

August 6, 1975 he sustained a recurrence of disability. He returned to work on December 8, 1975. On February 15, 1977 appellant claimed a right wrist injury as a consequence of lifting with his right hand only due to the accepted left hand injury. The Office accepted this claim on March 13, 1980 for giving way of the right wrist.

The Office granted appellant a schedule award for 20 percent impairment of his left upper extremity on February 23, 1977. The period of the schedule award was from October 7, 1976 through December 16, 1977. The Office based appellant's schedule award on his May 19, 1975 weekly pay rate of \$232.17.

The employing establishment terminated appellant's light-duty position on November 21, 1977 stating that there was no light duty available within appellant's work restrictions. Appellant returned to a light-duty assignment at the employing establishment on December 26, 1981 after working in the private sector from 1978 through 1981.

Appellant filed a recurrence of disability claim on February 4, 1987 alleging a recurrence of disability on December 1, 1986. The Office denied this claim on June 7, 1987. He filed an occupational disease claim on April 20, 1988 alleging a new injury to his right wrist on December 1, 1986. The Office denied this claim on December 1, 1988.

By decision dated August 10, 1999, the Office granted appellant a schedule award for 30 percent impairment of his left upper extremity. The Office stated that appellant was entitled to 94 weeks of compensation based on his date of maximum medical improvement pay rate of \$740.80 per week.

The Office accepted the additional conditions of right wrist triangular fibrocartilage tear and right volar wrist ganglion on May 19, 2004. The Office also authorized corrective surgery. Appellant returned to work on October 18, 2004 as an office assistant. He retired from this position on December 21, 2004.

The Office calculated that appellant had received an overpayment of compensation for the period April 12, 1999 through January 26, 2001 as he received a schedule award for 30 percent impairment of his left upper extremity when he was only entitled to receive a schedule award for an additional 10 percent impairment of his left upper extremity. The Office further found that appellant's August 10, 1999 schedule award was based on an incorrect pay rate. The Office found that appellant was entitled to be paid at the May 19, 1975 recurrent pay rate of \$240.79 per week rather than the \$740.80 weekly pay rate utilized in the August 10, 1999 schedule award decision. The Office found that appellant had received a schedule award in the amount of \$51,826.46 on August 10, 1999 and that he should have received a schedule award in the amount of \$15,685.80. The Office concluded that appellant had received an overpayment of compensation in the amount of \$36,140.66.

The Office issued a preliminary finding of overpayment on June 21, 2006 finding that appellant had received an overpayment in the amount of \$36,140.66. The Office found that appellant was not at fault in the creation of the overpayment. Appellant requested an oral hearing regarding this issue on June 29, 2006 and completed an overpayment recovery questionnaire. He indicated that he had income of \$3,223.92. Appellant listed his savings as

\$17,870.58. He listed monthly expenses of \$3,014.50 including car payments of \$560.00 per month and two monthly doctors' bills totaling \$1,000.00. Appellant submitted a written statement alleging that it would be a hardship for him to repay the overpayment amount.

Appellant testified at the oral hearing on December 21, 2006 and stated that his current monthly income was \$4,000.00 per month. He indicated that he no longer owed car payments or the monthly doctors' bills, reducing his monthly expenses by \$1,560.00. Appellant stated that his current savings account balance was \$30,000.00 due to monies from his mother's estate. He noted that his mother had asked that the bulk of her estate go to appellant's son and that he planned to make that transfer at the beginning of the new year. Appellant stated that he relied on the 1999 schedule award payment to build a garage at a cost of \$30,000.00 and that he remodeled his home with the remainder of the schedule award funds. He stated that he would not have undertaken these projects if he had received the correct schedule award amount. Appellant noted that he had received an additional \$23,000.00 from the Office due to schedule impairment of his right upper extremity and that he had invested this money in a CD.

