

ISSUE

The issue is whether appellant is entitled to receive compensation at the recurrent pay rate.

FACTUAL HISTORY

OWCP accepted that on July 9, 1997 appellant, then a 50-year-old aviation safety inspector, sustained multiple upper and lower extremity conditions due to a slip and fall at work.³ Appellant stopped work on July 10, 1997. He received disability compensation on the daily rolls beginning July 31, 1998 and on the periodic rolls beginning December 1, 2002. On September 16, 2014 appellant filed a claim for compensation (Form CA-7) requesting disability for the period August 24 to September 16, 2014 due to his accepted July 9, 1997 work injury.⁴ He claimed, through counsel, that he was entitled to receive compensation at the recurrent pay rate because he returned to regular full-time employment with the United States.

In a letter dated December 16, 2014, OWCP requested that appellant submit additional evidence in support of his claim for the recurrent pay rate.

Appellant submitted a January 6, 2015 statement in which he alleged that he worked at least eight hours per day on July 13, August 8, and between October 18 and 29, 2007. He indicated that the documents of record reflected that on July 13, 2007 he worked for 9.5 hours attending meetings (including a working lunch) regarding proposed changes to the master minimum equipment list for the Saab SF-340 airplane; that on August 8, 2007 he worked 10 hours while attending an Equal Employment Opportunity (EEO) hearing for his own EEO claim; and that from October 18 to 29, 2007 he traveled to Sweden to conduct an on-site safety certification review of the Saab SF-340 airplane. Appellant submitted numerous documents, including time and attendance records and travel authorization records, which he believed supported his claims.

In a March 10, 2015 statement, an employing establishment official disputed appellant's claim that he returned to regular full-time employment for the United States. He noted that the record did not reflect that appellant worked for 9.5 hours attending meetings on July 13, 2007 because time and attendance records for that date show that he logged four hours of work time and 5.5 hours of compensatory time. The employing establishment official indicated that the record did not reflect that appellant worked 10 hours on August 8, 2007 while attending a hearing for his own EEO claim because the time and attendance records for the period August 6 to 10, 2007 do not support his claim.⁵ He accepted that appellant worked three eight-hour days from October 23 to 25, 2007 while on a work trip to Sweden, but asserted that he was still a part-

³ Appellant was a full-time employee at the time of his injury.

⁴ Appellant was separated from the employing establishment effective August 23, 2014.

⁵ The employing establishment official noted that appellant only listed 20 hours of work time for those five work days.

time employee because he never returned to work for 40 hours per week.⁶ The employing establishment noted that appellant traveled to and from Sweden in a first class airline cabin for medical reasons and therefore was not required to perform work tasks while traveling to and from Sweden.

In a decision dated February 22, 2016, OWCP determined that appellant was not entitled to receive compensation at the recurrent pay rate because he did not return to regular full-time employment with the United States within the meaning of 5 U.S.C. § 8101(4).

LEGAL PRECEDENT

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 monthly pay, which is known as his basic compensation for total disability.”⁷ Section 8101(4) of FECA defines “monthly pay” for purposes of computing compensation benefits as follows: “[T]he monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater....”⁸ OWCP’s regulations define “disability” as “the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.”⁹

Whether a given employee is entitled to compensation at the recurrent pay rate depends on whether the employee resumed regular full-time employment with the United States for six months prior to the start of his or her disability.¹⁰

ANALYSIS

OWCP accepted that on July 9, 1997 appellant sustained multiple upper and lower extremity conditions due to a slip and fall at work. On September 16, 2014 appellant filed a claim for compensation claiming disability for the period August 24 to September 16, 2014 due

⁶ The employing establishment cited an example in the Federal (FECA) Procedure Manual in which it was noted “that a claimant who worked a standard 40-hour week before the injury and returns to work eight hours per day for only three days per week has not returned to full-time employment.” See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.5 (September 2011).

⁷ 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. 5 U.S.C. § 8110(b).

⁸ 5 U.S.C. § 8101(4). See also 20 C.F.R. § 10.5(s). In an occupational disease claim, the date of injury is the date of last exposure to the employment factors which caused or aggravated the claimed condition. *Patricia K. Cummings*, 53 ECAB 623, 626 (2002). The Board has held that if an employee has one recurrence of disability which meets the requirements of 8101(4), any subsequent recurrence would also meet such requirements and would entitle the employee to a new recurrent pay rate. *Carolyn E. Sellers*, 50 ECAB 393 (1999).

⁹ 20 C.F.R. § 10.5(f).

¹⁰ See *D. W.*, Docket No. 14-0912 (issued September 29, 2014).

to his July 9, 1997 work injury.¹¹ He claimed that he was entitled to receive compensation at the recurrent pay rate because he returned to regular full-time employment with the United States. In a decision dated February 22, 2016, OWCP determined that appellant was not entitled to receive compensation at the recurrent pay rate because he did not return to regular full-time employment with the United States within the meaning of 5 U.S.C. § 8101(4).

The Board finds that appellant is not entitled to receive compensation at the recurrent pay rate because he did not return to regular full-time employment with the United States for six months prior to the start of his claimed disability on August 24, 2014.

Appellant claimed that he returned to regular work for at least eight hours per day on July 13, August 8, and between October 18 and 29, 2007. The Board has carefully reviewed the evidence of record, including the documentary evidence submitted by appellant, and finds that OWCP properly determined that appellant never returned to regular full-time employment with the United States.

The Board notes that this conclusion is supported by the documentary evidence of record and arguments of the employing establishment. An employing establishment official properly indicated that the time and attendance records do not support appellant's claim regarding the hours worked on July 13 and August 8, 2007. He noted that appellant traveled to and from Sweden in a first class airline cabin for medical reasons and therefore was not required to perform work duties while flying to and from Sweden. The employing establishment official also indicated that appellant worked three eight-hour days from October 23 to 25, 2007 while on a work trip to Sweden, but noted that OWCP procedures dictate that he was still a part-time employee because he never returned to work for 40 hours per week *i.e.*, his regular schedule at the time of his July 9, 1997 work injury.¹²

Whether a given employee is entitled to compensation at the recurrent pay rate depends on whether the employee resumed regular full-time employment with the United States for six months prior to the start of his or her disability.¹³ Resuming regular full-time employment with the United States for 14 days would in no way satisfy the requirement that appellant return to regular full-time employment with the United States for six months prior to his claimed August 24, 2014 disability. For these reasons, appellant is not entitled to receive compensation at the recurrent pay rate.

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.

¹¹ Appellant was separated from the employing establishment effective August 23, 2014.

¹² *See supra* note 6.

¹³ *See supra* notes 8 and 10.

CONCLUSION

The Board finds that appellant is not entitled to receive compensation at the recurrent pay rate.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board