

FACTUAL HISTORY

On March 1, 2011 OWCP accepted that appellant, then a 50-year-old mail processing clerk, sustained aggravation of right thumb carpometacarpal (CMC) joint degenerative arthritis, localized primary osteoarthritis of the right thumb and other joint derangement of the right hand. The claim was adjudicated by OWCP under claim number xxxxxx356.

On March 13, 2013 appellant filed an occupational disease claim, stating that repetitive trauma at work caused a left hand injury. The March 13, 2013 claim was adjudicated by OWCP under claim number xxxxxx743. In a September 7, 2012 treatment note, Dr. Kevin J. Collins, a Board-certified physiatrist, advised that appellant had overuse syndrome of the bilateral shoulders, elbows, and wrists. In reports dated April 15, 2013, he reported physical examination findings and diagnosed bilateral carpal tunnel syndrome (CTS), chronic pain, cumulative trauma from repetitive motion, and myofascial pain syndrome. Dr. Collins provided restrictions to appellant's physical activity, stating she could not grasp, pull, tie, cut or lift magazines or newspapers with the right hand or with the left hand after four hours. He recommended that she do simple grasping with each hand alternatively for four hours and rest both hands every hour and a half.

Under claim number xxxxxx356, appellant filed claims for intermittent compensation for the period April 15 to 19, 2013. She indicated that she attended a four-hour doctor's appointment on April 15, 2013 and that she worked part time from April 18 through May 3, 2013 because full-time work was not available. Under this claim, on May 7, 2013 OWCP paid appellant compensation totaling \$930.27.²

In an overpayment memorandum dated May 22, 2013, OWCP determined that appellant had received an overpayment of compensation in the amount of \$930.27 because she had been inappropriately paid compensation under her right thumb claim number xxxxxx356 when her doctor's appointment and work restrictions were based on her bilateral CTS, under claim number xxxxxx743, which had not been accepted at that time. The memorandum was assigned to a senior claims examiner on May 23, 2013.

On May 23, 2013 under claim number xxxxxx743, OWCP accepted employment-related right CTS.³

On May 25, 2013 a senior claims examiner approved the overpayment memorandum.

In correspondence dated June 10, 2013, OWCP advised appellant that future compensation claims should be submitted under claim number xxxxxx743. It specifically stated, "the medical evidence currently in file demonstrates your associated disability results from the right CTS and nonwork-related bilateral shoulder conditions."

² The payment included \$84.76 for a medical appointment on April 15, 2013 and \$845.51 for intermittent compensation for April 20 through May 3, 2013, for total compensation of \$930.27.

³ The record indicates that appellant has two additional claims: xxxxxx640 accepted for right wrist tenosynovitis, and xxxxxx450 denied, claiming bilateral shoulder and left elbow conditions. These claims are not before the Board.

Under claim number xxxxxx356, by letter dated June 25, 2013, OWCP issued a preliminary determination that appellant had received an overpayment in compensation in the amount of \$930.27 for April 15, 2013 and April 20 through May 3, 2013 because she was paid compensation for attending a medical appointment and because the employing establishment was unable to provide full-time work based on her restrictions. It found that the loss of wages were not due to the condition accepted under claim number xxxxxx356 but were due to a condition accepted under claim number xxxxxx743. OWCP found appellant not at fault in the creation of the overpayment. Appellant was provided an overpayment action request form and an overpayment questionnaire and was given 30 days to submit a response.

Appellant timely requested a precoupment hearing and submitted an overpayment questionnaire that was left blank. In an attached letter, she referred to the June 10, 2013 letter advising that future compensation claims should be submitted under claim number xxxxxx373 and asked that the paperwork filed under claim number xxxxxx356, the subject of the overpayment, be placed in the xxxxxx743 file.

Beginning May 4, 2013 appellant was paid intermittent compensation under claim number xxxxxx743.

On October 22, 2013 claim numbers xxxxxx356 and xxxxxx743 were doubled, with the former becoming the master file.

By letter dated January 15, 2014, OWCP informed appellant that a telephone hearing was scheduled for 12:30 p.m. on February 24, 2014. The notice was sent to her address of record in Jacksonville, Arkansas. Appellant submitted nothing further and did not telephone OWCP at the appointed time. In a March 20, 2014 decision, an OWCP hearing representative found that appellant had abandoned her request for a hearing.⁴

On February 3, 2015 OWCP finalized the preliminary overpayment decision, finding that appellant received an overpayment in compensation in the amount of \$930.27 and, while she was not at fault, she was not entitled to waiver of the overpayment because she did not provide the requested information to justify waiver. Repayment was due in full.

LEGAL PRECEDENT

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.”⁵

⁴ On December 2, 2014 appellant filed a claim for a September 14, 2014 recurrence under the xxxxxx743 file. The recurrence claim was accepted on January 27, 2015.

⁵ 5 U.S.C. § 8129.

ANALYSIS

The Board finds this case is not in posture for decision on the issue of whether appellant received an overpayment of compensation. In an overpayment decision, the Board must first determine whether an overpayment occurred by examining the underlying OWCP decision.⁶

In a preliminary determination dated June 25, 2013, OWCP found that an overpayment of \$930.27 existed because appellant received compensation under claim number xxxxxx356 for attending a medical appointment on April 15, 2013 and because the employing establishment was unable to provide full-time work based on her restrictions for the period April 20 through May 3, 2013. OWCP found that paid benefits were not due to the condition accepted under claim number xxxxxx356 but were due to a condition accepted under claim number xxxxxx743. It found appellant not at fault in the creation of the overpayment. The record, however, fails to adequately describe whether the benefits would have been payable or were already paid under claim number xxxxxx743. The Board notes that under the claim number xxxxxx743, appellant began receiving intermittent compensation beginning May 4, 2013 due to the accepted condition of right CTS.

In response to the June 25, 2013 preliminary overpayment finding, appellant requested that the paperwork filed under claim number xxxxxx356 be transferred to claim number xxxxxx743 claim. On October 22, 2013 the claims were doubled, and on February 3, 2015 OWCP finalized the overpayment determination.

Given the doubling of the case records and their relationship to an overpayment, the case will therefore be remanded to OWCP for further development on the fact of overpayment, to be followed by an appropriate decision.⁷

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant received an overpayment of compensation.

⁶ *William E. McCarty*, 54 ECAB 525 (2003).

⁷ *See generally, M.S.*, Docket No. 13-560 (issued May 10, 2013). In view of the Board's disposition on fact of overpayment, it is premature for the Board to consider whether OWCP properly found appellant not entitled to waiver.

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this opinion of the Board.

Issued: July 20, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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