

calculation of compensation for disability the value of any subsistence and quarters the employing establishment provided in kind for services, if that value can be estimated in money.³

In this case, the Office found that the value of subsistence and quarters “cannot be included” in the calculation of appellant’s compensation because the file contained no information from the employing establishment or appellant showing such value, but when it is not disputed that appellant received subsistence and quarters while at sea,⁴ the Office has a statutory obligation to include the value of that remuneration in kind if its value can be estimated in money.⁵

The Board will set aside the Office’s January 28, 2010 decision and remand the case for further development of the value of subsistence and quarters provided to appellant while aboard the *McArthur II* for the period in question. The Office shall follow up on the employing establishment’s offer to estimate, as best it can from meals cost data, the value of subsistence provided to appellant while aboard ship if the cash allowance for onshore meals is not an acceptable reflection of that value. If the employing establishment is unable to provide further useful information, the Office must estimate a value for subsistence from other agencies and sources as appears reasonable under the circumstances and for quarters if there is a reasonable way to estimate its value in money. The Office shall then issue an appropriate final decision on appellant’s pay rate for compensation purposes.

³ See *Robert J. Lima*, 55 ECAB 546 (2004) (finding that living quarters provided to the employee, rather than a direct payment of money, was the type of “in kind” remuneration Congress intended to include in the pay rate for compensation purposes); see also *Helen S. Forman (Lawrence T. Forman)*, 39 ECAB 212, 216 (1987) (finding that the payment of school fees in money, as opposed to free tuition at a school operated by the employer, did not constitute remuneration “in kind”). Consistent with *Lima* and *Forman*, a cash allowance for food or lodging, such as appellant received when unable to eat or sleep aboard ship, is not remuneration in kind under section 8114(e).

⁴ Appellant stated that he averaged 280 sea days per year.

⁵ When the ship was ashore and meals were not provided onboard, appellant received a subsistence allowance of \$6.00 for breakfast, \$12.00 for lunch and \$20.00 for dinner, according to the employing establishment’s David C. North, but Mr. North did not believe \$38.00 a day should be used for appellant’s time at sea. He offered to estimate the value of subsistence at sea from meals cost data, if that was what the Office required. The Office never took him up on his offer.

The employing establishment’s Cecilia Collins was at a loss to calculate the value of appellant’s quarters at sea. She advised that the employing establishment owned the research vessel, so there was no cost to the employing establishment if an employee bunked aboard or not. She allowed, however, that it might be possible to make a rough estimate of the value of subsistence based on meals cost data.

IT IS HEREBY ORDERED THAT the January 28, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order of the Board.

Issued: April 8, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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