

weekly pay rate of \$769.60 and 46.8 weeks of compensation. Appellant was paid \$23,699.46 for the applicable period.

The record reflects that appellant had two previous claims. File No. xxxxxx739 was accepted for a right shoulder strain. File No. xxxxxx820 was accepted for right carpal tunnel syndrome. The claims were consolidated under master File No. xxxxxx739. By decision dated July 28, 2003, appellant was granted a schedule award for a 30 percent permanent impairment of her right upper extremity covering the period October 8, 2001 to July 25, 2003 in File No. xxxxxx739. There is no record of the weekly pay rate on which the award was calculated. Appellant was paid the amount of \$43,983.50 for the applicable period.

The record contains a December 12, 2008 intra-office memorandum from Michael McCalley, reflecting that the schedule awards were based on two different pay rates, using two different effective pay rate dates. Mr. McCalley recommended that File Nos. xxxxxx739 and xxxxxx619 be combined. He opined that the schedule award issued under File No. xxxxxx739 was most correct.

In a letter dated December 12, 2008, the Office made a preliminary determination that appellant had received an overpayment in the amount of \$23,699.46 because she received a double payment of a schedule award for the period October 8, 2001 to August 31, 2002. It found that appellant was not at fault in the creation of the overpayment. By decision dated February 23, 2009, the Office finalized its determination that appellant had received an overpayment of compensation in the amount of \$23,699.46 because she received an overlapping schedule award payment. Although it found that appellant was not at fault in the creation of the overpayment, it denied waiver of the overpayment amount, and demanded that appellant pay the amount of \$200.00 per month until the overpayment was satisfied.

LEGAL PRECEDENT -- ISSUE 1

Section 8116 of the Federal Employees' Compensation Act defines the limitations on the right to receive compensation benefits. This section of the Act provides that, while an employee is receiving compensation, she may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.¹ When a claimant receives a duplicative compensation payment for a period that she has already received compensation for wage loss, an overpayment of compensation is created.²

A final decision of the Office shall contain findings of fact and a statement of reasons.³ With respect to overpayment decisions, the Office must provide clear reasoning showing how the overpayment was calculated.⁴

¹ 5 U.S.C. § 8116(a).

² See *Lawrence J. Dubuque*, 55 ECAB 667, 670-71 (2004).

³ 20 C.F.R. § 10.126.

⁴ *O.R.*, 59 ECAB ____ (Docket No. 07-2399, April 10, 1999); *James Tackett*, 54 ECAB 611 (2003).

ANALYSIS -- ISSUE 1

The Office granted appellant a schedule award for a 15 percent impairment of her upper extremity under File No. xxxxxx619, which was accepted for right shoulder and arm strain. The award was for the period October 8, 2001 to August 31, 2002. The Office granted a second schedule award for a 30 percent impairment of the right upper extremity under File No. xxxxxx739 for the period October 8, 2001 to July 25, 2003. In its February 23, 2009 decision, it stated that appellant had received duplicate payments for the period October 8, 2001 to August 31, 2002. Noting that she received the amount of \$23,699.46 pursuant to the March 7, 2002 a schedule award in File No. xxxxxx619, the Office determined that she had received an overpayment in that amount.

The record indicates that appellant received two schedule awards for her right upper extremity impairment. Both awards covered the period October 8, 2001 to August 31, 2002. The Board finds she received an overpayment of compensation due to overlapping schedule awards.⁵

The Board finds, however, that the Office has not adequately explained how it calculated the amount of overpayment. The Office's December 12, 2008 memorandum reflects that the March 7, 2002 schedule award was based on a different pay rate than the July 28, 2003 award. It is reasonable to assume, therefore, that the amount of the schedule award was different for the same period of time under each schedule award decision. However, the Office did not explain how or why it found that the amount received under the March 7, 2002 award, \$23,699.46, represented the amount of the overpayment, rather than the amount received under the later schedule award. In fact, the Office did not provide evidence of the amount received by appellant under the second award during the period October 8, 2001 to August 31, 2002, or the pay rate on which the award was based. It is required to provide clear reasoning showing how the overpayment was calculated.⁶ Without any record of the method used to determine the amount of the overpayment, the Board is unable to adequately review this aspect of the case. The case will be remanded to the Office for further development regarding the amount of the overpayment, including consolidation of File Nos. xxxxxx739 and xxxxxx619. The Office should fully explain its rationale and provide adequate documentation to support its explanation. After such further development, it should issue an appropriate decision.

CONCLUSION

The Board finds that appellant received an overpayment of compensation due to overlapping schedule awards. The Board further finds, however, that the case is not in posture for decision regarding the amount of the overpayment. Accordingly, the Board will not address appellant's eligibility for waiver.⁷

⁵ See *Lawrence J. Dubuque*, *supra* note 2.

⁶ *O.R.*, *supra* note 4.

⁷ Regarding repayment of the overpayment, the Board's jurisdiction is limited to reviewing those cases where the Office seeks recovery from continuing compensation benefits under the Act. *Ronald E. Ogden*, 56 ECAB 278 (2005).

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2009 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: April 13, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board