

On appeal, appellant acknowledges that an overpayment was created but asserts that the amount of the overpayment is incorrect.

FACTUAL HISTORY

This case has previously been before the Board.² In a March 24, 2009 decision, the Board affirmed the fact that appellant was at fault in the creation of an overpayment of compensation for the period May 24 and June 12, 2004 because she received her salary for work and wage-loss compensation. The Board found that further development was required on the issue of amount of overpayment and remanded the case to OWCP.³ The facts of the previous Board decision are incorporated herein by reference.

On April 24, 2006 OWCP reduced appellant's wage-loss compensation based on part-time earnings of 24 hours a week. It found that she had a 64 percent wage-earning capacity. OWCP applied the principles set forth in *Albert C. Shadrick*.⁴ The pay rate for compensation purposes was that for a Grade 12 Step 1 on the date of injury or \$63,602.24 annually, \$1,223.12 a week.

On March 31, 2010 OWCP accepted an aggravation of cervical radiculopathy.

On June 11, 2012 appellant contacted OWCP to advise that she increased her work from a three day, 24-hour week schedule, to a four day, 32-hour week schedule beginning in April. In a letter dated June 14, 2012, OWCP advised her in order to avoid an additional overpayment, she was being removed from the periodic rolls and advised to file claims for compensation (Form CA-7) through her employing establishment for time lost. On June 18, 2012 the employing establishment provided pay rate information. It noted that appellant worked 32 hours a week and, when injured on February 10, 2004, she was a Grade 12, Step 1. The current pay rate for that grade and step was \$60,274.00 and she had no additional pay elements. On August 18, 2012 the employing establishment provided appellant's work schedule beginning April 1, 2012.

By letter dated October 3, 2012, OWCP issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$2,721.35 from April 2 through June 2, 2012 because she received wage-loss compensation based on a 24-hour work week but had worked 32 hours a week during this period. It found that for the period March 11 through April 7, 2012, she received compensation of \$1,639.00 when she should have received \$1,375.65. For each of the following two pay periods, appellant received compensation of

² Docket No. 08-2044 (issued March 24, 2009). On February 10, 2004 appellant, a language specialist, sustained a herniated disc at L2-3 when she moved a heavy chair. She was placed on the periodic compensation rolls effective March 26, 2004 and returned to 16 hours of work per week on June 15, 2004. In January 2005, appellant began working three days a week.

³ The record reflects that on October 7, 2009, OWCP found an overpayment of \$711.18. It deducted \$100.00 from appellant's ongoing compensation to recover the overpayment. This overpayment is not the subject of the present appeal.

⁴ 5 ECAB 376 (1953).

\$1,639.00 from April 8 to May 5, 2012 and May 6 to June 2, 2012, when she should have received \$410.00 for each period, creating an overpayment of \$1,229.00 for each pay period. OWCP based its overpayment finding on a recalculation under *Shadrick*⁵ and found that she had a wage-earning capacity of 91 percent. It found appellant at fault in creating the overpayment because she knew or reasonably should have known that the wage loss she received after she increased her work hours was incorrect. Appellant was provided an overpayment action request form and questionnaire.⁶

On October 25, 2012 appellant returned the overpayment action request only. She disagreed with the amount of the overpayment and attached calculations in which she maintained that the correct amount of the overpayment was \$1,843.875.⁷

By decision dated March 29, 2013, OWCP finalized the overpayment in the amount of \$2,721.35 for which appellant was at fault. It based the fault determination on the fact that she accepted incorrect payments of wage-loss compensation after increasing her work hours a week from 24 to 32.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.⁸ Section 8116 of FECA defines the limitations on the right to receive compensation benefits. This section of FECA provides that while an employee is receiving compensation, he or she may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.⁹ Section 10.500 of OWCP regulations provide that “compensation for wage loss due to disability is available only for any periods during which an employee’s work-related medical condition prevents him or her from earning the wages earned before the work-related injury.”¹⁰ OWCP procedures provide that an overpayment in compensation is created when a claimant returns to work and continues to receive compensation.¹¹

⁵ 20 C.F.R. § 10.403(d); *see Albert C. Shadrick*, 5 ECAB 376 (1953).

