

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

C.S., Appellant)

and)

**FEDERAL AVIATION ADMINISTRATION,
CHARLOTTE/DOUGLAS INTERNATIONAL
AIRPORT, Charlotte, NC, Employer**)

**Docket No. 16-1437
Issued: November 2, 2016**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

On July 2, 2016 appellant filed a timely appeal of a June 29, 2016 decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 16-1437.

On review of the case record the Board finds the case must be remanded to OWCP. By decision dated March 10, 2016, OWCP found appellant had been paid compensation based on an incorrect weekly pay rate of \$2,292.06 from July 18, 2013 to March 5, 2016. It found the correct pay rate was \$2,129.81. The June 29, 2016 OWCP decision on appeal finalizes a March 16, 2016 preliminary determination that an overpayment of \$16,740.25 was created, based on use of an incorrect pay rate for compensation purposes.

The Board reviewed the March 20, 2016 decision on a prior appeal. By decision dated July 27, 2016, the Board remanded the case to OWCP.¹ The Board found the evidence was insufficient to make a proper determination as to the correct pay rate for compensation purposes. It was noted that appellant had argued that he was in a "learner's capacity" under 5 U.S.C. § 8113 at the time of injury on March 15, 2013, and therefore the pay rate should correspond to a probable higher wage-earning capacity upon completion of training. The Board found the case

¹ Docket No. 16-0881(issued July 27, 2016).

was not in posture for decision, and additional development was required to properly determine appellant's rate of pay.

In view of the Board's finding as to the pay rate, the June 29, 2016 overpayment decision is not in posture for decision. The correct pay rate has not been determined, and OWCP should properly develop the evidence in accord with the Board's July 27, 2016 decision. Once a proper determination is made as to the correct pay rate, OWCP may then address an overpayment issue if necessary. The case will be remanded to OWCP to properly resolve the issues regarding pay rate and a possible overpayment of compensation. After such further development as is deemed necessary, OWCP should issue an appropriate decision.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 29, 2016 is set aside and the case remanded to OWCP for further action consistent with this order of the Board.

Issued: November 2, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board