



## **FACTUAL HISTORY -- ISSUES 1 AND 2**

OWCP accepted that on August 24, 2000 appellant, then a 43-year-old part-time flexible (PTF) letter carrier sustained injuries to his buttocks, back, and left leg when he slipped and fell on a curb in the performance of duty.<sup>2</sup> Appellant submitted medical evidence to support his claim including a December 26, 2000 magnetic resonance imaging (MRI) scan of his lower back. OWCP accepted his claim for low back pain, displacement of lumbar intervertebral disc, mechanical complication of internal orthopedic device, implant and graft, and spinal stenosis of the lumbar region. Appellant received disability compensation beginning December 2000 and was on and off work for intermittent periods. On September 18, 2001 he returned to part-time restricted duty and on October 22, 2001 to modified full duty.

On February 4, 2003 appellant stopped work and filed a claim for recurrence of disability (Form CA-2a). OWCP accepted his recurrence claim and paid compensation beginning March 1, 2003. In a letter dated June 27, 2003, it noted that appellant had been placed on the periodic rolls. OWCP outlined his entitlement to compensation benefits and his responsibility to return to work in connection with the accepted injury. The letter further stated that appellant must advise OWCP if he returned to his former job or obtained other work, either with his original employing establishment or with another employer. It provided:

“To minimize the possibility of an overpayment of compensation, NOTIFY THIS OFFICE IMMEDIATELY WHEN YOU GO BACK TO WORK. Each payment shows the period for which payment is made. If you have worked for any portion of this period, return the payment to this office, even if you have already advised OWCP that you are working.”

Appellant continued to receive medical treatment from Dr. Subbanna Jayaprakash, Board-certified in physical medicine and rehabilitation, and Dr. Dennis J. Maiman, a Board-certified neurological surgeon. In a May 20, 2004 report, Dr. Maiman informed Dr. Jayaprakash that appellant had improved since his lumbar fusion surgery but had complaints of significant leg pain and muscle spasm. He reported that appellant’s range of motion had improved and provided x-ray reports from that date.

Appellant submitted various medical reports including a February 27, 2003 computerized tomography (CT) examination of his lumbar spine, x-ray reports of his lumbar spine dated February 5 and May 10, 2004, December 17, 2005, and May 18 and November 30, 2006, and x-rays of his right foot dated November 30, 2006.

---

<sup>2</sup> Appellant began work for the employing establishment on July 15, 2000. The record indicates that although he was hired as a PTF he was mostly working a full-time schedule and he eventually became a full-time regular (FTR) employee.

In a September 5, 2009 report of earnings from the Social Security Administration (SSA), it noted that from October 2007 through December 2008 appellant earned \$1,033.00 in 2007 and \$1,694.00 in 2008 through private-sector employment.<sup>3</sup>

According to an August 22, 2012 SSA report of earnings for 2009 to 2011, appellant earned \$3,704.04 in 2009, \$2,423.40 in 2010, and \$2,136.02 in 2011 through private-sector employment.<sup>4</sup>

On July 11, 2012 OWCP suspended appellant's compensation benefits based upon a finding that he had failed to complete EN1032 forms dated April 2, 2010, April 6 and May 8, 2011. It received EN1032 forms from appellant on July 17, 2012 wherein he reported part-time employment as a basketball and golf coach from September 2009 to February 2011. Benefits were reinstated on that date.

After a period of vocational rehabilitation, appellant opted to receive retirement benefits from the Office of Personnel Management (OPM), effective January 13, 2013, in lieu of compensation benefits from OWCP.

The employing establishment provided appellant's pay rate information. In a follow-up telephone conversation with Peggy Rappe, an employing establishment human resources specialist, OWCP requested clarification regarding appellant's work schedule. Ms. Rappe stated that appellant began work on July 15, 2000. She reported that he worked just 17 hours during his first week on duty due to training and worked 39.5 hours for the second week. Ms. Rappe further noted that for the next two weeks appellant worked a 40-hour work schedule until his injury on August 24, 2000. She stated that the employing establishment would have no problem considering appellant's schedule that of a full-time worker for pay rate calculation purposes.

