

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

A.B., Appellant

and

**DEPARTMENT OF LABOR, OFFICE OF
WORKERS' COMPENSATION PROGRAMS,
New York, NY, Employer**

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**Docket No. 15-0229
Issued: September 20, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 12, 2014 appellant filed a timely appeal from a May 15, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 is entitled to compensation for locality pay beginning on October 9, 2011 as a result of her accepted emotional condition.

On appeal appellant asserts that, because the New York district office could not accommodate her medical restrictions, she felt obligated to accept a position in the Boston district office, which had a lower locality pay.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On January 18, 2011 appellant, then a 55-year-old claims examiner, filed an occupational disease claim alleging that factors of her federal employment caused stress-related conditions including panic attacks, anxiety, and depression. She stopped work on January 3, 2011 and submitted factual and medical evidence to support her claim.

OWCP initially denied the claim on March 14, 2011. On July 12, 2011 an OWCP hearing representative remanded the case for further development. Appellant accepted a transfer to the Boston district office and began work there on October 11, 2011 as a rehabilitation specialist with no loss in pay.² The employing establishment indicated that the reassignment was the result of her request for reasonable accommodation. OWCP again denied the claim on November 2, 2011.

By decision dated February 13, 2012, an OWCP hearing representative determined that appellant had established two compensable factors of employment: an increased workload and dealing with difficult claimants. The case was remanded for review of the medical evidence to determine if the accepted employment factors caused her emotional condition. On March 2, 2012 OWCP accepted the condition of major depression, recurrent episode, severe without mention of psychotic behavior. Appellant was compensated for wage loss from January 14 to October 8, 2011, including locality pay for the New York City area.

On September 25, 2013 appellant filed a CA-7, claim for compensation, for loss of locality pay for the period October 9, 2011 to September 25, 2013. The record reflects that appellant was a Grade 12 Step 7 claims examiner in New York, and transferred to Boston, effective October 9, 2011, at the same grade and step. For the year 2011, the record reflects that the base pay for a Grade 12 Step 7 was \$72,326.00. The locality pay for the New York area was 28.72 percent, which yielded a Grade 12 Step 7 salary of \$93,101.00. The locality pay for the Boston area was 24.8 percent for a Grade 12 Step 7 salary of \$90,265.00.

In an October 25, 2013 statement, appellant indicated that, upon the recommendation of her psychiatrist, she initiated disability retirement in 2011 but also searched for a job that would accommodate her restrictions and agreed to accept a position in Boston as a rehabilitation specialist. She stated that she relocated at her own expense and, because she continued to have expenses in the New York area, she requested the difference in locality pay.

By decision dated November 19, 2013, OWCP denied appellant's claim for additional locality pay for the period October 9, 2011 through September 25, 2013. Appellant requested a review of the written record and, in a May 15, 2014 decision, an OWCP hearing representative affirmed the November 19, 2013 decision.

² The pay period began on October 9, 2011. Appellant had returned to part-time light-duty work on June 17, 2011. She last worked at the employing establishment in New York on October 7, 2011.

LEGAL PRECEDENT

OWCP procedures indicate that when an injured employee is reemployed in a new locale with a lower percent of locality pay than the job held on the date of injury, or without the cost-of-living allowance, the employee may be paid less than previously even if reemployed at the same grade and step. However, the current pay rate for the job and step when injured should reflect the pay in the new locale, not the original one.³ The procedures further explain that the employee is not losing net pay if reemployed at a lower locality pay rate since the cost of living is less in the new location, as represented by the difference in locality pay.⁴

ANALYSIS

In the instant case, OWCP accepted that appellant, a Grade 12 Step 7 claims examiner in the New York district office, sustained an employment-related emotional condition and paid her appropriate compensation through October 8, 2011, when she transferred to the Boston district office as a rehabilitation specialist at the same grade and step. Appellant was offered the Boston position because it comported with restrictions provided by her psychiatrist, and she relocated at her own expense. She thereafter filed a claim for the difference in locality pay in the New York and Boston areas, beginning October 9, 2011.

As noted above, OWCP procedures provide that when an injured employee is reemployed in a new locale, the current pay rate for the job and step when injured should reflect the pay in the new locale, even if the locality pay is less than at the previous location. The procedures explain that the employee is not losing net pay if reemployed at a lower locality pay rate because, as reflected in “locality pay,” the cost of living is less in the new location.⁵

There is no evidence of record to support appellant’s argument that she was obligated to accept the position in Boston. The Board finds that, upon her reemployment in Boston in October 2011, at the same step and grade, appellant would be entitled to the locality pay of the Boston area and not locality pay for the New York area where she was previously employed.

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 appellant is not entitled to additional locality pay as a result of her accepted emotional condition.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Wage-Earning Capacity Based on Actual Earnings*, Chapter 2.815.4.e(1) (June 2013).

⁴ *Id.*

⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2014 decision of the Office of Workers' Compensation Programs is affirmed.⁶

Issued: September 20, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁶ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.