

FACTUAL HISTORY

On June 20, 2018 appellant, then a 49-year-old air traffic control specialist, filed a traumatic injury claim (Form CA-1) alleging that on June 14, 2018 he experienced severe emotional and psychological distress while in the performance of duty when aircraft under his control came in close proximity to other aircraft. OWCP accepted the claim for acute stress reaction. Appellant stopped work on June 14, 2018. He received continuation of pay (COP) from June 15 to July 31, 2018.

In a memorandum dated June 29, 2018, Dr. Susan E. Northrup, a flight surgeon with the employing establishment who is Board-certified in occupational medicine, noted that appellant's clearance had terminated on June 29, 2018. She provided a clearance determination of incapacitation with special consideration for medical condition and/or medication. Dr. Northrup indicated that the clearance was pending further information.

In a work capacity evaluation (Form OWCP-5a), Dr. William M. Beecham, a clinical psychologist, released appellant to return to his usual employment as an air traffic controller with no restrictions.

Appellant returned to full-time employment on August 2, 2018.

In an August 18, 2018 report, Dr. L. Edward Antosek, an osteopath and senior aviation medical examiner, advised that appellant could perform air traffic control duties unless a flight surgeon rescinded his clearance.

In an undated statement received by OWCP on August 25, 2018, appellant indicated that the employing establishment had not reinstated him to active duty even though his physician had submitted the appropriate medical evidence. He advised that a flight surgeon with the employing establishment had failed to medically clear him to return to duty as an air traffic controller. Appellant indicated that his manager had told him that the flight surgeon had not issued a medical clearance because he had previously filed a traumatic injury claim. He advised that on August 23, 2018 the employing establishment had transferred him to another facility to perform administrative duties. Appellant further asserted that the employing establishment had failed to include night differential, Sunday premium pay, or holiday pay in his COP.

Appellant submitted information regarding his pay rate and premium pay earned during the course of a year, noting that his salary on the date of injury was \$142,504.00 including night differential pay, Sunday premium pay, and holiday premium pay.

On September 13, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) requesting lost Sunday premium pay, holiday premium pay, and night differential from June 14 to September 15, 2018.

In a medical clearance status update e-mail dated September 20, 2018, Dr. Northrup advised appellant that the employing establishment could not knowingly put employees in situations proven to cause harm. She indicated that his work had caused him harm four times and advised that, in an abundance of caution to protect his health, his file had needed to be reviewed

before she could return him to controlling status. Dr. Northrup informed appellant that she had returned him to controlling status and apologized for the delay.

In a statement dated September 28, 2018, appellant indicated that a qualified treating physician had returned him to work without restrictions on August 1, 2018, but, the head flight surgeon had found that he was not medically qualified. He asserted that the employing establishment was acting in a punitive manner because he filed a Form CA-1.

On September 29, 2018 appellant filed a Form CA-7 requesting wage-loss compensation for lost Sunday premium pay, holiday pay, and night differential pay from September 16 to 19, 2018.

In a development letter dated October 4, 2018, OWCP notified appellant that the evidence submitted was insufficient to establish that he was entitled to wage-loss compensation from June 14, 2018 and continuing. It noted that his physician had released him to full duty on August 1, 2018. OWCP requested that appellant submit medical evidence supporting that he was disabled from work during the claimed period. It afforded him 30 days to submit the requested evidence.

On October 31, 2018 appellant asserted that his treating physician had returned him to full-duty work on August 1, 2018, but he had not possessed a medical clearance from the flight surgeon to return to his air traffic control duties. He indicated that his clearance was terminated on June 29, 2018 and that he was consequently disabled from performing his air traffic control duties until requalified by the flight surgeon on September 19, 2018. Appellant noted that, while awaiting medical clearance from the flight surgeon, the employing establishment had assigned him to other duties at various locations.

By decision dated December 26, 2018, OWCP denied appellant's claim for compensation. It found that he had received COP for the period June 15 through July 31, 2018 and had returned to work on August 2, 2018 in an administrative position. OWCP noted that appellant's physician had released him to full duty and that the fact that the employing establishment flight surgeon had failed to release him to his usual employment constituted an administrative action.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁴ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁵ Whether a particular injury causes an employee to

³ *Supra* note 1.