On January 16, 2014 OWCP issued a preliminary overpayment determination in the amount of \$6,144.56 for the period January 1, 2007 to December 31, 2011 because appellant received wage-loss compensation for disability even though he earned wages through private employment. It determined that he received compensation in the gross amount of \$153,346.38 from January 1, 2007 to December 31, 2011 when he should have only received \$147,201.82 for this same period. This resulted in a total amount of overpayment of \$6,144.56. OWCP further found that appellant was at fault in the creation of the overpayment because he knowingly accepted payments that he knew, or reasonably should have known, were incorrect. In an attached memorandum, it explained in detail how the overpayment was calculated and noted that the overpayment amount required a calculation of appellant's wage-earning capacity from 2007 to 2011. OWCP further advised appellant that he could submit evidence challenging the fact, amount, or finding of fault and request waiver of the overpayment and requested that he

---

<sup>3</sup> In 2007, appellant earned \$440.00 from the school district of South Milwaukee; \$175.00 from the Village of Union Grove; and \$418.00 from the City of Oak Creek. In 2008, appellant earned \$120.00 from the school district of South Milwaukee; \$160.00 from the City of Oak Creek; \$1,351.00 from self-employment; and \$63.00 from Badger Inventory Service.

<sup>4</sup> In 2009 appellant earned \$1,567.00 from self-employment; \$683.00 from Booster, Inc.; and \$1,454.04 from the University of Wisconsin. In 2010 and 2011, he earned \$2,423.40 and \$2,136.02 respectively from the University of Wisconsin.

complete the enclosed financial information questionnaire within 30 days. No information was received from appellant.

By decision dated February 18, 2014, OWCP finalized the determination of overpayment with modification. It modified the period of the overpayment to January 1, 2009 to December 31, 2011 for a total overpayment of \$4,732.35. OWCP requested that appellant forward a check in the amount of \$4,732.35 to OWCP within 30 days.

In an attached memorandum, OWCP noted that appellant was to be paid a schedule award in the amount of 26 percent permanent impairment of his left lower extremity for the period January 25, 2007 to July 2, 2008. It explained that a claimant could not receive compensation for total disability and compensation for a schedule award for concurrent date ranges for the same injury.<sup>5</sup> Thus, the disability compensation issued for the period January 25, 2007 to July 2, 2008 had already been offset by compensation for the appellant's schedule award. Because the same date range was for a schedule award, it would not seek collection of an overpayment of disability compensation for that period. OWCP further stated that because the exact dates that appellant worked in 2008 were unknown it would calculate the amount of appellant's overpayment beginning on January 1, 2009. The period of the final overpayment was, therefore, determined to be January 1, 2009 to December 31, 2011.

OWCP provided calculations of the overpayment amount for the modified period of January 1, 2009 to December 31, 2011. It explained that, pursuant to FECA, appellant was not entitled to compensation for total disability because he earned actual wages, but was only entitled to compensation for partial disability based on his loss of wage-earning capacity.<sup>6</sup>

Thus, OWCP determined the amount that appellant should have received from January 1, 2009 to December 31, 2011 by applying the *Shadrick* formula to determine appellant's wage-earning capacity.<sup>7</sup> The record contains a document titled "Note to File" submitted by the claims examiner on February 18, 2014, the same date as the final overpayment decision, which attempts to explain the calculations used for determining the modified period of overpayment.

