

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

S.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Myersville, MD, Employer**

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**Docket No. 12-707
Issued: February 5, 2013**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 9, 2012 appellant, through her attorney, filed an appeal of a February 3, 2012 decision of the Office of Workers' Compensation Programs (OWCP) regarding her pay rate. 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 OWCP properly determined appellant's pay rate for compensation purposes for the period July 30 to December 2, 2011.

On appeal, counsel contends that all of appellant's earnings should be considered regular wages.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on or before March 7, 2010 appellant, then a 53-year-old full-time regular rural carrier, sustained bilateral carpal tunnel syndrome, bilateral ulnar nerve lesions, a left rotator cuff tear, aggravation of preexisting C5-6 and C6-7 stenosis and complications of a fixation hardware shift in the cervical spine.

Appellant claimed compensation based on an 88-hour pay period, working six 8-hour days every other week. She asserted that her date-of-injury position required her to work six days a week every other week, for a total of 88 hours each pay period. The employing establishment noted that, as of March 7, 2010, appellant worked a six-day-a-week schedule from Monday through Saturday, beginning at 7:30 a.m. It did not state the time when her workday ended or provide the total number of work hours each week.

From August 16, 2010 to March 15, 2011, appellant's work schedule changed intermittently from 80 hours a pay period to 88 hours a pay period.² She received compensation for work absences beginning on August 16, 2010 based on a 40-hour workweek with a weekly pay rate of \$1,151.46.³ OWCP divided appellant's annual base salary of \$59,876.00 by 2,080 hours to determine an hourly pay rate of \$28.786538, multiplied by 40 to equal \$1,151.46. It placed her case on the periodic rolls effective March 26, 2011.

On July 29, 2011 appellant accepted a limited-duty job offer as a modified rural carrier, working six to eight hours a day, three days a week. She returned to work on July 30, 2011, working two days per week, for a total of 32 hours a pay period. The employing establishment increased appellant's schedule to three days a week as of August 1, 2011, equivalent to 48 hours a pay period and four days a week on August 28, 2011, equivalent to 64 hours a pay period. Appellant returned to full-time work on September 23, 2011, working 40 hours a week. She received wage-loss compensation for intermittent work absences based on a 40-hour workweek.

On compensation time analysis forms (CA-7a) signed on November 27, 2011, appellant indicated that, from August 1 to November 18, 2011, she was scheduled to work for eight hours a day, six days a week on alternate weeks. She claimed compensation for the sixth workday and for intermittent absence to attend medical appointments. OWCP issued wage-loss compensation based on a 40-hour-a-week schedule.

By decision dated February 3, 2012, OWCP found that appellant was not entitled to compensation in excess of 80 hours per two-week pay period for the period July 30 to December 2, 2011. It explained that its procedures provided that compensation for a full-time

² The employing establishment noted on wage-loss compensation CA-7 forms dated August 31, September 28, October 12 and 27, 2010 and April 12 and 27, 2011 that appellant was scheduled to work 88 hours every two weeks during the prior pay period. However, the employing establishment stated on CA-7 forms dated November 24 and December 7, 2010, January 6 and 20, February 3 and 24, March 4 and 29, 2011 that appellant was scheduled to work only 80 hours during the prior pay period.

³ Appellant underwent a cervical discectomy on August 22, 2010, a right median nerve release and right ulnar nerve transposition on August 27, 2010, cervical fixation hardware revision October 19, 2010 and left median nerve release and left ulnar nerve transposition on November 23, 2010.

postal employee was based on a 40-hour workweek or a maximum of 80 hours every two weeks. Therefore, appellant was not entitled to compensation based on an 88-hour pay period.

