

FACTUAL HISTORY

On November 25, 2008 appellant, then a 49-year-old nurse, filed a claim alleging that she experienced numbness and pain in her hands and wrists in the course of her employment, which included typing. OWCP accepted her claim for bilateral carpal tunnel syndrome.

On April 24, 2009 appellant underwent surgical decompression of the right median nerve. On June 19, 2009 she underwent the same procedure on the left. OWCP paid compensation for temporary total disability on the periodic rolls beginning April 24, 2009 until appellant returned to work for four hours a day on November 9, 2009.

On March 15, 2010 OWCP issued a preliminary determination that appellant had received a \$20,542.48 overpayment of compensation from April 24 to November 9, 2009. It stated that appellant was entitled to compensation for only four hours a day for this period.

During a telephone hearing on June 30, 2010, OWCP's hearing representative explained that appellant had a February 14, 2000 injury under a separate claim, which OWCP had accepted for neck, back and right shoulder problems as well as a herniated disc and depressive reaction. The hearing representative noted that appellant had returned to work for four hours a day as a nurse on February 23, 2007 and that OWCP reduced her compensation benefits accordingly. Thus, it was OWCP's preliminary determination that appellant had received an overpayment, as she was in receipt of compensation for partial disability from her earlier injury when she received compensation for total disability for her later carpal tunnel injury.

In a decision dated September 23, 2010, OWCP's hearing representative found that appellant had received a \$20,542.48 overpayment of compensation from April 24 to November 9, 2009. The hearing representative further found that appellant was at fault in the creation of the overpayment and that she should repay the debt at the rate of \$200.00 per month.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of her duty.² "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.³

FECA further provides that 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.⁴

² 5 U.S.C. § 8102(a).

³ 20 C.F.R. § 10.5(f).

⁴ 5 U.S.C. § 8129(a).

ANALYSIS

OWCP based its preliminary determination and its September 23, 2010 final decision on evidence that does not appear in the case record. It states that appellant was in receipt of compensation for partial disability under another claim, but the Board is unable to confirm this assertion because OWCP did not include in the record any documentation of appellant's continuing entitlement under the earlier claim.

The evidence that appears in the record on appeal, appellant underwent surgery for the accepted condition on April 24 and June 19, 2009, was totally disabled for work until November 9, 2009, and accordingly received compensation for her temporary total disability. As there is no evidentiary basis to support a finding that the receipt of this compensation caused an overpayment, the Board will set aside OWCP's September 23, 2010 decision. Fact of overpayment is not established.

CONCLUSION

The Board finds that OWCP has not established that appellant received an overpayment of compensation from April 24 to November 9, 2009.

ORDER

IT IS HEREBY ORDERED THAT the September 23, 2010 decision of the Office of Workers' Compensation Programs is set aside and remanded.

Issued: September 9, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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