United States Department of Labor
Employees' Compensation Appeals Board

A.K., Appellant	)	
and	)	**Docket No. 26-0561**
	)	**Issued: October 7, 2026**
DEPARTMENT OF AGRICULTURE, U.S. FOREST SERVICE, WILLAMETTE NATIONAL FOREST, Albuquerque, NM, Employer	)	

Appearances:
Wayne Johnson, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On June 3, 2026 appellant, through counsel, filed a timely appeal from a December 5, 2025 merit decision of OWCP of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether the OWCP properly determined appellant's pay rate for compensation purposes.

FACTUAL HISTORY

On January 3, 2023 appellant, then a 38-year-old seasonal forestry technician, filed an occupational disease claim (Form CA-2) alleging that he developed herniated cervical discs due to factors of his federal employment, including his duties as a firefighter. He noted that he first became aware of his claimed injury and realized its relation to his federal employment on July 1, 2020. Appellant stopped work on June 10, 2022, and underwent cervical arthroplasty at C5-6 and C6-7 on June 28, 2022. OWCP accepted the claim for cervical disc disorder with radiculopathy, and retroactively authorized the June 28, 2022 surgery.

On March 9, 2023 appellant filed a claim for compensation (Form CA-7) claiming a schedule award.

In June 2024, OWCP requested that the employing establishment complete and return a Form CA-1030 regarding information about appellant's position status and the pay he received, as well as the pay of a similarly-situated employee. In a Form CA-1030 completed on July 31, 2024, the employing establishment indicated that he was classified as a seasonal employee, had $3,184.00 in earnings in the year prior to the June 10, 2022 date of injury, and advised that he worked 25 days in the same period. Appellant was scheduled to work eight hours per day and received $15.97 per hour. The employing establishment also reported that a similarly-situated employee would be a forestry technician, GS-4, step 1, who in the year prior to June 10, 2022 had $20,642.31 in salary earnings, $481.28 in Sunday premium pay, $1,416.44 in hazard pay, and $487.52 in holiday pay.

By decision dated August 15, 2024, OWCP granted appellant a schedule award for 16 percent permanent impairment of the right upper extremity. The award was based on a March 15, 2024 report by Dr. James Brien, a Board-certified orthopedic surgeon, and a May 9, 2024 report by Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA). The physicians applied the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3] The award ran for 49.92 weeks from March 15, 2024 through February 27, 2025. OWCP used an effective date of pay rate of June 10, 2022 in calculating the amount of the schedule award due appellant.

On September 16, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

After a preliminary review, by decision dated December 12, 2024, OWCP's hearing representative set aside the August 15, 2024 schedule award decision and remanded the case to OWCP to calculate consumer price index (CPI) increases to which appellant was entitled. The hearing representative referenced OWCP's procedures which provide that, for an occupational disease claim where there is prior disability and the claimant was not working at the time of the

[3] A.M.A., *Guides* (6th ed. 2009).

schedule award rating examination, the CPI start date is the pay rate effective date (the date of injury, date disability began, or the date of recurrence, as applicable).[4] The hearing representative indicated that, in the present case, appellant stopped working June 10, 2022 and had been disabled since that date, but OWCP improperly used a date-of-injury pay rate in the August 15, 2024 schedule award that did not take into account prior disability and did not include CPI increases. The hearing representative advised that the pay rate should reflect appellant's prior disability and that the CPI effective date would then be the date of injury. The hearing representative remanded the case for OWCP to amend the pay rate to reflect appellant's prior disability and recalculate the CPI increases based upon the proper start date, to be followed by a *de novo* decision awarding appellant any further compensation due.