OWCP determined that, per appellant's periodic disability payment reports, appellant's weekly pay rate when his disability began on February 5, 2003 was \$671.50. This figure came from appellant's pay rate at his date of recurrence. Appellant's hourly pay rate for the period that the overpayment began on January 1, 2009 was \$20.94. This figure was confirmed by the employing establishment via telephone on February 19, 2014. OWCP multiplied \$20.94 by 40 hours to determine that appellant's January 1, 2009 weekly pay rate was \$837.60 for Line 2. It reported that appellant earned \$683.00 from Booster Inc. and \$6,013.46 from the University of

---

<sup>5</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.4a(3) (February 2013) (a schedule award is payable consecutively, not concurrently, with an award for wage loss for the same injury).

<sup>6</sup> See 5 U.S.C. § 8115(a). OWCP stated that calculation of appellant's loss of wage-earning capacity relied on appellant's actual earnings, pay rate for appellant's date-of-injury job, pay rate when appellant last stopped working on February 4, 2003, appellant's compensation rate of  $\frac{3}{4}$ , and consumer price index adjustment.

<sup>7</sup> *Albert C. Shadrick*, 5 ECAB 376 (1953).

Wisconsin from 2009 to 2011 for a total amount of \$6,696.46. These figures came from the August 22, 2012 SSA report of earnings. For the 156.4 weeks that appellant worked, he earned \$42.81 weekly for Line 3. OWCP concluded that appellant's four-week compensation amount should have been \$2,453.00. Taking into account consumer price index adjustments, the correct entitlement for appellant's loss of wage-earning capacity was \$33,647.43 during the period January 1, 2009 to March 1, 2010; \$29,956.07 during the period March 1, 2010 to March 1, 2011; and \$25,540.07 during the period March 1 to December 31, 2011. Accordingly, appellant should have received \$89,143.57 in compensation for the period January 1, 2009 to December 31, 2011. As the record reveals that appellant received \$93,875.92 in compensation benefits for the same date range, this resulted in an overpayment of \$4,732.35.

### **FACTUAL HISTORY -- ISSUE 3**

On September 16, 2008 OWCP granted a schedule award for 17 percent of the left lower extremity. The award ran from January 25, 2007 to January 2, 2008. The date of maximum medical improvement was January 25, 2007.

On July 27, 2013 appellant filed a claim for an increased schedule award.

In an August 21, 2013 report, Dr. Jayaprakash provided an accurate history of appellant's August 24, 2000 employment injury and reviewed his history, including the various surgeries he had undergone. Upon examination of appellant's lumbar spine, he observed that appellant's sensations continued to be severely impaired on the left side at the L5 and the S1 level in addition to the foot drop on the left side. Dr. Jayaprakash reported that appellant's ankle dorsiflexion was only 1- to 1+ and a moderate degree of muscle atrophy of the tibialis anterior gastrocnemius and intrinsic muscles of the foot on the left side. The right side was otherwise fairly intact. Dr. Jayaprakash stated that appellant's hip flexion was 3+, abduction was 4-, adduction was 4+, and quadriceps strength was 4+. He diagnosed chronic left L5 and S1 radiculopathy with foot drop and post L3-S1 spinal fusion.

Dr. Jayaprakash noted a date of maximum medical improvement of January 25, 2007. He opined that, based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) Table 15-13 on page 384, appellant was DRE lumbar #3 with a permanent impairment of the whole body between 13 to 20 percent due to the fact that he had an overlap and this would constitute 16 percent impairment. Dr. Jayaprakash explained that this impairment was based upon the fact that he had a foot drop on the left side with his motor strength loss of almost 75 percent at the level of the L5 nerve root on the left side. He also noted that appellant had 75 percent loss of functional strength at his S1 nerve root as well. Dr. Jayaprakash reported that these, in combination, were 9 percent and 6 percent respectively with 1 percent loss of sensation which would place him at 16 percent loss.

In an October 10, 2013 report, Dr. Jayaprakash, utilizing the sixth edition of the A.M.A., *Guides*, Chapter 17, Table 10, determined that appellant had class 3 impairment by virtue of multiple levels, which resulted in a default rating of 19 percent. He noted that based upon residual radiculopathy of L5 and S1 he adjusted the rating to grade D for +1 percent. Dr. Jayaprakash concluded that appellant had 20 percent whole percent impairment and 15 percent regional impairment of the left leg.

