

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

D.P., Appellant	)	
	)	
and	)	Docket No. 21-0753
	)	Issued: November 20, 2024
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Flushing, NY, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On April 7, 2021 appellant filed a timely appeal from a February 19, 2021 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 OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,540.00 for the period March 23 through June 5,

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

<sup>2</sup> The Board notes that following the February 19, 2021 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.*

2020 because she continued to receive compensation for total disability following her return to private sector work; (2) whether OWCP properly determined that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

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

On June 23, 1997 appellant, then a 39-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she injured her low back on that date when lifting a bag while in the performance of duty. She stopped work on June 24, 1997. OWCP accepted the claim for lumbar sprain. It subsequently expanded acceptance of the claim to include a herniated lumbar disc and an aggravation of degeneration of lumbar disc disease. Appellant returned to limited-duty work on August 9, 1997, but stopped work again on September 14, 1997 and did not return. OWCP paid her wage-loss compensation on the periodic rolls.

On July 25, 2017 appellant accepted a position as a modified passport call center assistant with the employing establishment. OWCP subsequently accepted that she sustained a recurrence of disability in June 2018. In a letter dated January 16, 2019, it advised appellant that she would be paid on the periodic rolls, effective June 19, 2018, outlined her entitlement to compensation benefits, and notified her of her responsibility to return to work if she was no longer totally disabled from work in connection with the accepted injury. OWCP informed her to notify it immediately if she returned to work to avoid an overpayment of compensation.

On a financial disclosure statement (Form EN-1032) dated November 4, 2020, appellant reported that, for 11 weeks from March 23 through June 5, 2020, she provided babysitting services for 8 hours per day, 5 days per week, earning \$140.00 per week.

On December 3, 2020 appellant confirmed upon OWCP's request, that she had earned \$1,540.00 working for 11 weeks earning \$140.00 per week babysitting from March 23 through June 5, 2020.

On January 5, 2021 OWCP notified appellant of its preliminary overpayment determination that she had received an overpayment of compensation in the amount of \$1,540.00 for the period March 23 through June 5, 2020, because she received compensation for total disability during a period in which she had unreported earnings from employment. It further advised her of its preliminary determination that she was at fault in the creation of the overpayment. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records which supported her reported income and expenses. Additionally, it provided an overpayment

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<sup>3</sup> Docket No. 20-0546 (issued November 19, 2020); Docket No. 09-2286 (issued May 21, 2010).

action request form and 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.

On an overpayment action request form dated January 26, 2021, appellant requested a decision based on the written evidence. She challenged OWCP's finding that an overpayment had occurred and requested waiver of recovery. On an attached Form OWCP-20, appellant reported total monthly income of \$3,083.00, total monthly expenses of \$2,702.50, and no assets. She submitted supporting financial documentation.

By decision dated February 19, 2021, OWCP finalized its determination that appellant had received a \$1,540.00 overpayment of compensation because it paid her wage-loss compensation for total disability from March 23 through June 5, 2020 when she had earnings from private sector employment. It further finalized its finding that she was at fault in the creation of the overpayment. OWCP required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

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

Section 8102 of FECA<sup>4</sup> 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.<sup>5</sup>

OWCP's regulations provide that compensation for wage loss due to disability is available only for periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.<sup>6</sup> A claimant is not entitled to receive temporary total disability benefits and actual earnings for the same period.<sup>7</sup> OWCP's procedures also provide that an overpayment is created when a claimant returns to work, but continues to receive wage-loss compensation.<sup>8</sup>

If only partial wage loss exists, the claims examiner should not rely on the automatically generated amount for determination of the overpayment amount. Rather, the claims examiner should calculate the difference between what was paid and what should have been paid given partial wage loss in order to determine the final overpayment amount.<sup>9</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at § 8102.

<sup>6</sup> 20 C.F.R. § 10.500(a).

<sup>7</sup> *See J.L.*, Docket No. 18-1266 (issued February 15, 2019); *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *M.S.*, Docket No. 16-0289 (issued April 21, 2016); *L.S.*, 59 ECAB 350, 352-53 (2008).

<sup>8</sup> *See C.W.*, Docket No. 19-1743 (issued March 23, 2021); *Danny E. Haley*, 56 ECAB 393 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1(a) (September 2020).

<sup>9</sup> *Id.* at Chapter 6.200.1(a)(1) (September 2020).

If the claimant is entitled to compensation for partial wage loss after returning to work, the claims examiner should compute entitlement using the *Shadrick* formula and authorize compensation on a 28-day payment cycle.<sup>10</sup>

OWCP's procedures further provide:

“Where the injured employee has actual earnings which do not fairly and reasonably represent a WEC, a formal LWEC [loss of wage-earning capacity] decision should not be issued, but compensation payable for the period during which the employee has earnings should be reduced to reflect those earnings. The reduction in compensation is not permanent but only covers the period of earnings.”<sup>11</sup>

### ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for the period March 23 through June 5, 2020 because OWCP paid her wage-loss compensation for total disability when she had earnings from private sector employment. The Board further finds, however, that the case is not in posture for decision with regard to the amount of the overpayment.

Appellant received wage-loss compensation for total disability on the periodic rolls effective June 19, 2018. However, she had earnings of \$140.00 per week for 11 weeks from providing babysitting services during the period March 23 through June 5, 2020. As previously noted, a claimant is not entitled to receive total disability benefits and actual earnings for the same time period.<sup>12</sup> Thus, OWCP has established fact of overpayment.

With regard to the amount of the overpayment, OWCP found that the entire amount that appellant earned from babysitting during the period March 23 through June 5, 2020 constituted an overpayment of compensation without referencing its procedures or otherwise explaining its calculations. As noted above, OWCP's procedures provide that, in order to determine the final overpayment amount, the claims examiner should calculate the difference between what was paid and what should have been paid given partial wage loss.<sup>13</sup> If the claimant is entitled to compensation for partial wage loss after returning to work, the claims examiner should compute entitlement using the *Shadrick* formula and authorize compensation on a 28-day payment cycle.<sup>14</sup>

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<sup>10</sup> *Id.* at Chapter 2.815 (June 2013). See *Albert C. Shadrick*, 5 ECAB 376 (1953), codified at 20 C.F.R. § 1043; *P.B.*, Docket No. 19-0329 (issued December 31, 2019); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

<sup>11</sup> *Id.* at Chapter 2.815.5e(2) (June 2013).

<sup>12</sup> *Supra* note 9.

<sup>13</sup> *Supra* note 12.

<sup>14</sup> *Supra* note 13.

The Board has long held that a claimant is entitled to an overpayment decision that clearly sets forth how the overpayment amount was calculated.<sup>15</sup> As OWCP failed to reference its procedures in calculating the overpayment of compensation, the Board finds that the case must be remanded.

On remand OWCP shall review its procedures and determine the proper 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. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>16</sup>

### CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for the period March 23 through June 5, 2020 because she continued to receive wage-loss compensation for total disability following her return to private sector work. The Board further finds, however, that the case is not in posture for decision with regard to the amount of the overpayment.

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<sup>15</sup> *C.G.*, Docket No. 23-1074 (issued February 27, 2024); *A.P.*, Docket No. 19-1671 (issued February 22, 2021); *J.M.*, Docket No. 18-1505 (issued June 21, 2019); *Teresa A. Ripley*, 56 ECAB 528 (2005).

<sup>16</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 19, 2021 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: November 20, 2024  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board