LEGAL PRECEDENT

Pay rate for compensation purposes is defined by FECA and in OWCP regulations as the employee's pay at the time of injury, time disability began or when compensable disability recurred, if the recurrence began more than six months after the employee resumed regular full-time employment with the United States, whichever is greater.⁴

Section 8114(d)(1) and (2) of FECA⁵ provide methodology for computation of pay rate for compensation purposes by determination of average annual earnings at the time of injury. Section 8114(d)(1) and (2) specify methods of computation for employees who worked in the employment for substantially the whole year prior to the date of injury and for employees who did not work the majority of the preceding year, but for whom the position would have afforded employment for substantially the whole year if the employee had not been injured.⁶

OWCP's procedure manual provides methodology for computing weekly pay on an annual, daily and hourly basis.⁷ Section 2.900.10(c) provides that, for postal employees, the employee's hourly pay rate is multiplied by 2,080 (hours), then divided by 52 (weeks) to determine the weekly pay rate.⁸

ANALYSIS

OWCP accepted that, on or before March 7, 2010, appellant sustained bilateral median and ulnar nerve lesions, a left rotator cuff tear and an aggravation of cervical stenosis. Appellant claimed compensation based on an 88-hour pay period July 30 to December 2, 2011, asserting that her date-of-injury job required working six days a week on alternate weeks. However, the employing establishment did not confirm that her date-of-injury position required her to work more than 40 hours a week. While the employing establishment indicated that appellant worked a six-day-a-week schedule beginning at 7:30 a.m., it did not indicate the time her shift ended or otherwise indicate that she worked more than 40 hours a week. Also, from August 16, 2010 to March 15, 2011, appellant's work schedule alternated between 80 hours a pay period and 88 hours a pay period. The employing establishment did not specify if the 88-hour pay periods were a job requirement or voluntary overtime. Therefore, the record does not establish that

⁴ 5 U.S.C. § 8101(4); 20 C.F.R. § 10.5(s); *see John M. Richmond*, 53 ECAB 702 (2002).

⁵ 5 U.S.C. § 8114(d)(1)(2).

⁶ OWCP defines "substantially the whole year" as at least 11 months. Federal (FECA) Procedure Manual, Part 2-- Claims, *Determining Pay Rates*, Chapter 2.900.4.a (October 2005).

⁷ *Id.* at Chapter 2.900.10 (October 2005).

⁸ *Id.* at Chapter 2.900.10.c (October 2005).

appellant's date-of-injury job required her to work 88 hours a pay period as opposed to a standard 80-hour pay period.⁹

Additionally, OWCP's procedures for calculating a postal employee's pay rate of compensation purposes are based on a 40-hour workweek or 80-hour pay period. The employee's hourly pay rate is multiplied by 2,080 annual work hours, then divided by 52 weeks to result in a 40-hour pay period.¹⁰ OWCP utilized the formula provided by its procedures in paying appellant wage-loss compensation based on a 40-hour workweek. To calculate appellant's weekly pay rate for compensation purposes, OWCP followed its procedures by dividing her annual salary of \$59,876.00 by 2,080 annual work hours, resulting in \$28.786538. It multiplied this result by 40, to equal \$1,151.46.¹¹ The Board finds that this calculation is mathematically correct and in accordance with OWCP procedures for calculating a postal employee's compensation.¹² Appellant has offered no authority to support that she should be compensated for greater than 40 hours per week for the claimed period.

On appeal, counsel contends that all of appellant's earnings should be considered regular wages for compensation purposes. This argument is without merit. As stated, OWCP properly computed appellant's compensation according to its procedures.

CONCLUSION

The Board finds that OWCP properly determined appellant's pay rate for compensation purposes for the period July 30 to December 2, 2011.

⁹ Furthermore, under 5 U.S.C. § 8114(e)(1), overtime pay shall not be taken into account in determining the employee's effective pay rate. While OWCP has administratively determined that certain premium pay, such as night and shift differentials, holiday and Sunday pay and premium pay for administratively uncontrollable overtime, shall be included for purposes of computing an employee's pay rate, the evidence before the Board does not substantiate appellant's entitlement to this. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rate*, Chapter 2.900.6(b) (March 2011); *L.F.*, Docket No. 11-1219 (issued April 13, 2012).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.10.c (March 2011).

¹¹ *Id.*

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 3, 2012 is affirmed.

Issued: February 5, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board