

FACTUAL HISTORY

On July 19, 1995 appellant, then a 40-year-old flat sorter machine (FSM) operator, filed a traumatic injury claim (Form CA-1) alleging that on July 18, 1995 she strained her right arm joint muscle while placing buckets of mail in the all-purpose container (APC). OWCP accepted a right shoulder strain and authorized right shoulder arthroscopy, which occurred on July 8, 1998. OWCP paid appellant compensation. The record shows that appellant accepted several modified job offers for both partial and full-time work.

By letter dated September 19, 2013, OWCP placed appellant on the periodic rolls for temporary total disability with the first payment for the period August 20 to 24, 2013.

In a December 8, 2014 memorandum to file, OWCP noted that appellant called to inform it that she had returned to work on September 8, 2014, but was still receiving wage-loss compensation.

The record contains a January 5, 2015 worksheet computing an overpayment of compensation for the period August 19 to December 13, 2014 based on appellant's return to part-time work on August 19, 2014 and noting that she continued to receive compensation on the periodic rolls through October 18, 2014. It noted that appellant had been paid a net of \$10,445.39 for the period August 24 to December 13, 2014 when she should have been paid \$1,398.94 for this period resulting in a net difference of \$9,046.45. In attached computer printouts appellant's weekly pay rate was noted as \$1,083.79. Under the comments section on one computer printout and compensation termination form, OWCP noted that appellant had called and provided notice that she had returned to work on September 8, 2014.

On February 2, 2015 OWCP informed appellant of its preliminary determination that she received an overpayment in the amount of \$9,520.58 because she received compensation for the period August 19 to December 13, 2014 while receiving pay for working four hours per day. OWCP found an overpayment in the amount of \$9,520.58 for the period August 19 to December 13, 2014. It calculated the overpayment by noting what appellant was paid for one pay period and then multiplying that amount by the four pay periods covering August 24 to December 13, 2014 ($\$2,611.35 \times 4 = \$10,445.40$) and that appellant was paid \$2,655.07 for the period July 27 to August 23, 2014 which when divided by 28 days equalled \$94.82392. OWCP then multiplied the \$94.82392 by five days to find an overpayment of \$474.12 for the period August 19 to 23, 2014. Next it combined the \$474.12 with the \$10,445.40 to arrive at an overpayment of \$10,919.52 for the period August 19 to December 13, 2014. OWCP then subtracted \$1,398.94 (hours it noted were owed to appellant) from the \$10,919.52 overpayment resulting in a final overpayment of \$9,520.58. OWCP found that appellant was at fault in the creation of the overpayment because she should have been aware that she was not entitled to receive compensation for total disability after returning to work part time. 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. Appellant did not respond, nor did she submit a completed overpayment recovery questionnaire.

By decision dated March 11, 2015, OWCP finalized the preliminary determination that an overpayment of compensation in the amount of \$9,520.58² had been created during the period August 19 to December 13, 2014. It finalized its finding of fault; thus precluding waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 1

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, she may not receive salary, pay, or remuneration of any type from the United States, except in limited circumstances.³ 20 C.F.R. § 10.500 provides that compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents her from earning the wages earned before the work-related injury.

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for a decision. The record is unclear as to the exact date appellant returned to work, the hours worked, and the amount of the overpayment. The record before the Board is devoid of any evidence regarding the number of hours that appellant was working after her return to work. The only evidence of record pertaining to appellant's return to work are a December 8, 2014 memorandum, a January 5, 2015 manual adjustment form computing the overpayment, computer printouts, and a compensation termination form noting that appellant had called OWCP to say she had returned to work on September 8, 2014. It is unclear from the record how OWCP determined that appellant returned to work part-time on August 19, 2014. The record contains no evidence showing that appellant actually returned to work on August 19, 2014, what her job was, or the number of work hours. In addition, while the January 5, 2015 overpayment calculation and computer printouts note that appellant returned to work four hours on September 8, 2014, the December 8, 2014 memorandum to file merely noted a return to work on September 8, 2014 without indicating the number of hours she was working per day or pay period. As the evidence in the record appears to indicate that appellant returned to work on September 8, 2014, it is unclear how OWCP determined that appellant returned to work on August 19, 2014. In addition the record contains conflicting calculations on the amount of the overpayment. The January 5, 2015 worksheet computed the overpayment for the period in question as \$9,046.94 while on February 2, 2015 OWCP calculated the overpayment to be \$9,520.58.

OWCP did not adequately address the basis for the fact or amount of the overpayment in this case due to the lack of evidence supporting its finding of a return to work on August 19, 2014 and the differing calculations provided by OWCP regarding the overpayment. Moreover, the record does not contain any evidence on the number of hours appellant was working when she returned to work other than OWCP's finding that she had returned to four hours per day. Furthermore, OWCP calculated two different amounts of overpayment. The

² OWCP noted overpayment amounts of \$9,520.58 and \$9,250.58 in its decision. The \$9,250.58 amount appears to be a typographical error as OWCP in its preliminary determination calculated the overpayment to be \$2,950.58.

³ 5 U.S.C. § 8116(a).

January 5, 2015 worksheet computed an overpayment of \$9,046.45 while the February 2, 2014 preliminary notice determined the overpayment to be \$9,520.58. Finally, OWCP does not explain the basis for its finding that appellant was owed \$1,398.94 which it deducted from the overpayment. As the record is incomplete and unclear as to the number of hours that appellant actually worked or the actual date she returned to work, the Board is unable to make an informed decision regarding the amount of the overpayment.

The case will therefore be remanded to OWCP to provide documentation of appellant's exact date she returned work, the number of hours worked, and then issue an appropriate final decision regarding any overpayment of compensation. After this and such further development deemed necessary, OWCP should render a *de novo* decision.

As the amount of the overpayment is not yet established, it is premature to address the issue of fault.

CONCLUSION

The Board finds that the case is not in posture regarding the period and the amount of the alleged overpayment, fault, and waiver.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 11, 2015 is set aside and the case remanded for further action consistent with this decision.

Issued: January 12, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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