

ISSUE

The issue is whether OWCP properly determined appellant's pay rate in calculating compensation for her schedule award.

FACTUAL HISTORY

On June 13, 2019 appellant, then a 48-year-old city carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her knees when she tripped on the sidewalk, and fell while in the performance of duty. She stopped work that day, and returned to light-duty work on June 19, 2019. Appellant's supervisor noted on the claim form that appellant's pay rate was \$17.79 per hour. OWCP accepted appellant's claim for contusion of right knee, contusion of left knee, tear of right knee medial meniscus, prepatellar bursitis right knee, and tear of right knee lateral meniscus. On May 27, 2020 appellant underwent an OWCP-authorized right knee arthroscopic partial lateral meniscectomy, and synovectomy. OWCP paid her wage-loss compensation on its supplemental rolls commencing May 26, 2020.

A March 16, 2020 notification of personnel action (PS Form 50) documented that, effective March 28, 2020, appellant was converted to career status, as a Grade/Step 01/A working 40 hours per week with an annual pay of \$39,999.00, which is equivalent to \$769.21 weekly.

Appellant subsequently filed a claim for compensation (Form CA-7) for a schedule award on November 18, 2020. By decision dated August 16, 2021, OWCP granted her a schedule award for three percent permanent impairment of the right lower extremity. The period of the award ran for 8.64 weeks from March 17 to May 16, 2021. OWCP paid the schedule award at a weekly pay rate of \$769.21 and an augmented compensation rate of \$576.91, based on her May 26, 2020 date of disability pay rate.

On August 23, 2021 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held telephonically on December 20, 2021. By decision dated March 3, 2022, OWCP's hearing representative set aside OWCP's August 16, 2021 decision as a May 21, 2021 impairment report from Dr. Ralph D'Auria, a Board-certified physiatrist, was received after OWCP issued its August 16, 2021 decision and was sufficient to require further development.

By decision dated July 21, 2022, OWCP granted appellant an additional schedule award for 7 percent permanent impairment of the right lower extremity, (for a total of 10 percent), and 2 percent permanent impairment of the left lower extremity. The award ran for 25.92 weeks for the period May 21 through November 18, 2021. The payment was based on an annual pay rate of \$39,999.00 (\$769.21 weekly), and an augmented compensation rate of \$576.91, for date-of-disability pay rate effective May 26, 2020.

On September 1, 2022 appellant, through counsel, requested reconsideration with regard to the schedule award pay rate. Specifically, counsel argued that the pay rate used to calculate the schedule award should have been \$779.63 based on an annual salary of \$40,541.00. In support of the pay rate, counsel submitted a March 29, 2020 copy of a PS Form 50, which noted that effective March 28, 2020 appellant's base salary was \$40,541.00. This form noted that "the ASC will

process any necessary salary and/or leave adjustment increasing from C0 to E3.” OWCP also received an October 5, 2021 letter from the Department of Labor, which confirmed that appellant’s annual pay was \$39,999.00 effective March 28, 2020 and partially cut-off copies of “Payment history details” reports which note a \$769.21 weekly pay rate, effective May 26, 2020, for schedule award compensation for the periods March 17 through April 24, 2021 and April 25 through May 18, 2021.

By decision dated November 30, 2022, OWCP denied modification of its July 21, 2022 decision.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA⁴ provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.

Under FECA, monetary compensation for disability or impairment due to an employment injury is paid as a percentage of the pay rate.⁵ Section 8101(4) provides that monthly pay means the 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.⁶ OWCP procedures provide that, if the employee did not stop work on the date of injury or immediately afterwards, defined as the next day, the record should indicate the pay rate for the date of injury and the date disability began. The greater of the two should be used in computing compensation, and if they are the same, the pay rate should be effective on the date disability began.⁷

In applying section 8101(4), the statute requires OWCP to determine monthly pay by determining the date of the greater pay rate, based on the date of injury, date of disability, or the date of recurrent disability. The Board has held that rate of pay for schedule award purposes is the highest rate which satisfies the terms of section 8101(4).⁸ Where an injury is sustained over a period of time, the date of injury is the date of last exposure to the employment factors causing the injury.⁹

⁴ 5 U.S.C. § 8102.

⁵ *See id.* at §§ 8105-8107.

⁶ *Supra* note 2 at § 8101(4). *J.S.*, Docket No. 17-1277 (issued April 20, 2018); *K.B.*, Docket No. 13-0569 (issued June 17, 2013).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.9005a(3) (September 2011).

⁸ *A.W.*, Docket No. 19-0557 (issued November 18, 2019); *Robert A. Flint*, 57 ECAB 369, 374 (2006).

⁹ *See A.I.*, Docket No. 21-0248 (issued April 19, 2023); *A.W., id.*; *Barbara A. Dunnavant*, 48 ECAB 517 (1997).

ANALYSIS -- ISSUE 1

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

In determining the appropriate rate of pay for schedule award purposes, OWCP must determine the greater pay rate based on the date of injury, date of disability, or the date on which disability recurred.¹⁰

Appellant's supervisor noted on the claim form that appellant's pay rate was \$17.79 per hour. OWCP first paid appellant wage-loss disability commencing May 26, 2020 with no evidence of wage-loss compensation paid prior to May 26, 2020. It found that her pay rate as of May 26, 2020 was based on a salary of \$39,999.00 (weekly rate of \$769.21). Additionally, appellant had no dates of subsequent disability that would entitle her to a recurrent pay rate. Thus, the Board finds that OWCP properly determined that May 26, 2020 was the date of disability, and that her pay rate on May 26, 2020 was the greater pay rate.

In calculating appellant's pay rate, OWCP based the pay rate on her annual pay of \$39,999.00 effective March 28, 2020. However, counsel submitted a PS Form 50 to the record which indicates that as of March 28, 2020 appellant's base pay rate was greater at \$40,541.00, due to a salary and or leave adjustment increase. OWCP did not obtain clarification from the employing establishment regarding the conflicting information on appellant's PS 50 forms, after it received the subsequent form. As appellant has submitted evidence that her pay rate as of the date of disability was greater than that used by OWCP for calculation of her schedule award, the case must be remanded to OWCP for resolution of this discrepancy, to be followed by a *de novo* decision regarding this issue.

CONCLUSION

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

¹⁰ 5 U.S.C. § 8101(4).

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2022 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: August 11, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board