⁶ The record contains financial documents that show appellant received a total of \$4,917.00 in wage-loss compensation from April 2 to June 2, 2012 but was entitled to \$2,195.65, which created an overpayment of \$2,721.35.

⁷ Appellant did not indicate whether she wanted a telephone conference, decision on the record or a hearing.

⁸ 5 U.S.C. § 8102(a).

⁹ *Id.* at § 8116(a); *see Danny E. Haley*, 56 ECAB 393 (2005).

¹⁰ 20 C.F.R. § 10.500.

¹¹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2(a) (September 1994).

If the claimant is entitled to compensation for partial wage loss after return to work, the claims examiner should compute entitlement using the *Shadrick* formula and authorize compensation on a 28-day payment cycle.¹²

ANALYSIS -- ISSUE 1

The record establishes that an overpayment of compensation was created because appellant increased her part-time work schedule on April 2, 2012 from 24 hours (3 days) a week to 32 hours (4 days) a week. She received compensation for wage loss on the periodic rolls through June 2, 2012 based on the 24-hour workweek schedule. Appellant received wage-loss compensation of \$4,917.00 during this period but was only entitled to compensation of \$2,195.65. Therefore an overpayment was created in the amount of \$2,721.35.

The Board finds that, as appellant increased her part-time work from three days to four days a week, she should not have received wage-loss compensation based on a three-day work week. Thus an overpayment of compensation was created. In calculating the amount of overpayment, OWCP utilized the *Shadrick* formula¹³ and determined that appellant had a wage-earning capacity of 91 percent.

The Board, however, finds that the case is not in posture for decision regarding the amount of the overpayment.

When a claimant is entitled to compensation for partial wage loss after a return to work, OWCP should compute entitlement using the *Shadrick* formula and authorize compensation on a 28-day payment cycle.¹⁴ It based the 2012 *Shadrick* calculation on salary information provided by the employing establishment on June 14, 2012. OWCP stated that when injured in February 2004, appellant was at Grade 12 Step 1, that the current annual pay rate for this grade and step was \$60,274.00 and that she had no additional pay.

The record also contains conflicting information as to the weekly pay rate on which appellant's compensation was based beginning on the date of injury in 2004, which lists \$1,223.12 or \$63,602.24 annually. This weekly pay rate was used in the April 24, 2006 wage-earning capacity determination. The evidence of record is in conflict as to appellant's salary when injured in 2004. The record before the Board does not contain sufficient information to establish her weekly pay rate for compensation purposes when injured in 2004.¹⁵ Accurate financial information is essential to the application of the *Shadrick* formula to properly determine the pay rate for compensation purposes. The Board will affirm the fact of

¹² *Id.* at Chapter 2.815.3(b) (June 2013).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ A Form CA-7 claim form submitted by appellant on April 9, 2004 indicates that on the date of injury, February 10, 2004, she was a Grade 12 Step 1 with base annual pay of \$63,602.00 and no additional pay. The form, however, also indicates that on the day she stopped work, also February 10, 2004, she was a Grade 12 Step 2 at the same pay. A review of the 2004 Office of Personnel Management salary table indicates that the annual salary for a Grade 12 Step 2, with New York City locality pay, was \$65,206.00.

overpayment but remand the case on amount. OWCP should obtain additional pay rate information from the employing establishment. After such further development as deemed necessary, it should render a *de novo* overpayment decision.

CONCLUSION

The Board finds that OWCP properly determined that appellant was at fault in the creation of an overpayment of compensation. The case is not in posture for decision regarding the amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2013 decision of the Office of Workers' Compensation Programs is affirmed, in part, and set aside, in part. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: August 25, 2014
Washington, DC

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

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

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