache, cervical and back conditions.³ The facts of the case as set forth in the Board's prior decisions are hereby incorporated by reference.⁴

The record reflects that OWCP previously paid appellant compensation for total disability in the amount of \$797.14 for the period February 12 to 20, 2012 and \$2,480.00 for the period January 15 to February 11, 2012. These payments were based on his date-of-injury weekly pay rate of \$670.50.

By letter dated February 21, 2013, appellant requested that OWCP pay him the retroactive disability compensation benefits due to him as a result of the Board's February 14, 2013 decision. In addition, he noted that he was still owed \$88.57 for the period OWCP had failed to pay him for one of the days in the period of February 12 to 20, 2012.

OWCP advised appellant on March 5, 2013 that pursuant to the Board's February 14, 2013 decision, retroactive compensation for disability in the amount of \$33,515.78 had been approved for February 21, 2012 through February 21, 2013. Appellant received an electronic payment for the stated amount on March 8, 2013.

In an April 4, 2013 decision, OWCP denied appellant's claim for the additional compensation in the amount of \$88.57 for February 20, 2012. It noted that he was on the periodic rolls and received disability compensation every 28 days. OWCP further noted that it had paid appellant \$797.14 for the partial period of disability from February 12 to 20, 2012. It stated that his periodic gross payment at that time was \$2,480.00 and the number of days between February 12 and 20, 2012 was nine. OWCP then divided \$2,480.00 by 28 days which resulted in \$88.57. It then multiplied \$88.57 by nine days resulting in \$797.14, which appellant had received.

² Docket No. 13-47 (issued February 14, 2013).

³ Subsequent to filing of the instant appeal, appellant appealed a February 22, 2013 OWCP decision that suspended his compensation benefits on the grounds that he failed to attend a scheduled medical examination. In a September 11, 2013 decision, the Board set aside the February 22, 2013 decision, finding that OWCP improperly selected an impartial medical specialist to conduct the examination and remanded the case for proper selection of a referee physician. Docket No. 13-968 (issued September 11, 2013).

⁴ OWCP accepted that on December 4, 1996 appellant, then a 49-year-old custodial laborer, sustained cervical and lumbar sprains, myalgias and myositis while in the performance of duty. Appellant stopped work on December 6, 1996. OWCP placed him on the periodic rolls beginning January 22, 1997 and paid him disability compensation based on his date-of-injury weekly pay rate of \$670.50. Appellant resigned from the employing establishment in August 1997.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.⁵

Section 8105(a) of FECA provides: “If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of his [or her] monthly pay, which is known as his [or her] basic compensation for total disability.”⁶ Section 8101(4) of FECA defines monthly pay for purposes of computing compensation benefits as the employee’s pay at the time of injury, time disability began or when compensable disability recurred, if the recurrence began more than six months after the employee resumed regular full-time employment with the United States, whichever is greater.⁷

The word disability is used in several sections of FECA. With the exception of certain sections where the statutory context or the legislative history clearly shows that a different meaning was intended, the word as used in FECA means incapacity because of injury in employment to earn wages which the employee was receiving at the time of such injury. This meaning, for brevity, is expressed as disability for work.⁸

ANALYSIS

The Board finds that OWCP properly determined appellant’s pay rate for compensation purposes and properly compensated appellant for the entire period in question.

The evidence of record reveals that OWCP calculated the pay rate with reference to appellant’s date-of-injury pay rate, *i.e.*, his pay as of December 4, 1996, which was \$670.50 per week. It properly used the weekly pay rate to calculate his pay rate. OWCP noted that appellant had gross compensation of \$2,480.00, which covered a period of 28 days and then calculated that the per day rate of compensation was \$88.57. It multiplied the per day rate of compensation times nine days of compensation he was entitled to receive from February 12 to 20, 2012 to calculate \$797.14 in total disability compensation, which it had already paid. The confusion in this case arose due to a letter from OWCP, dated March 20, 2012, advising appellant that he was being paid for the period February 11 to 20, 2012 in the amount of \$797.14. In fact, the record reflects that he had already been paid for February 11, 2012 in the previous payment of \$2,480.00 for the period from January 15 to February 11, 2012, but the period for the payment referenced in the March 20, 2012 letter mistakenly included February 11, 2012. Appellant had already been paid for February 11, 2012 in the \$2,480.00 payment. The March 20, 2012 payment was correct for February 12 to 20, 2012 in the amount of \$797.14 (for nine days). The Board finds that appellant has not submitted any evidence showing that OWCP’s calculation

⁵ 5 U.S.C. § 8102(a).

⁶ 5 U.S.C. § 8105(a). Section 8110(b) of FECA provides that total disability compensation will equal three fourths of an employee’s monthly pay when the employee has one or more dependents. *Id.* at § 8110(b).

⁷ *Id.* at § 8101(4); *see also* 20 C.F.R. § 10.5(s); *John M. Richmond*, 53 ECAB 702 (2002).

⁸ *See Charles P. Mulholland, Jr.*, 48 ECAB 604, 606 (1997).

of his pay rate was improper and the evidence of record does not otherwise reveal that an error was made.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly calculated appellant's pay rate for compensation purposes and he was not entitled to an additional \$88.57.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 15, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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