On January 15, 2025 OWCP issued a *de novo* decision on the schedule award which accounted for the retroactive CPI increases and amended the ongoing payments. It recalculated appellant's cost-of-living adjustment (COLA) based on the fact that he suffered work-related disability when he stopped work on June 10, 2022. The award ran for 49.92 weeks from March 15, 2024 through February 27, 2025. The effective date of the pay rate was June 10, 2022, and the weekly pay for pay rate purposes was $442.85. The award noted that the schedule award included an additional payment of $403.24 in the form of a COLA which was based on the relevant CPI data. OWCP provided pay documents and worksheets, including a January 15, 2025 manual adjustment form, in support of its calculations.

On February 14, 2025 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. An oral hearing was held on September 23, 2025.

By decision dated December 5, 2025, OWCP's hearing representative affirmed the January 15, 2025 decision.

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."[5] 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

[4] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.5c (September 2011) and Exhibit 1 (September 2011).

[5] 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).

greater...."[6] 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."[7]

With respect to the calculation of appellant's pay rate for compensation purposes, FECA provides for different methods of computation of average annual earnings depending on whether the employee worked in the employment in which he was injured substantially for the entire year immediately preceding the injury and would have been afforded employment for substantially a whole year, except for the injury.[8] Sections 8114(d)(1) and 8114(d)(2) of FECA provides:

"Average annual earnings are determined as follows:

> (1) If the employee worked in the employment in which he was employed at the time of injury during substantially the whole year immediately preceding the injury and the employment was in a position for which an annual rate of pay --
>
> > (A) was fixed, the average annual earnings are the rate of pay; or
> >
> > (B) was not fixed, the average annual earnings are the product obtained by multiplying his daily wage for the particular employment, or the average thereof if the daily wage has fluctuated, by 300 if he was employed on the basis of a 6-day workweek, 280 if employed on the basis of a 5 1/2-day week, and 260 if employed on the basis of a 5-day week.
>
> (2) If the employee did not work in employment in which he was employed at the time of his injury during substantially the whole year immediately preceding the injury, but the position was one which would have afforded employment for substantially a whole year, the average annual earnings are a sum equal to the average annual earnings of an employee for the same class working substantially the whole immediately preceding year in the same or similar employment by the United States in the same or neighboring place as determined under paragraph (1) of this subsection."[9]

[6] 5 U.S.C. § 8101(4). 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. *J.L.,* Docket No. 26-0350 (issued July 7, 2026); *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 recurrence pay rate. *K.D.,* Docket No. 23-0982 (issued June 5, 2024); *Carolyn E. Sellers*, 50 ECAB 393 (1999).

[7] 20 C.F.R. § 10.5(f).

[8] 5 U.S.C. §§ 8114(d)(1), (2).

[9] *Id.* at §§ 8114(d)(1), (2). The phrase "substantially the whole year" has been interpreted to mean at least 11 months. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.4a (September 2020).

If the evidence shows that an employee did not work in the employment in which he was injured substantially for the entire year immediately preceding the injury and that he would not have been afforded employment for substantially a whole year, except for the injury, sections 8114(d)(1) and (2) of FECA are not applicable to the computation of the employee's pay rate.

If sections 8114(d)(1) and (2) of FECA are not applicable, section 8114(d)(3) provides as follows:

> "If either of the foregoing methods of determining the average annual earnings cannot be applied reasonably and fairly, the average annual earnings are a sum that reasonably represents the annual earning capacity of the injured employee in the employment in which he was working at the time of injury having regard to the previous earnings of the employee in federal employment, and of other employees of the United States in the same or most similar class working in the same or most similar employment in the same or neighboring location, other previous employment of the employee, or other relevant factors. However, the average annual earnings may not be less than 150 times the average daily wage the employee earned in the employment during the days employed within 1 year immediately preceding the injury."[10]

ANALYSIS

The Board finds that OWCP properly determined appellant's pay rate for compensation purposes.

The record reflects that appellant's appointment was temporary and that his tour of duty was seasonal. The evidence shows that appellant did not work in the employment in which he was injured substantially for the entire year immediately preceding the injury and that he would not have been afforded employment for substantially a whole year, except for the injury, and therefore sections 8114(d)(1) and (2) of FECA are not applicable to the computation of his pay rate.