⁴ *T.A.*, Docket No. 18-0431 (issued November 7, 2018).

⁵ *T.W.*, Docket No. 19-1286 (issued January 13, 2020); *D.R.*, Docket No. 18-0232 (issued October 2, 2018).

become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁶

Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁸ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.⁹

Section 8114(e) of FECA and OWCP's procedures provide that, in addition to annual base pay, certain items will be included in the computation of pay, such as the value of subsistence and quarters, premium pay, and any form of remuneration in kind for services.¹⁰ Consequently, when the job held at the time of injury includes elements of pay such as night or shift differential, extra compensation for work performed on Sundays and holidays, or pay for administratively uncontrollable overtime, OWCP must include the additional pay in the base pay.¹¹

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹² Section 10.126 of Title 20 of the Code of Federal Regulations provides that a decision shall contain findings of fact and a statement of reasons. The Board has held that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.¹³

⁶ *Id.*

⁷ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁸ *See B.A.*, Docket No. 17-1471 (issued July 27, 2018).

⁹ *Id.*

¹⁰ 5 U.S.C. § 8114(e); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.6(b)(7) (March 2011).

¹¹ *Id.*

¹² 5 U.S.C. § 8124(a).

¹³ *L.M.*, Docket No. 13-2017 (issued February 21, 2014); *D.E.*, Docket No. 13-1327 (issued January 8, 2014); *L.C.*, Docket No. 12-0978 (issued October 26, 2012); Federal (FECA) Procedure Manual Part 2 -- Claims, *Disallowances* Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP accepted that appellant sustained acute stress reaction due to a June 14, 2018 employment incident. Appellant filed a claim for wage-loss compensation for lost Sunday premium pay, holiday pay, and night differential from June 14 to September 15, 2018 and September 16 to 19, 2018. He indicated that he had returned to work on August 2, 2018 but, did not receive medical clearance to return to his usual duties, and thus lost wages for Sunday premium pay, night differential, and holiday pay.

In its December 26, 2018 decision, OWCP denied appellant's claim for compensation for lost premium pay. It found that the employing establishment had paid him COP for the period June 15 through July 31, 2018. OWCP indicated that on August 1, 2018 appellant's physician had released him to resume his usual employment and noted that he had returned to work in an administrative position on August 2, 2018. It found that the fact that the flight surgeon at the employing establishment had failed to release appellant to perform his regular duties constituted an administrative action.

Section 8124(a) of FECA¹⁴ and section 10.126 of the implementing regulations¹⁵ require that final decisions of OWCP contain findings of fact and a statement of reasons. A decision denying a claim should contain a correct description of the basis for the denial in order that the parties of interest have a clear understanding of the precise defect of the claim and the kind of evidence which would overcome it.¹⁶ The Board finds that OWCP's December 26, 2018 decision was incomplete as it did not make findings regarding appellant's pay rate, nor did it address whether he was entitled to premium pay and night differential for the period August 1 to September 19, 2018. Because the December 26, 2018 decision does not explain the basis for the denial of his claim for compensation and request for premium pay and night differential or the findings of fact reached therein, the Board finds that OWCP has not fulfilled its responsibility under section 8124 of FECA and section 10.126 of its implementing regulations with regard to his request for premium pay and night differential pay for the period August 1 to September 19, 2018.¹⁷

The case shall therefore be remanded to OWCP for a proper decision, to include findings of fact and a clear and precise statement of reasons addressing appellant's pay rate and whether he was entitled to premium pay and night differential pay for the period August 1 to

¹⁴ 5 U.S.C. § 8124.

¹⁵ 20 C.F.R. § 10.126.

¹⁶ *O.M.*, Docket No. 19-0342 (issued November 15, 2019); *L.R.*, Docket No. 15-0235 (issued December 21, 2015); *Patrick Michael Duffy*, 43 ECAB 280 (1991).

¹⁷ *See L.D.*, Docket No. 19-0350 (issued October 22, 2019).

September 19, 2018. Following further development as OWCP deems necessary, it shall issue a *de novo* decision.¹⁸

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the December 26, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 9, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁸ *Id.*; see also *S.B.*, Docket No. 19-0634 (issued September 19, 2019).