

**United States Department of Labor
Employees' Compensation Appeals Board**

D.W., Appellant

and

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Carol Stream, IL,
Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 14-912
Issued: September 29, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 13, 2014 appellant filed a timely appeal from a January 29, 2014 decision of the Office of Workers' Compensation Programs (OWCP) finding that she received an overpayment of compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$2,884.86 for the period April 19, 2008 through April 22, 2011 because she received compensation at an incorrect pay rate, for which she was found to be without fault; (2) whether she is entitled to waiver of recovery of the overpayment; and (3) whether OWCP properly determined that it would recover the overpayment by deducting \$200.00 from appellant's continuing compensation under another OWCP file number.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 15, 2004 appellant, then a 33-year-old mail processor clerk, filed an occupational disease claim alleging that she sustained right carpal tunnel syndrome causally related to factors of her federal employment. OWCP accepted the claim for right carpal tunnel syndrome, a right ganglion of the tendon sheath and right de Quervain's syndrome. It paid appellant compensation from July 1, 2004 until March 17, 2007. The pay rate was the date that disability began, July 1, 2004.

By decisions dated February 26 and November 13, 2007, OWCP terminated appellant's compensation and authorization for medical benefits effective March 17, 2007. It found that the weight of the medical evidence established that she had no further employment-related disability or condition requiring medical treatment.

In a report of telephone call dated December 11, 2008, the employing establishment related that appellant worked from March 18 to May 17, 2007 with intermittent periods of total disability.² On May 17, 2007 appellant began working for four hours a day. She resumed full-time employment on June 4, 2007. Appellant stopped work on February 5, 2008 after working for part of the day. The employing establishment indicated that it would "send over the physical requirements of the date of injury position."

OWCP again paid appellant compensation under the current file number beginning April 19, 2008. It utilized a recurrent pay rate date of April 19, 2008.

By decision dated April 22, 2011, OWCP terminated appellant's compensation and authorization for medical benefits effective that date. It found that the medical evidence established that she had no further residuals of her accepted employment injury. On November 2, 2011, an OWCP hearing representative affirmed the April 22, 2011 decision.

In a worksheet dated April 10, 2013, OWCP noted that it should have paid appellant \$122,613.57 from April 19, 2008 through April 22, 2011 using an effective pay rate date of January 22, 2008, the date disability began. This resulted in a weekly pay rate of \$1,027.20.

On April 11, 2013 OWCP advised appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$2,884.86 because it paid her compensation at an inaccurate pay rate from April 19, 2008 to April 22, 2011. It found that she returned to work following her 2004 employment injury, but stopped work in January 2008 under a different OWCP file number, xxxxxx919, with a weekly pay rate of \$1,027.20. On

² In a decision dated December 11, 2007, OWCP granted appellant a schedule award for a 16 percent permanent impairment of the right upper extremity. The period of the award ran for 49.92 weeks from March 18, 2007 to March 1, 2008. By decision dated April 28, 2008, an OWCP hearing representative vacated the December 11, 2007 decision. He found that OWCP should request clarification from OWCP's medical adviser regarding the extent of permanent impairment. In a decision dated July 23, 2008, OWCP found that appellant had no more than a 16 percent right upper extremity impairment. On October 27, 2008 an OWCP hearing representative set aside the July 23, 2008 decision and instructed OWCP to refer her for a second opinion examination. In a decision dated February 25, 2009, OWCP again found that appellant had no more than a 16 percent right upper extremity impairment.

April 19, 2008 OWCP began paying appellant under the current file number, with a recurrent pay rate of \$1,063.20. It determined that as she had not returned to full-time employment prior to April 19, 2008; after stopping work on January 22, 2008, she was not entitled to a recurrent pay rate. OWCP subtracted the amount it should have paid appellant from April 19, 2008 through April 22, 2011, \$122,613.57, from the amount that it paid her of \$125,498.43, to find an overpayment of \$2,884.86. It notified her that she was without fault in the creation of the overpayment. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, it notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence or a precoupment hearing before an OWCP hearing representative.