OWCP also referred appellant's claim for an increased schedule award and the most recent medical records to the district medical adviser to determine whether the medical evidence supported a greater impairment to appellant's left lower extremity. In a January 12, 2014 report, Dr. Christopher Gross, a Board-certified orthopedic surgeon and OWCP medical adviser, noted that he had reviewed appellant's history and provided results on examination. He observed left foot drop with normal sensation and no evidence of any right lower extremity dysfunction. Referencing *The Guides Newsletter* July/August 2009, Table 2, he rated appellant's left L5 and S1 as moderate/severe motor deficits. Based on Table 16-6, page 516, Dr. Gross reported moderate functional problem with pain on normal activity. He noted that the grade modifier for physical examination was not relevant because the neurologic findings were used to define impairment ranges and that the clinical studies were not available for review. Dr. Gross stated that appellant had a net adjustment formula of +1. Therefore, his right lower extremity permanent impairment was 13 percent impairment for L5 and 13 percent impairment for S1 for a total of 26 percent impairment. Dr. Gross reported that this rating differed from Dr. Jayaprakash's rating because he did not use *The Guides Newsletter*. He noted a date of maximum medical improvement of January 25, 2007.<sup>8</sup>

In a January 16, 2014 letter, appellant requested clarification of the statement that he was seeking an "increased schedule award." He explained that he never received any monetary award for a schedule award from a September 16, 2008 decision for 17 percent permanent impairment of the left lower extremity.

In a February 4, 2014 letter, OWCP noted that Dr. Gross had provided a permanent impairment rating for appellant's right lower extremity even though the memorandum referenced the left lower extremity impairment. It requested clarification from Dr. Gross regarding whether appellant's impairment rating was for the left or right lower extremity.

In a February 9, 2014 updated report, Dr. Gross stated that appellant had 26 percent impairment of the left lower extremity.

By decision dated February 18, 2014, OWCP granted appellant a schedule award for 26 percent permanent impairment of the left lower extremity. The award ran from January 25, 2007 to July 2, 2008 and noted a date of maximum medical improvement of January 25, 2007.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102 of FECA 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.<sup>9</sup> 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

---

<sup>8</sup> The Board notes that a maximum medical improvement date of January 25, 2007 is also supported by Dr. Jayaprakash in his August 21, 2013 medical report.

<sup>9</sup> *Supra* note 1 at 8102.

limited circumstances.<sup>10</sup> A claimant is not entitled to receive total disability compensation and actual earnings for the same period. OWCP procedures provide that an overpayment in compensation is created when a claimant returns to work but continues to receive wage-loss compensation.<sup>11</sup>

Under section 8115(a) of FECA, wage-earning capacity is determined by the actual wages received by an employee if the earnings fairly and reasonably represent his wage-earning capacity.<sup>12</sup> Generally, wages actually earned are the best measure of wage-earning capacity and, in the absence of evidence showing that they do not fairly and reasonably represent the injured employee's wage-earning capacity, must be accepted as such measure.<sup>13</sup> OWCP applies the *Shadrick* formula to calculate a given claimant's loss of wage-earning capacity, a formula which was derived from principles contained in the case of *Albert C. Shadrick*.<sup>14</sup>

In deciding matters pertaining to a given claimant's entitlement to compensation benefits OWCP is required by statute and regulation to make findings of fact.<sup>15</sup> Its procedures further specify that a final decision of OWCP "should be clear and detailed so that the reader understands the reason for the disallowance of the benefit and the evidence necessary to overcome the defect of the claim."<sup>16</sup> These requirements are supported by Board precedent.<sup>17</sup>

A claimant may not receive compensation for disability and a schedule award covering the same period of time.<sup>18</sup> Therefore, appellant cannot receive concurrent wage-loss compensation and a schedule award for the same injury.<sup>19</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP did not provide an adequate explanation of how it determined an overpayment of compensation in the amount of \$4,732.35 for the period January 1, 2009 to December 31, 2011. In its January 16, 2014 preliminary determination

---

<sup>10</sup> *Id.*

<sup>11</sup> See *M.M.*, Docket No. 15-0265 (issued May 27, 2015).

