

**United States Department of Labor  
Employees' Compensation Appeals Board**

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E.B., Appellant )

and )

DEPARTMENT OF THE AIR FORCE, )  
RANDOLPH AIR FORCE BASE, )  
Oklahoma City, OK, Employer )

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**Docket No. 15-0627  
Issued: June 23, 2015**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 27, 2015 appellant filed a timely appeal from a January 5, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant received a \$388.98 overpayment of compensation for the period September 7 through 20, 2014, based upon an incorrect pay rate.

On appeal appellant asserts that OWCP calculated an incorrect pay rate as he did not work the 24-hour shifts OWCP used to calculate his pay rate.

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<sup>1</sup> Appellant initially requested an oral argument with the Board; however, in a February 18, 2015 letter, the oral argument request was withdrawn.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On June 11, 2014 appellant, then a 55-year-old GS-8, step 9 fire protection inspector, filed a traumatic injury claim alleging that on June 3, 2014 he injured his left knee when he slipped/tripped over a garden hose that was lying over an exit landing. He stopped work on June 4, 2014. OWCP accepted the claim for left knee sprain, cruciate ligament and tear of left knee medial meniscus and paid appropriate benefits.<sup>3</sup> Appellant was medically released to return to modified work on July 23, 2014. On September 4, 2014 he underwent a partial medial menisectomy. Appellant returned to work on September 22, 2014.

On September 25, 2014 appellant filed a Form CA-7 claim for compensation for the period September 7 through 20, 2014. The employing establishment noted that appellant worked 60 hours a week as a firefighter, 120 hours per pay period, with \$468.59 per week authorized overtime.

Appellant received compensation in the amount of \$2,288.27 for the period September 7 through 20, 2014.

On November 5, 2014 OWCP issued a preliminary determination that an overpayment of compensation in the amount of \$388.98 had been created for the period September 7 through 20, 2014, for which appellant was not at fault. It noted that a weekly pay rate of \$1,525.51 had been used instead of the correct weekly pay rate of \$1,266.19, which created an overpayment of \$388.98. OWCP calculated the weekly pay rate of \$1,266.19 based on Firefighter FLSA-144 hours (six 24-hour shifts) with annual salary \$54,960.00. It was also noted that appellant had 120 biweekly tour hours.

On November 17, 2014 appellant requested a telephonic hearing with OWCP and argued that he disagreed that an overpayment occurred. He indicated that as a federal fire inspector, he was required to work 60 hours at an annual salary and the original calculations were correct. Appellant also completed an overpayment recovery questionnaire.

In an effort to show that an overpayment had not occurred, appellant submitted a copy of his leave and earnings statement for the pay period ending September 6, 2014. The statement indicated that his adjusted basic pay was \$54,960.00. Appellant's earnings for the period ending September 6, 2014 was 80 hours of regular base pay in the amount of \$2,106.40, 26 hours overtime in tour in the amount of \$518.44, and 14 hours in overtime pay of \$418.74. A copy of the 2014 Federal Firefighter Pay Chart was also submitted.

By decision dated January 5, 2015, OWCP finalized the preliminary overpayment decision. It advised appellant to forward payment for the full amount of \$388.98 within 30 days.

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<sup>3</sup> OWCP subsequently accepted the conditions of old bucket handle tear of left medial meniscus and aggravation of traumatic arthropathy left lower leg.

## LEGAL PRECEDENT

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.<sup>4</sup> Section 8129 further provides, in pertinent part: “When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.”<sup>5</sup>

OWCP procedures set forth two formulas for determining a firefighter’s pay rate, one for firefighters who generally work 24-hour shifts and the other for firefighters with an extended tour built on top of a 40-hour basic workweek.<sup>6</sup>

The pay rate computation rules are delineated as follows in the FECA Procedure Manual:

“Under the Federal Firefighters Overtime Pay Reform Act of 1998, there are two categories of firefighters based on the type of work schedule. Different pay computation rules apply to each category.

(1) *Firefighters with regular tours of duty* generally consisting of 24-hour shifts (which is the most common situation).

(a) Annual salary / 2756 (53 hours of regular pay per week X 52 weeks) = firefighter hourly rate.

(b) Firefighter hourly rate X 106 hours = biweekly base pay.

(c) Firefighter hourly rate X 1.5 = ‘firefighter overtime’ rate (subject to GS-10, step 1 cap as described in PM 2-0900.6.b(13)).