By decision dated March 23, 2007, the hearing representative affirmed the Office's June 21, 2006 preliminary overpayment finding. He noted that appellant had received the overpayment as the Office improperly granted him a schedule award for 30 percent impairment of his left upper extremity when appellant was only entitled to receive a schedule award for an additional 10 percent impairment of his left upper extremity. The hearing representative found that the amount was correct, that appellant was not at fault in the creation of the overpayment and that appellant was not entitled to waiver as he had abundant assets and he had not established that he relied on his detriment for this payment. The hearing representative found that appellant should repay \$1,500.00 every 28 days until the overpayment was fully recovered.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of the Federal Employees' Compensation Act authorizes the payment of schedule awards for the loss or loss of use of specified members or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.¹

It is well established that preexisting impairments to the scheduled member are to be included when determining entitlement to a schedule award.² Office procedures state that 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, in which case the percentage already paid is subtracted from the total percentage of impairment.³

¹ 20 C.F.R. § 10.404.

² *Michael C. Miller*, 53 ECAB 446 450 (2002).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7a(2) (November 1998).

If there is permanent disability involving the loss, or loss of use, of a member or function of the body or involving disfigurement, the employee is entitled to basic compensation for the disability, as provided by the schedule in section 8107(c) of the Act, at the rate of two-thirds of his monthly pay. Under 5 U.S.C. § 8101(4), “monthly pay” means the monthly pay at the time of the injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, which ever is greater.⁴

ANALYSIS -- ISSUE 1

The record is clear and appellant does not dispute that he received an overpayment of compensation when the Office improperly granted his schedule award on August 10, 1999 for 30 percent impairment of his left upper extremity when he had already received a schedule award on February 23, 1977 for 20 percent impairment of his left upper extremity. Appellant was entitled to receive compensation for only the extra 10 percent impairment of his left upper extremity.

However, the Office has not adequately explained the amount of the overpayment. In his March 23, 2007 decision, the hearing representative did not mention the finding in the Office’s preliminary decision that a portion of appellant’s overpayment was due to payment at the incorrect pay rate. In its preliminary finding, the Office determined that the 10 percent additional schedule award should have been issued based on appellant’s pay rate as of May 19, 1975. The Office stated that appellant had not experienced a compensable recurrence of disability since May 19, 1975. The hearing representative did not make a finding whether or not appellant was paid at a correct rate or whether he had sustained a compensable recurrence of disability since May 19, 1975. The Board notes that the record establishes that the employing establishment withdrew appellant’s light-duty work on November 21, 1977.⁵ At the time the employing establishment terminated appellant’s light-duty job assignment, he was receiving compensation due to the February 23, 1977 schedule award.⁶ However, the Board has found that the dates when “disability began” or “compensable disability” recurred are the dates the employee stopped work, not the dates pay stopped.⁷ On remand, the Office must issue a final decision regarding the overpayment of compensation which discusses both aspects of how the overpayment was sustained, whether appellant received an incorrect schedule award and whether

⁴ 5 U.S.C. § 8101(4).

⁵ When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that he cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements. *Joseph D. Duncan*, 54 ECAB 471 (2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁶ The period of this schedule award was from October 7, 1976 to December 16, 1977.

⁷ *Samuel C. Miller*, 55 ECAB 119 (2003).

this schedule award was issued at the incorrect pay rate.⁸ After this and such other development as the Office deems necessary, the Office should issue an appropriate merit decision.⁹

CONCLUSION

The Board finds that this case is not in posture for decision as the hearing representative did not address both stated causes for the Office's finding of overpayment of compensation. On remand, the Office should issue a final decision addressing both the basis for finding that appellant received an overpayment in the amount of \$36,140.16.

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2007 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: October 9, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

⁸ The Board jurisdiction is limited to the review of final decisions issued by the Office. 20 C.F.R. § 501.2(c). As the Office has not issued a final decision addressing the full source of the overpayment, the Board may not address this issue on appeal.

⁹ Due to the disposition of this issue, it is not appropriate for the Board to address waiver of the undetermined amount of overpayment.