Given the inapplicability of sections 8114(d)(1) and (2) of FECA, OWCP properly applied section 8114(d)(3) to determine appellant's pay rate for compensation purposes.[11] In applying section 8114(d)(3), OWCP properly considered the factors delineated therein, including appellant's previous earnings in federal employment; the earnings of other employees of the United States in the same or most similar class working in the same or most similar employment in the same or neighboring location; and appellant's prior nonfederal employment. OWCP complied with its procedures by obtaining information from the employing establishment and appellant concerning these factors.[12] This information revealed that appellant had $3,184.00 in earnings in the year prior

[10] 5 U.S.C. § 8114(d)(3). According to OWCP's procedures, the phrase "the same or most similar class working in the same or most similar employment" refers to both the kind of work held and the kind of appointment held. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.4c (September 2020).

[11] *See T.T.,* Docket No. 09-1907 (issued June 28, 2010); *Randy L. Premo*, 45 ECAB 780, 782 (1994) (holding that section 8114(d)(3) of FECA provides an alternative method for determination of the pay rate to be used for compensation purposes when the methods provided in sections 8114(d)(1) and 8114(d)(2) cannot be applied reasonably and fairly).

[12] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.4c(3) (September 2020).

to the date his disability began on June 10, 2022, and that a similarly-situated employee would be a forestry technician, GS-4, step 1, who in the year prior to June 10, 2022 had earnings of $23,027.55, comprised of $20,642.31 in base salary earnings, $481.28 in Sunday premium pay, $1,416.44 in hazard pay, and $487.52 in holiday pay. OWCP further complied with its procedures by calculating appellant's average annual earnings based on this information, comparing this figure for average annual earnings to that which would be obtained from the formula delineated in the last sentence of 8114(d)(3) and using the greater of the two figures to determine appellant's pay rate for compensation purposes.[13]

The formula from section 8114(d)(3) yielded a weekly pay rate of $367.38, a figure which was derived by multiplying appellant's hourly wage of $15.97 times his average work hours per day, multiplying the result times 150, and then dividing the result of this computation by 52. OWCP also calculated the weekly pay rate for a similarly-situated employee by dividing the $23,027.55 in annual earnings of such an employee by 52, which yielded the figure of $442.85. It determined that the earnings of a similarly-situated employee were higher than would be calculated under the above-described formula from section 8114(d)(3), and therefore OWCP properly paid appellant based on the earnings of a similarly-situated employee.

OWCP properly computed appellant's pay rate pursuant to the average annual earnings of a similarly-situated temporary employee, and he is not due additional compensation based on the wages of a career seasonal employee, or the special pay rate of a career seasonal firefighter. The Board further notes that OWCP applied the appropriate standards so that the compensation it paid him included the CPI increases to which he was entitled.[14] The case record contains pay documents and worksheets, including a January 15, 2025 manual adjustment form, which support OWCP's calculations.

The terms of FECA are specific as to the method and amount of payment of compensation. OWCP and the Board do not have the authority to enlarge the terms of FECA or to make an award of benefits under any terms other than those specified in the statute. The applicable provisions of FECA specify that compensation for disability shall be computed on the basis of the employee's monthly pay as defined in FECA.[15] For the reasons detailed above, OWCP used the correct pay rate to calculate appellant's benefits.

CONCLUSION

The Board finds that OWCP properly determined appellant's pay rate for compensation purposes.

[13] *Id.* at Chapter 2.900.4c(4), (5) (September 2020).

[14] *See supra* note 4.

[15] *J.L.,* Docket No. 08-0983 (issued August 4, 2009); *Gerald A. Karth*, 48 ECAB 194, 197 (1996).

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2025 decision of OWCP of Workers' Compensation Programs is affirmed.

Issued: October 7, 2026
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board