

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

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L.C., Appellant

and

U.S. POSTAL SERVICE, FORT WORTH  
PROCESSING & DISTRIBUTION CENTER,  
Fort Worth, TX, Employer

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**Docket No. 20-1058  
Issued: June 21, 2021**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 21, 2020 appellant filed a timely appeal from a March 12, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$2,542.68 for the period December 7, 2019 to January 4, 2020 for which he was without

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the March 12, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

fault because he continued to receive compensation following his return to work; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On July 7, 2015 appellant, then a 57-year-old tractor trailer operator, filed an occupational disease claim (Form CA-2) alleging that he sustained limited mobility of the upper extremities and numbness of the hands and fingers causally related to factors of his federal employment including use of heavy mail transport equipment. OWCP accepted the claim for bilateral shoulder impingement syndrome, bilateral carpal tunnel syndrome, and left upper limb lesion of the ulnar nerve, and later expanded the acceptance of appellant's claim to include bilateral trigger thumb. Appellant stopped work on July 25, 2016. OWCP paid him wage-loss compensation on the supplemental rolls from July 27 through August 20, 2016, and on the periodic rolls beginning August 21, 2016.

On July 5, 2019 appellant accepted a modified (limited-duty) job offer as a motor vehicle operator with the employing establishment for eight hours a day. His scheduled days off were noted as Saturday and Sunday.

On December 4, 2019 appellant underwent OWCP-authorized left shoulder arthroscopic surgery including arthroscopic glenohumeral debridement and synovectomy, arthroscopic superior labrum anterior and posterior lesion repair, and revision surgeries of arthroscopic subacromial decompression and bursectomy, arthroscopic distal clavicle resection, and arthroscopic-assisted rotator cuff repair.

On December 16, 2019 appellant filed a claim for wage-loss compensation (Form CA-7) for disability from work for the period December 1 through 13, 2019. On the reverse side of the claim form a supervisor indicated that appellant had returned to work with restrictions on December 9, 2019. On December 24, 2019 he filed a Form CA-7 for leave without pay and loss of night differential for the period December 14 through 20, 2019.

On January 10, 2020 OWCP paid appellant wage-loss compensation *via* electronic funds transfer (EFT) for the period December 1, 2019 through January 4, 2020 in the net amount of \$3,068.75.

In a note from a field nurse dated January 14, 2020, the field nurse stated that appellant informed her that he went off work on December 4, 2019 for surgery, but returned to work on December 8, 2019 in a modified position. The field nurse confirmed with the employing establishment that appellant was working and recommended closure of the file.

In an Automated Compensation Payment System (ACPS) termination worksheet dated January 17, 2020, OWCP calculated an overpayment of \$2,542.68 for the period December 7, 2019 through January 4, 2020, noting that a field nurse stated that appellant informed her he went off work on December 4, 2019 for surgery and returned to work on December 8, 2019 in a modified position.

On February 5, 2020 OWCP notified appellant that a preliminary determination was made that he had received an overpayment of compensation in the amount of \$2,542.68 for the period

December 7, 2019 through January 4, 2020 because he continued to receive wage-loss compensation for total disability after he returned to work on December 7, 2019. It further found that he was not at fault in the creation of the overpayment. OWCP explained that, at the time of the overpayment, appellant was on the periodic rolls receiving net compensation every 28-calendar days in the amount of \$3,068.75. It calculated that, for the period December 7, 2019 through January 4, 2020, he received \$2,542.68 in overpaid wage-loss compensation. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. It advised appellant that failure to submit the requested information within 30 days would result in the denial of waiver and no further request would be considered until the requested information was received. Additionally, it provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, she could request waiver of recovery of the overpayment based either on a decision based on the written record, or a precoupment hearing. In a Form OWCP-20 dated February 11, 2020, appellant requested a waiver of recovery because he was found to be without fault in the creation of the overpayment. Attached to his request were medical work excuse notes and confirmations of appointments dating from January 7 through February 4, 2020.

By decision dated March 12, 2020, OWCP finalized its preliminary determination that appellant received an overpayment of compensation in the amount of \$2,542.68 for the period December 7, 2019 through January 4, 2020, based on his receipt of wage-loss compensation after he had returned to full-time, limited duty work on December 7, 2019. It found that he was not at fault in the creation of the overpayment, but denied waiver of recovery because there was no evidence to substantiate that adjustment or recovery would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by repayment for the full amount of the \$2,542.68 overpayment within 30 days.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.<sup>4</sup> OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.<sup>5</sup>

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<sup>3</sup> *Supra* note 1 at § 8102(a).

<sup>4</sup> *Id.* at § 8116(a).

<sup>5</sup> *See L.H.*, Docket No. 20-0115 (issued September 4, 2020); *E.R.*, Docket No. 19-1365 (issued December 23, 2019); *J.L.*, Docket No. 18-1266 (issued February 15, 2019); *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *B.H.*, Docket No. 09-0292 (issued September 1, 2009); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.1(a) (September 2018).

## ANALYSIS

The Board finds that fact of overpayment has been established.

The evidence of record establishes that appellant stopped work on December 4, 2019 to undergo a surgical procedure and returned to limited-duty work at eight hours per day a few days thereafter. However, OWCP continued to pay appellant wage-loss compensation for temporary total disability through January 4, 2020. As noted above, a claimant is not entitled to receive compensation for total disability during a period in which he or she had actual earnings.<sup>6</sup> Therefore, an overpayment of compensation was created in this case.

The Board further finds, however, that this case is not in posture for decision with regard to the amount of overpayment. In the February 5, 2020 preliminary notice, OWCP determined the overpayment of compensation to be \$2,542.68 for the period December 7, 2019 through January 4, 2020 because OWCP continued to pay appellant wage-loss compensation for total disability after he returned to work on December 7, 2019. However, the note from a field nurse dated January 14, 2020 indicated that appellant returned to work on December 8, 2019 in a modified-duty position, while in the December 16, 2019 Form CA-7, a supervisor indicated that he returned to work with restrictions on December 9, 2019. The Board notes that December 7 and 8, 2019 were a Saturday and a Sunday and that, based on his accepted July 5, 2019 modified job offer, Saturdays and Sundays were his scheduled days off.

OWCP did not adequately explain the amount of the overpayment in this case, as it found an overpayment beginning December 7, 2019 despite the evidence of record demonstrating that appellant returned to full-time limited-duty work on or about December 9, 2019. A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.<sup>7</sup> The Board, therefore, finds that OWCP has not established the period and amount of the overpayment in question.

The case will be remanded to OWCP for recalculation of the period and amount of the overpayment, to be followed by a new preliminary determination of overpayment and a *de novo* overpayment decision.<sup>8</sup>

## CONCLUSION

The Board finds that OWCP properly determined that an overpayment of compensation was created. The Board further finds, however, that the case is not in posture for decision regarding the period and amount of the overpayment.<sup>9</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> See *M.M.*, Docket No. 17-0560 (issued August 23, 2017); *R.H.*, Docket No. 08-2025 (issued July 20, 2009); see also *O.R.*, 59 ECAB 432 (2008).

<sup>8</sup> See *L.H.*, *supra* note 5.

<sup>9</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 12, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 21, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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