In an April 17, 2013 response, appellant questioned the amount of the overpayment, contending that she had received only \$22,337.99 from OWCP. She maintained that she was entitled to a recurrent pay rate and raised issues regarding her schedule award. On May 7, 2013 appellant requested a precoupment hearing. She submitted a benefits statement from the U.S. Department of Labor showing that she received \$22,337.99 in compensation for the period April 23 to November 16, 2011. Appellant also submitted an overpayment recovery questionnaire without providing any financial information on the form.

At the telephone hearing, held on November 13, 2013, the hearing representative requested that appellant complete another overpayment questionnaire and provide her financial information. Appellant related that both of her cases should have been combined and questioned the calculation of the overpayment.

By decision dated January 29, 2014, an OWCP hearing representative determined that appellant received an overpayment of compensation in the amount of \$2,884.86 for the period April 19, 2008 to April 22, 2011 because she was paid at an inaccurate pay rate. She also found that appellant was not entitled to waiver of recovery of the overpayment as her income exceeded her expenses by more than \$50.00 a month. The hearing representative determined that the overpayment would be recovered from deducting \$200.00 per month from continuing compensation under OWCP File No. xxxxxx919.

On appeal appellant contends that she would experience severe financial hardship in attempting to repay the overpayment.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of the FECA³ provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁴ Pay rate for compensation purposes is defined in section 8101(4) as the monthly pay at

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Id.* at § 8102.

the time of injury, the time disability begins or the time disability recurs, if the recurrence is more than six months after returning to full-time work, whichever is greater.⁵

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.⁶

ANALYSIS -- ISSUE 1

OWCP accepted appellant's 2004 occupational disease claim for right carpal tunnel syndrome, a right ganglion of the tendon sheath and right de Quervain's syndrome. It paid her compensation from July 1, 2004 until March 17, 2007 based on a pay rate date of July 1, 2004, the date disability began.

On December 11, 2008 the employing establishment related that appellant returned to work on March 17, 2007 but sustained intermittent periods of total disability. Appellant worked four hours a day from May 17 until July 4, 2007 and was disabled from May 18 to June 3, 2007. She returned to full-time work on June 4, 2007.

OWCP paid appellant compensation beginning April 19, 2008 under the current file number utilizing a recurrent pay rate date of April 19, 2008. It subsequently determined that she was not entitled to a pay rate date of April 19, 2008 because she stopped work in January 2008 under another file number. As appellant was not working on April 19, 2008, it found that she was not entitled to a recurrent pay rate. A work stoppage, however, is not necessary for a claimant to be entitled to a recurrent pay rate if he or she sustains a new period of total disability due to the accepted employment injury.⁷

Whether appellant is entitled to compensation at a recurrent pay rate, however, depends on whether she resumed regular full-time employment with the United States for six months prior to her disability beginning April 19, 2008. While the employing establishment advised that she returned to full-time work on June 4, 2007, it did not address whether she was performing her regular or limited-duty employment. Consequently, the Board will remand the case for further development to resolve the issue of whether appellant resumed regular full-time employment with the United States for six months following her work injury. After such further development as may be necessary to resolve the matter, OWCP shall, if necessary, issue a *de novo* decision on any overpayment determination.

⁵ *Id.* at §§ 8101(4); 8114; *see also* 20 C.F.R. § 10.5(s).

⁶ *Id.* at § 8129; *see also* *Ricky Greenwood*, 57 ECAB 462 (2006).

⁷ *See R.N.*, Docket No. 10-470 (issued September 9, 2010).

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant received an overpayment of compensation in the amount of \$2,884.86 for the period April 19, 2008 through April 22, 2011.⁸

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 29, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

⁸ In view of the Board's disposition of the first issue, it is premature to address the issues of whether the overpayment should be waived and recovery of the overpayment.