

FACTUAL HISTORY

OWCP accepted that on November 12, 1999 appellant, then a 43-year-old labor relations assistant, sustained traumatic medial collateral ligament sprains of both knees, traumatic arthropathy of the right knee, right meniscus tear and traumatic arthropathy of both lower legs.

The record contains a January 24, 2011 letter in which an OWCP medical adviser stated that the record reveals that appellant received three schedule awards for her left leg: a February 12, 2001 award (20 percent impairment); a September 11, 2003 award (20 percent impairment); and a June 20, 2007 award (17 percent impairment). The medical adviser opined that the three schedule awards should have been combined under the Combined Values Chart starting on page 604 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). He stated that the result of combining these figures would be a 47 percent impairment rating and posited that appellant actually received schedule awards for a total left leg impairment of 57 percent.

In a February 7, 2011 notice, OWCP advised appellant of its preliminary determination that she received a \$20,373.82 overpayment of compensation and stated, “You were awarded 17 percent additional schedule award benefits for your left leg when your actual entitlement was 7 percent of your left leg, which resulted in an overage of 10 percent of schedule award benefits for your left leg during your May 4, 2007 [through] April 10, 2008, award.” It also determined that she was not at fault in the creation of the overpayment. OWCP advised appellant that she could submit evidence challenging the fact, amount or finding of fault and request waiver of the overpayment. It requested that she complete and return an enclosed financial information questionnaire within 30 days even if she was not requesting waiver of the overpayment. Regarding the creation of the overpayment, OWCP further stated:

“On June 20, 2007, you were issued a decision that awarded you an additional 17 percent permanent partial impairment of your left leg. On January 24, 2011, the [d]istrict [m]edical [a]dviser reviewed your claim and determined that your impairment rating was not combined correctly and provided you with an additional 17 percent impairment of your left leg, instead of 7 percent of your left leg. The failure to combine your previous awards with this award caused your impairment rating to be calculated incorrectly and as a result you received 10 percent more than you were entitled to. You were overpaid from July 20, 2007 through April 10, 2008.”

“You were paid \$34[,]529.78 for the period May 4, 2007 [through] April 10, 2008. Your correct entitlement is \$14[,]155.93 for the period May 4, 2007 [through] July 19, 2007. You[r] overpayment amount is \$20[,]373.82 for the period July 20, 2007 [through] April 10, 2008.”

Appellant requested waiver of the overpayment and submitted a financial information questionnaire with supporting documents.

In a March 11, 2011 decision, OWCP determined that appellant received a \$20,373.82 overpayment of compensation. It found that she was not at fault in creating the overpayment but that the overpayment was not subject to waiver because her monthly income exceeded her monthly expenses by more than \$50.00. Regarding the creation of the overpayment, OWCP stated, “You were awarded 17 percent additional schedule award benefits for your left leg when your actual entitlement was 7 percent of your left leg, which resulted in an overage of 10 percent of schedule award benefits for your left leg during your May 4, 2007 [through] April 10, 2008, award.”

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.² Section 8129(a) of FECA provides, in pertinent part:

“When an overpayment has been made to an individual under this subchapter 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.”³

Section 8116(a) of FECA provides that while an employee is receiving compensation or if he has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay or remuneration of any type from the United States, except in limited specified instances.⁴

In determining whether a claimant has discharged her burden of proof and is entitled to compensation benefits, OWCP is required by statute and regulations to make findings of fact.⁵ OWCP procedures further specify that a final decision of OWCP must include findings of fact and provide clear reasoning which allows the claimant to “understand the precise defect of the claim and the kind of evidence which would tend to overcome it.”⁶ These requirements are supported by Board precedent.⁷

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8129(a).

⁴ *Id.* at § 8116(a).

⁵ 5 U.S.C. § 8124(a) provides that OWCP “shall determine and make a finding of facts and make an award for or against payment of compensation.” 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP “shall contain findings of fact and a statement of reasons.”

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

⁷ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

It is well established that, once OWCP accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. In establishing that its prior acceptance was erroneous, OWCP is required to provide a clear explanation of the rationale for rescission.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not adequately support the basis for its finding that appellant received a \$20,373.82 overpayment of compensation. Prior to OWCP's issuance of its February 7, 2011 preliminary overpayment notice, it had not made any determination that appellant received schedule award monies for her left leg to which she was not entitled. As noted, before OWCP modifies an award of compensation it must clearly explain the basis for such modification.⁹ Through the overpayment, it effectively rescinded a portion of appellant's entitlement to schedule award compensation, but it did not adequately explain the basis for such action. In its February 7, 2011 preliminary overpayment notice, OWCP mentioned a January 24, 2011 report of the medical adviser but it did not provide an explanation of the calculations described by the medical adviser or discuss the basis for the calculations. Under these circumstances, appellant would not adequately understand, with respect to the creation of the claimed overpayment, the precise defect of her claim and the kind of evidence which would tend to overcome it. Moreover, OWCP did not address that section of the procedure manual that provides that, if a subsequent calculation of a schedule award results in a lower percentage of impairment, a finding should be made that the claimant has no more than the percentage of impairment originally awarded and there is no basis for declaring an overpayment.¹⁰

For these reasons, OWCP did not adequately justify or explain its claim that appellant received a \$20,373.82 overpayment of compensation and the case shall be remanded to OWCP to further develop and clarify this matter.¹¹ After such development as it deems necessary, it shall issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant received a \$20,373.82 overpayment of compensation. The case is remanded to OWCP for further development.

⁸ *John W. Graves*, 52 ECAB 160, 161 (2000).

⁹ *Id.*

¹⁰ *See supra* note 6 at Chapter 2.808.7(b)(4).

¹¹ Given the Board's disposition of the first issue of this case, it is not necessary to address the second issue.

ORDER

IT IS HEREBY ORDERED THAT the March 11, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: February 22, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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