

evidence not before the Board at the time of its original decision.³ The Board has denied petitions which present a mere repetition of matters already heard and decided.⁴ It is the burden of the party seeking reconsideration to prove the existence of the error of fact or law identified in the petition.⁵

Appellant alleged an error of law because he considers that the amount of the overpayment found by OWCP and the rate at which that overpayment was to be recovered to be incorrect. He contends that the Board did not apply calculations based on hours worked, as found in a pay rate memorandum to the file dated February 15, 2011, as the definition for statutory language which defines the terms “year” and “substantially the whole year.” This argument is not supported by the Federal Employees’ Compensation Act (FECA) statute.

The statutory language in 5 U.S.C. § 8114(a)(2) states:

“‘[Y]ear’ means a period of 12-calendar months, or the equivalent thereof as specified by regulations prescribed by the Secretary of Labor.”⁶

The language in 5 U.S.C. § 8114(d)(1)(A) defines a period less than 12 months as one criterion for how a claimant’s average annual earnings are to be computed:

“If the employee worked in the employment in which he was employed at the time of his 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 annual rate of pay....”⁷

The statute does not define the term “year” as a hypothetical number of work hours. The term “year” as quoted above means twelve months. The term “substantially the whole

³ *Id.* at § 501.7(c).

⁴ *Piotr Gul*, 17 ECAB 714 (1966); *Clara Blackburn*, 10 ECAB 110 (1958); *Rose Timmer*, 9 ECAB 519 (1957); *Julianne Harrison*, 8 ECAB 573 (1956); *Floyd Godden*, 8 ECAB 494 (1956); *Margaret Kelly*, 8 ECAB 345 (1955).

⁵ *Id.*

⁶ The Secretary has not issued regulations to provide an alternative to the statutory definition of a year. Rather the Secretary has issued rules and procedures in the Procedure Manual to implement the statutory language. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.4(a)(4) (August 2012).

⁷ The Office determined that appellant’s average annual earnings equaled his annual rate of pay. Appellant does not dispute that he was employed in the same position for twelve months prior to his injury. He argues that because he was in a permanent, part time appointment and worked 32 hours per week instead of forty hours a week that the number of hours he worked was less than the equivalent number of hours that would have been worked by a hypothetical 40 hour a week employee in eleven months. Therefore, he did not work substantially the whole year, that is, eleven months. Appellant asserts that the Office and the Board should have calculated his earnings under the method provided in 5 U.S.C. § 8114(d)(3). Appellant asserts that his rate of pay would have been higher, his FECA benefits would have been higher and that his overpayment would have been reduced, perhaps to zero.

year” means eleven months.⁸ There is no authority under the statute, the implementing federal regulations or Board case precedent to define the term “year” as 2087 work hours and “eleven months,” as 1913 work hours.

Appellant’s assertion that the statutory definition of “year” should be interpreted in hours rather than months is not supported by FECA.

The determination of appellant’s pay rate was made under 5 U.S.C. § 8114 based on his appointment and tour of duty. The pay rate memorandum in the records reflects that he worked substantially the whole year in a permanent part-time appointment and with fixed compensation. Appellant has not established an error of fact or law in the Board’s decision based upon his argument concerning the definition of the phrase, “substantially the whole year.”

Appellant contends that because he was found not at fault in the creation of the overpayment that recovery should be waived. He also mentions other matters in his request for reconsideration. He asserts that his work hours were inaccurately reported. He refers to proceedings he instituted against his employer under statutes other than FECA. He complains that the timing of decisions by OWCP was unfair and did not allow him to submit evidence which would strengthen his claim. He argues that many OWCP claims examiners failed to coordinate or understand his claim. The Board has reviewed contentions and finds that they lack the clarity or specificity required to establish an error of fact or law in the Board’s decision.

The Board’s decision affirmed the fact of overpayment and remanded the case to OWCP for further adjudication of the amount of the overpayment. The record presented on appeal failed to contain worksheets which fully explained the determination of the period and amounts which were paid in excess of the correct benefit amount.⁹

In this case, OWCP found that appellant was overpaid because of an incorrect earnings calculation which it did not correct for more than seven years. OWCP also found that it had failed to deduct appellant’s premiums for post-retirement basic life insurance from his benefits which caused another overpayment. Because of the duration of the alleged overpayment and because OWCP found two independent overpayments, it is essential that the record provide specific detail as to how the amount was calculated. This information was not of record.

⁸ *G.H.*, Docket No. 08-2118 (issued May 19, 2009); *Robert Flint*, 57 ECAB 369 (2006); *O.W.*, Docket No. 13-2081 (issued March 7, 2014).

⁹ *C.P.* Docket No. 13-526 (issued June 7, 2013) (the Board was able to confirm the amount of an overpayment and correct an Office mathematical error because worksheets and supporting information were present in the appeal file. The facts of this case parallel the instant case in several respects); *Sinclair Taylor*, 52 ECAB 227 (2001) (worksheets in the file allowed the Board to verify overpayment amount); *E.P.*, Docket No. 11-1553 (issued February 16, 2012) (the Board set aside the decision of OWCP on the amount of an overpayment and remanded the case because the worksheets in file were not sufficient); *Louis Dabbondanza*, Docket No. 03-1646 (issued April 26, 2004) (the Board remanded the case for OWCP to recalculate and fully explain its calculation of the amount of an overpayment. The information in file was sufficient for the Board to identify an incorrect amount); *S.B.* Docket No. 12-1675 (issued March 20, 2013) (the Board set aside OWCP decision as to the amount of overpayment because the appeal file did not demonstrate that the claimant received the benefits which OWCP identified as paid in error).

The Board will affirm its April 26, 2013 decision as to the fact of overpayment and that appellant was without fault in the creation of the overpayments. The decision is modified to find that the case is not in posture for decision as to the amount of the overpayments, the denial of waiver of recovery or recovery of the overpayments.

IT IS HEREBY ORDERED THAT the petition for reconsideration is granted. The Board's decision of April 26, 2013 is modified.¹⁰

Issued: July 21, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

¹⁰ Richard J. Daschbach, Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after May 16, 2014.