

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

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**T.S., Appellant** )

**and** )

**U.S. POSTAL SERVICE, PROCESSING &  
DISTRIBUTION CENTER, Chicago, IL,  
Employer** )  
\_\_\_\_\_ )

**Docket No. 20-0873  
Issued: August 7, 2023**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On March 11, 2020 appellant filed a timely appeal from a February 26, 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 \$11,553.36 for the period April 4 through June 30, 2019 as she concurrently received wage-loss compensation and schedule award compensation for the same extremity; (2) whether

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

<sup>2</sup> The Board notes that, following the February 26, 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.*

appellant was at fault in the creation of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$500.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior order and decision are incorporated herein by reference. The relevant facts are as follows.

On October 27, 2010 appellant, then a 41-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 26, 2010 she dislocated her right shoulder while attempting to catch a falling bag of mail in the performance of duty. OWCP accepted the claim for closed anterior dislocation of the right shoulder and sprain of right shoulder and upper arm.<sup>4</sup> Appellant stopped work and OWCP paid appellant wage-loss compensation on the supplemental rolls commencing December 14, 2010 and on the periodic rolls from April 10, 2011 until January 9, 2012. On February 15, 2011 she underwent an OWCP-authorized right shoulder arthroscopic rotator cuff repair, subacromial decompression, and biceps tendon tenotomy. Appellant returned to full-time, full-duty work on January 9, 2012. She stopped work again with regard to her accepted injury under OWCP File No. xxxxxx785. OWCP paid appellant wage-loss compensation on the supplemental rolls as of April 5, 2012, and on the periodic rolls as of October 20, 2013.

On November 13, 2013 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On November 29, 2013 OWCP expanded the acceptance of appellant's claim to include partial tear of the right rotator cuff and right shoulder impingement.

In a November 29, 2013 development letter, OWCP requested that appellant have her physician provide a permanent impairment evaluation in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*.<sup>5</sup>

By decision dated May 13, 2015, OWCP granted appellant a schedule award for five percent permanent impairment of the right upper extremity.

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<sup>3</sup> *Order Dismissing Appeal*, Docket No. 20-0871 (issued May 26, 2020); Docket No. 15-1455 (issued April 10, 2017).

<sup>4</sup> OWCP assigned the present claim OWCP File No. xxxxxx385. Under OWCP File No. xxxxxx783, OWCP accepted appellant's occupational disease claim (Form CA-2) for bilateral carpal tunnel syndrome and tenosynovitis of the right hand/wrist as of February 13, 2012. OWCP has administratively combined OWCP File Nos. xxxxxx783 and xxxxxx385, with the latter serving as the master file.

<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

On June 25, 2015 appellant appealed to the Board. By decision dated April 10, 2017, the Board set aside the May 13, 2015 schedule award decision.<sup>6</sup> The Board found that OWCP had inconsistently applied Chapter 15 of the A.M.A., *Guides* regarding the proper use of the diagnoses based impairment (DBI) and/or range of motion (ROM) methodologies in assessing the extent of permanent impairment. The Board remanded the case for OWCP to issue a *de novo* decision after development of a consistent method for calculating permanent impairment of the upper extremities.

Following further development, by decision dated December 10, 2019, OWCP granted appellant a schedule award for an additional four percent permanent impairment of the right upper extremity, for a total of nine percent permanent impairment of the right upper extremity. The award payment amount of \$11,553.36 ran for 12.48 weeks from April 4 through June 30, 2019.

On December 9, 2019 OWCP paid appellant \$11,553.36 *via* electronic funds transfer.

In a December 11, 2019 corrected decision, OWCP granted appellant a schedule award for an additional 5 percent permanent impairment of the right upper extremity, for a total of 10 percent permanent impairment of the right upper extremity. This was comprised of four percent increased impairment due to the right shoulder conditions and one percent impairment due to right carpal tunnel conditions. It also granted appellant a schedule award for one percent permanent impairment of the left upper extremity due to the left carpal tunnel condition. The award amount of \$16,805.88 represented 18.72 weeks of compensation covering the period April 4 through August 12, 2019. OWCP advised that “no additional compensation would be forthcoming. The compensation for your schedule award is offset by the compensation already issued for total disability under [OWCP File No. xxxxxx783] due to the accepted bilateral hand/wrist conditions.” It explained that, per OWCP’s procedures, a schedule award for one injury may be paid concurrently with compensation paid for wage loss for another injury as long as the two injuries do not involve the same part of the body and/or extremity. OWCP further explained that in this case, “[c]ompensation claimed for total disability cannot be paid since compensation involves the same extremity, the right arm.”