(d) ‘Firefighter overtime’ rate X number of hours in regular tour in excess of 106 hours = biweekly ‘firefighter overtime.’

(e) (Biweekly base pay + biweekly ‘firefighter overtime’) / 2 = weekly pay rate.

(Note: most 24-hour shift firefighters have a regular biweekly tour of 144 hours (six 24-hour shifts), consisting of 106 regular hours and 38 ‘firefighter overtime’ hours; thus, 38 hours (144-106) would be used in step (d) above.)

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<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8129(a).

<sup>6</sup> See *William D. Schilling*, Docket No. 03-1525 (issued September 26, 2003). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.8(d) (August 2012).

(2) *Firefighters with an extended regular tour* built on top of a 40-hour basic workweek.

(a)  $(\text{Annual salary} / 2087) \times 80 \text{ hours} = \text{biweekly base pay}$ .

(b)  $\text{Annual salary} / 2756 = \text{firefighter hourly rate}$ .

(c)  $\text{Firefighter hourly rate} \times 26 \text{ hours} = \text{additional biweekly base pay}$ .

(d)  $\text{Firefighter hourly rate} \times 1.5 = \text{'firefighter overtime' rate}$   
(subject to GS-10, step 1 cap as described in PM 2-0900.6.b(13)).

(e)  $\text{'Firefighter overtime' rate} \times \text{hours in regular tour in excess of 106 hours} = \text{biweekly 'firefighter overtime'}$ .

(f)  $(\text{Biweekly base pay} + \text{additional biweekly base pay} + \text{biweekly 'firefighter overtime'}) / 2 = \text{weekly pay rate}$ .

(Note: a common schedule would be a 40+16 weekly tour, which translates into a biweekly tour of 112 hours, including 6 'firefighter overtime' hours to be used in step (e) above.)<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board has reviewed the case record and concludes that OWCP determined an overpayment of compensation based on an incorrect pay rate during the period September 7 through 20, 2014. In determining an overpayment of \$388.98 was created for the period September 7 through 20, 2014, OWCP determined that the weekly rate should be calculated based on a firefighter with regular tours of duty generally consisting of 24-hour shifts.

On appeal and before OWCP appellant argued that he was a firefighter with an extended regular tour built on top of a 40-hour basic workweek. His supervisor concurred with this statement in the September 25, 2014 CA-7 and appellant also provided an earnings and leave statement to support his assertion. The Board finds that the record does not establish that appellant worked 24-hour shifts, but rather that he worked a 40-hour basic workweek, with extended overtime hours to 60 hours a week. OWCP therefore used an incorrect pay computation to find that the overpayment occurred.

OWCP procedures indicate that for firefighters with an extended regular tour built on top of a 40-hour basic workweek, the following pay computation applies: Appellant's annual salary divided by 2087 ( $\$54,960/2087$ ) times 80 hours equals \$2,106.76 biweekly base pay. His annual salary divided by 2756 ( $\$54,960/2756$ ) equals \$19.94 firefighter hourly rate. The firefighter hourly rate times 26 hours ( $\$19.94 \times 26$ ) equals \$518.44 additional biweekly base pay. The firefighter hourly rate times 1.5 ( $\$19.94 \times 1.5$ ) equals \$29.91 for "firefighter overtime" rate

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<sup>7</sup> *Id.* at Chapter 2.900.8(d).

subject to GS-10, step 1 cap, not applicable. The “firefighter overtime” rate times hours in regular tour in excess of 106 hours (\$29.91 times 14) equals \$418.74. The weekly pay rate amounts to (biweekly base pay + additional biweekly base pay + biweekly “firefighter overtime”) divided by 2 ( $\$2,106.76 + 518.44 + 418.74 = 3043.94/2 = \$1,521.99$ ).<sup>8</sup>

For the period September 7 through 20, 2014, OWCP paid appellant at a weekly rate of \$1,525.51; however, the correct weekly rate should have been \$1,521.99 as calculated above. Thus the amount of overpayment is not in posture for decision. The case will be remanded to OWCP for further development and a proper decision on the overpayment issue.

### **CONCLUSION**

The Board finds that the case must be remanded to OWCP for proper findings with respect to an overpayment of compensation based on an incorrect pay rate for compensation purposes.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 5, 2015 decision of the Office of Workers’ Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: June 23, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy 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>8</sup> *Id.*