

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether OWCP properly determined that appellant was not entitled to consumer price index (CPI) adjustments beginning November 6, 2015, in calculating the pay rate for her schedule award.

## **FACTUAL HISTORY**

On November 9, 2015 appellant, then a 58-year-old office manager, filed a traumatic injury claim (Form CA-1) alleging that on November 6, 2015 she fractured the patella of her right knee when she slipped on a wet floor while in the performance of duty. She stopped work on November 6, 2015. OWCP accepted the claim for a right patella fracture. Appellant underwent an OWCP-authorized open reduction and internal fixation (ORIF) of the patella fracture on November 16, 2015.

Appellant returned to part-time employment on February 16, 2016. She retired effective March 1, 2016.

In a February 4, 2022 impairment evaluation, Dr. Robert W. Macht, a general surgeon, diagnosed status post ORIF of a fractured right patella. Referencing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>3</sup> he found eight percent permanent impairment of the right lower extremity. Dr. Macht opined that appellant had reached maximum medical improvement (MMI) by February 1, 2022.

On April 14, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On May 16, 2022 Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), concurred with Dr. Macht's finding of eight percent permanent impairment of the right lower extremity. He opined that appellant had reached MMI on February 1, 2022, the date of Dr. Macht's impairment evaluation.

By decision dated October 28, 2022, OWCP granted appellant a schedule award for eight percent permanent impairment of the right lower extremity.<sup>4</sup> The period of the award ran for 23.04 weeks from the date of MMI, February 1, 2022, until July 12, 2022. OWCP found an effective pay rate date of November 6, 2015, and that appellant's weekly compensation of \$1,528.27 was unchanged after cost-of-living adjustments (COLAs).

On November 11, 2022 appellant, through counsel, requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. He contended that the pay rate of the schedule award was incorrect and that she was entitled to CPI adjustments. Counsel noted that appellant had compensable disability following her injury even though she had not

---

<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed 2009).

<sup>4</sup> OWCP did not indicate the extent and degree of impairment in its decision; however, it is evident from the weeks of compensation awarded that it found eight percent lower extremity impairment.

received wage-loss compensation. He asserted that the pay rate should be the date of injury (DOI), November 6, 2015, which was also the date disability began, and that the CPI should start on that date.

By decision dated April 17, 2023, OWCP's hearing representative affirmed the October 28, 2022 decision. The hearing representative found that OWCP had not paid appellant wage-loss compensation due to the accepted employment injury, and thus her effective pay rate date was the DOI and her CPI adjustment start date was February 1, 2022, the date of MMI.

On March 20, 2024 appellant, through counsel, requested reconsideration. He noted that appellant had stopped work on the DOI and had undergone OWCP-authorized surgery on November 16, 2015. She returned to full-duty work for four hours per day on February 18, 2016. Counsel argued that appellant was totally disabled from November 6, 2015 until February 17, 2016, during which time she received continuation of pay (COP) and used sick leave. He noted that before her injury she had submitted retirement paperwork with a date of January 3, 2016, but changed the effective date to March 1, 2016 after her injury. Counsel argued that appellant was incapable of earning the wages she would have earned due to her employment injury. He maintained that there was no requirement to receive wage-loss compensation to meet the definition of disability. Counsel also asserted that appellant's receipt of COP established disability and noted that appellant could have requested leave buy back. He argued that she was entitled to a CPI/COLA start date of November 6, 2015.

In a statement dated April 9, 2024, appellant related that prior to her injury she had been scheduled to retire on January 3, 2016.<sup>5</sup> After her injury, she changed her retirement date to March 1, 2016. Appellant stopped work subsequent to her November 6, 2015 employment injury and did not return to work due to her limitations and surgery until February 18, 2016. She returned to work for 4.75 hours to review e-mail prior to her retirement. Appellant remained off work until March 1, 2016, when she worked 8.5 hours to complete retirement preparations. For the period that she missed work from November 6, 2015 until March 1, 2016, she used a combination of COP, sick leave, and annual leave. Appellant indicated that a human resources specialist at the employing establishment advised appellant that if she claimed wage-loss compensation she would be unable to receive her retirement annuity for a year, which is why she had used leave instead of claiming wage-loss compensation due to disability.

By decision dated June 12, 2024, OWCP denied modification of its April 17, 2023 decision.

### **LEGAL PRECEDENT**

Under FECA, monetary compensation for disability or impairment due to an employment injury is paid as a percentage of monthly rate.<sup>6</sup> 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

---

<sup>5</sup> Appellant previously submitted a statement on March 20, 2024; however, she subsequently requested that OWCP disregard that statement and submitted an amended statement on April 9, 2024.

<sup>6</sup> See 5 U.S.C. §§ 8105-8107.