In a letter dated December 12, 2019, OWCP afforded appellant 14 days to return the full amount of the \$11,553.36 payment to avoid an overpayment determination. No response was received.

On January 23, 2020 OWCP informed appellant of its preliminary overpayment determination that she received an overpayment of compensation in the amount of \$11,553.36 for the period April 4 through June 30, 2019 as she received wage-loss compensation for total disability concurrently with schedule award compensation. It found that appellant was at fault in the creation of the overpayment because she knowingly accepted payments which she knew or reasonably should have known were incorrect. The preliminary determination provided an explanation of the calculation of the overpayment. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, it provided her with an overpayment action request form and

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<sup>6</sup> *Supra* note 4.

notified her that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a precoupment hearing.

Appellant subsequently requested waiver of recovery of the overpayment, asserting that she thought the monies were for the additional percentage of impairment she received. She indicated that she first received a letter two days after the deposit had been made, which noted the payment was issued in error. Appellant indicated that she did not receive a letter of explanation until December 16 or 17, 2020, which was after the money was deposited and after she began to pay for her bills and holiday expenses. In a completed Form OWCP-20 dated February 1, 2010, she listed her total monthly income at \$5,133.42 with monthly expenses of \$5,570.22. Appellant indicated that she had \$5,300.00 in assets. She also submitted financial documentation.

By decision dated February 26, 2020, OWCP finalized its preliminary overpayment determination finding that appellant received an overpayment of compensation in the amount of \$11,553.36 and that she was at fault in the creation of the overpayment. It required recovery of the overpayment by deducting \$500.00 from her continuing compensation payments every 28 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 his or her duty.<sup>7</sup> Section 8129(a) of FECA provides, in pertinent part: “When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.”<sup>8</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>9</sup>

Under OWCP’s procedures, a schedule award for one injury may be paid concurrently with compensation for wage loss paid for another injury, only if the two injuries do not involve the same part of the body and/or extremity.<sup>10</sup>

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<sup>7</sup> 5 U.S.C. § 8102(a).

<sup>8</sup> *Id.* at § 8129(a).

<sup>9</sup> *Id.* at § 8116(a).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.4a(5) (February 2013). *See also L.D.*, Docket No. 18-1317 (issued April 17, 2019); *E.S.*, Docket No. 16-1248 (issued May 15, 2017); *M.B.*, Docket No. 12-1344 (issued December 21, 2012).

## ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation as she concurrently received wage-loss compensation and schedule award compensation for the same extremity.

Appellant received a schedule award for an additional four percent permanent impairment of her right upper extremity for a total of nine percent under OWCP File No. xxxxxx385. In its December 10, 2019 decision, OWCP listed the dates of schedule award compensation as April 4 through June 30, 2019. However, as appellant had previously been paid wage-loss compensation for those dates under File No. xxxxxx783, OWCP found that she was not entitled to concurrently receive both wage-loss and schedule award compensation for the same part of the body. In a letter dated December 12, 2019, OWCP afforded appellant 14 days to return the full amount of the \$11,553.36 payment to avoid an overpayment determination. No response was received. As appellant concurrently received wage-loss compensation and schedule award compensation for injuries to her right upper extremity, the Board finds that OWCP properly determined that an overpayment of compensation was created.<sup>11</sup>

The Board further finds, however, that the case is not in posture for decision with regard to the period and amount of the overpayment.

In the February 26, 2020 final overpayment decision, OWCP found an overpayment in the amount of \$11,553.36 for the period April 4 through June 30, 2019 based on the compensation paid for the schedule award. However, it should have instead calculated the overpayment based on the amount of wage-loss compensation paid.<sup>12</sup> The Board will, therefore, remand the case for OWCP to determine the exact period and amount of the overpayment of compensation. It shall then issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, and instructions for appellant to provide supporting financial information.<sup>13</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>14</sup>

## CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation as she concurrently received wage-loss compensation and schedule award compensation for the same extremity. The Board further finds, however, that the case is not in posture for decision with regard to the period and amount of the overpayment.

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<sup>11</sup> See *P.J.*, Docket No. 18-0248 (issued August 14, 2018); *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>12</sup> *Cf. J.M.*, Docket No. 17-1285 (issued October 12, 2017) (OWCP properly calculated the \$2,110.15 overpayment by totaling the amount of compensation checks appellant received during the period February 15 through March 4, 2017).

<sup>13</sup> See *L.K.*, Docket No. 20-0416 (issued November 12, 2020).

<sup>14</sup> In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 26, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 7, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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