

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

material. OWCP accepted his claim for sprain of the right shoulder and upper arm and a rotator cuff.

On November 9, 2011 OWCP granted appellant a schedule award for a nine percent impairment of his right upper extremity due to loss of right shoulder motion.

OWCP later discarded that appellant previously received a schedule award for the same extremity under another claim number. The record shows that on August 11, 2006 OWCP issued a schedule award for a 10 percent impairment of appellant's right upper extremity resulting from a shoulder injury on June 11, 2005.<sup>2</sup>

On September 17, 2012 OWCP made a preliminary determination that appellant received an \$18,282.38 overpayment of compensation when he received the November 9, 2011 schedule award,<sup>3</sup> which was duplicative of his previous award. It recommended that he be found not at fault in creating the overpayment because he was not aware and could not reasonably have been expected to know that the second schedule award was paid to him incorrectly. OWCP notified appellant as follows:

“In order for OWCP to consider the question of waiver or to determine a reasonable method for collection, you must complete and submit the enclosed Form OWCP-20. Attach supporting documents to Form OWCP-20, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips and any other records which support the income and expenses listed. Under 20 C.F.R. 10.438, failure to submit the requested information within 30 days will result in the denial of waiver and no further request for waiver shall be considered until the requested information is furnished.”

In a decision dated October 29, 2012, OWCP finalized its preliminary findings. It found that appellant received an \$18,282.38 overpayment of compensation. Although OWCP found him without fault in creating the overpayment, it received no response from him to its preliminary determination. As appellant did not request waiver or complete the overpayment recovery questionnaire or otherwise provide the financial information requested within 30 days, OWCP denied waiver and asked for payment in full.<sup>4</sup>

On November 11, 2012 after OWCP had issued its final overpayment decision denying waiver, appellant completed the overpayment recovery questionnaire and submitted supporting financial documentation. On appeal, he explains that he is seeking waiver or partial waiver, as recovery would create a severe hardship on him and his wife.

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<sup>2</sup> OWCP File No. xxxxxx237.

<sup>3</sup> The compensation payment history shows that appellant received this amount of schedule compensation from October 6, 2011 to April 19, 2012.

<sup>4</sup> Appellant had returned to full-time limited duty and was not currently receiving monetary compensation.

### **LEGAL PRECEDENT**

FECA authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.<sup>5</sup> Any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to a previous work-related injury (and a schedule award has been granted for such prior impairment), in which case the percentage already paid is subtracted from the total percentage of impairment.<sup>6</sup>

When an overpayment of compensation has been made 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>7</sup>

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary. Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.<sup>8</sup>

### **ANALYSIS**

The record confirms that on August 11, 2006 OWCP issued a schedule award for a 10 percent impairment of appellant's right upper extremity resulting from a work injury on June 11, 2005 under a different claim number. Having already received this schedule award, appellant was not entitled to a schedule award for his December 9, 2010 work injury unless the impairment of his right upper extremity was greater than 10 percent, in which case he would receive the difference.<sup>9</sup> As his impairment was nine percent, he was not entitled to an additional schedule award.

OWCP paid the November 9, 2011 schedule award in error. The record confirms that appellant received \$18,282.38 in compensation as a result of this error. The Board will therefore affirm the October 29, 2012 decision on the issues of fact and amount of overpayment.

When OWCP issued its preliminary determination on September 17, 2012, it found appellant without fault. OWCP properly informed him that he was required to complete and

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<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.0808.7.a(2)(a) (January 2010).

<sup>7</sup> 5 U.S.C. § 8129(a).

<sup>8</sup> 20 C.F.R. § 10.438.

<sup>9</sup> Otherwise, a claimant could conceivably receive awards for more than a 100 percent loss of the evaluated member.

submit the enclosed overpayment recovery questionnaire and attach supporting financial documentation to support the income and expenses listed on the questionnaire.

OWCP also properly notified appellant that failure to submit the requested information within 30 days would result in the denial of waiver. Appellant did not respond within the time allotted. OWCP received no response from him when it issued its October 29, 2012 decision 42 days later. Under the implementing federal regulations, the failure to submit the requested information within 30 days of the request “shall result in denial of waiver.” The Board will therefore affirm OWCP’s October 29, 2012 decision on the issue of waiver.

The Board’s jurisdiction to review the collection of an overpayment is limited to cases of adjustment, where OWCP decreases later payments of compensation to which the individual is entitled.<sup>10</sup> Collection of the overpayment in this case cannot be made by adjusting later payments, as appellant is not receiving compensation for wage loss. Therefore, the Board lacks jurisdiction to review the recovery of the overpayment.

Appellant explains on appeal that he is seeking waiver or partial waiver of the overpayment. The Board’s review of a case, however, 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.<sup>11</sup> The Board cannot review the overpayment recovery questionnaire and supporting financial documents appellant submitted after the October 29, 2012 decision. Appellant may make a “further request for waiver” before OWCP, as provided by regulation.

### **CONCLUSION**

The Board finds that OWCP properly denied waiver of an \$18,282.38 overpayment of compensation.

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<sup>10</sup> 5 U.S.C. § 8129; *Levon H. Knight*, 40 ECAB 658 (1989).

<sup>11</sup> 20 C.F.R. § 501.2(c)(1). The Board therefore has no jurisdiction to review new evidence appellant submitted on appeal.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 29, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board