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.<sup>7</sup> The compensation rate for schedule awards is the same as compensation for wage loss.<sup>8</sup>

Section 8146(a) of FECA provides that compensation payable on account of disability or death which occurred more than one year before the effective date of a cost-of-living increase (determined in accordance with the provisions of the section) shall be increased by the percent of the increase.<sup>9</sup> Legislative history shows that this phrase means compensation payable for an employment-related condition where the entitlement to such compensation occurred more than one year before the effective date of the cost-of-living increase.<sup>10</sup>

In cases of disability, a beneficiary is eligible for COLAs under section 8146(a) where injury-related disability began more than one year prior to the date the COLA took effect. The employee's use of COP, as provided by section 8118, or of sick or annual leave during any part of the period of disability does not affect the computation of the one-year period.<sup>11</sup> The disability need not have been continuous for the whole year before the increase.<sup>12</sup>

When an injury does not result in disability, but compensation is payable for permanent impairment, a beneficiary is eligible for COLAs under section 8146(a) of FECA where the award for such impairment began more than one year prior to the date the COLA took effect.<sup>13</sup>

OWCP procedures provide that the effective pay rate date for schedule awards in traumatic injury cases is the DOI, the date disability began, or the date of recurrence, whichever is greater.<sup>14</sup> When there is prior injury-related disability, OWCP procedures indicate that the CPI start date for the schedule award is the effective date of the applicable pay rate.<sup>15</sup> When there is no prior injury-

---

<sup>7</sup> *Id.* at § 8101(4).

<sup>8</sup> *See* 20 C.F.R. § 10.404(b); *S.K.*, Docket No. 20-0422 (issued December 2, 2020); *K.H.*, 59 ECAB 495 (2008).

<sup>9</sup> 5 U.S.C. § 8146(a).

<sup>10</sup> *Franklin L. Armfield*, 29 ECAB 500 (1978) (claimant not eligible for a cost-of-living increase, as provided by section 8146(a), unless the date of his entitlement to compensation occurred more than a year before the effective date of the cost-of-living increase).

<sup>11</sup> 20 C.F.R. § 10.420(a).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at § 10.420(b).

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900 Exhibit 1 (September 2011).

<sup>15</sup> *Id.* *See also* *D.G.*, Docket No. 16-1855 (issued August 28, 2017).

related disability, the CPI start date is the date of MMI.<sup>16</sup> The schedule award start date is also the date of MMI.<sup>17</sup>

OWCP's procedures further provide, regarding CPIs, that "[w]here the schedule award represents the first payment for compensable disability, the claimant's entitlement to CPIs does not begin until one year after the award begins."<sup>18</sup> Its procedures additionally indicate that when a claimant has no disability for work before the date of MMI, "the one-year waiting period begins on the starting date of the award. This date represents the claimant's first entitlement to compensation, even though the effective date of the pay rate (DOI) is earlier."<sup>19</sup>

### ANALYSIS

The Board finds that OWCP properly determined that appellant was not entitled to CPI adjustments beginning November 6, 2015 in calculating the pay rate for her schedule award.

As noted above, OWCP's procedures provide that the pay rate date for schedule awards, if there is no prior disability, is the DOI. Appellant has not received wage-loss compensation from OWCP for any period of disability due to her accepted employment injury. Consequently, her pay rate date for schedule award purposes is her DOI pay rate.<sup>20</sup>

On appeal and before OWCP, counsel contended that appellant was disabled after her employment injury, and thus had a period of disability even if she did not receive wage-loss compensation. Appellant explained that she used a combination of COP, annual leave, and sick leave to cover her time off work because she was about to retire. However, OWCP's procedures and Board precedent incorporate the principle in the regulations that, where a "schedule award represents the first payment for compensable disability, the claimant's entitlement to [CPI adjustments] does not begin until one year after the schedule award begins."<sup>21</sup> Appellant's first payment for compensable disability occurred at the beginning of her schedule award, February 1, 2022, the date of MMI, and thus this represents the start date for her entitlement to CPI adjustments.<sup>22</sup>

FECA's implementing regulations at section 10.420(b), regarding application of COLAs, provide that, for a schedule award, "[w]here an injury does not result in disability, but compensation is payable for permanent impairment of a covered member, organ, or function of

---

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7h (February 2013).

<sup>19</sup> *Id.* at Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.16a(5) (February 2013).

<sup>20</sup> See *E.F.*, Docket No. 23-0505 (issued October 11, 2024); *S.K.*, *supra* note 8.

<sup>21</sup> *E.F.*, *id.*; *David M. Chillemi*, Docket No. 95-2546 (issued August 14, 1997); *Franklin J. Armfield*, *supra* note 10; *supra* note 14 at Chapter 2.808.7(h) (February 2013).

<sup>22</sup> *E.F.*, *id.*

the body, a beneficiary is eligible for COLAs under 5 U.S.C. § 8146(a) where the award for such impairment began more than one year prior to the date the cost-of-living adjustment took effect.”<sup>23</sup> Appellant’s start date for CPI adjustments in calculating her pay rate for schedule award purposes is the date of MMI as she had not previously received disability compensation from OWCP. While she contended that she could have received disability after her injury, as she has not established that she lost time from work and received payment for compensable disability due to her accepted employment injury, her CPI adjustment start date is the date of MMI.<sup>24</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant was not entitled to CPI adjustments beginning November 6, 2015, in calculating the pay rate for her schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 12, 2024 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: January 21, 2025  
Washington, DC

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

Janice B. Askin, Judge  
Employees’ Compensation Appeals Board

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

---

<sup>23</sup> 20 C.F.R. § 10.420(b).

<sup>24</sup> *S.K.*, *supra* note 8; *see also N.F.*, Docket No. 08-2117 (issued April 21, 2009).