<sup>12</sup> 5 U.S.C. § 8115(a).

<sup>13</sup> *E.W.*, Docket No. 14-584 (issued July 29, 2014); *Dennis E. Maddy*, 47 ECAB 259, 262 (1995).

<sup>14</sup> *Supra* note 7.

<sup>15</sup> 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."

<sup>16</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5c(3)(e) (February 2013).

<sup>17</sup> See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

<sup>18</sup> *Eugenia L. Smith*, 41 ECAB 409 (1990).

<sup>19</sup> See *James A. Earle*, 51 ECAB 567 (2000).

OWCP indicated that appellant received a \$6,144.56 overpayment for the period January 1, 2007 to December 31, 2011 because he received wage-loss compensation for disability even though he earned wages through private employment. In its February 18, 2014 decision, OWCP modified the period of the overpayment to January 1, 2009 to December 31, 2011 and reduced the amount of overpayment to \$4,732.35 for the period January 25, 2007 to July 2, 2008 which had already been offset due to appellant's schedule award. Further, it calculated a loss of wage-earning capacity based on appellant's actual earnings.

OWCP attempted to explain its calculations in the memorandum for the file, attached to the February 18, 2014 decision, and in a "Note to File" submitted by the claims examiner on February 18, 2014. The "Note to File" states that, per the employing establishment, appellant only worked 17 hours during the first week of his employment, but was essentially full time for the next two weeks until he was injured. The claims examiner thus used a pay rate based on a 40-hour per week schedule. The claims examiner noted that the employing establishment human resources specialist "could not obtain earnings for the one year prior for the most similar employee so far back in time." Therefore, a figure based on the most similar employee could not be calculated. Moreover, it was determined, without sufficient explanation, that appellant's actual earnings from employers during the period 2009 to 2011 averaged \$42.81 per week for the three-year period in question. The Board notes that the amount of overpayment does not contain sufficient explanation about the sources of these figures or how they may have been used to calculate appellant's pay rate.

As OWCP did not provide a clearly written statement explaining how the overpayment was calculated such that appellant could satisfy himself that the calculation was correct, the Board finds that this case is not in posture for decision as to fact and amount of overpayment. Accordingly the Board will set aside the February 18, 2014 decision on that issue.<sup>20</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

The schedule award provision of FECA<sup>21</sup> and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP as the appropriate standards for evaluating schedule losses.<sup>22</sup>

---

<sup>20</sup> See *T.G.*, Docket No. 15-566 (issued June 9, 2015).

<sup>21</sup> See generally *supra* note 1; 20 C.F.R. § 10.404 (1999).

<sup>22</sup> *Id.*; see also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, under FECA a schedule award is not payable for injury to the spine.<sup>23</sup> In 1960, amendments to FECA modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Therefore, as the schedule award provisions of FECA include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.<sup>24</sup>

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. The A.M.A., *Guides* for decade has offered an alternative approach to rating spinal nerve impairments.<sup>25</sup> OWCP has adopted this approach for rating impairment of the upper or lower extremities caused by a spinal injury, as provided in section 3.700 of its procedures, which memorializes proposed tables outlined in a July/August 2009 *The Guides Newsletter*.<sup>26</sup>

It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury. The Board has defined maximum medical improvement as meaning that the physical condition of the injured member of the body has stabilized and will not improve further. The Board has also noted a reluctance to find a date of maximum medical improvement, which is retroactive to the award, as retroactive awards often result in payment of less compensation benefits. The Board, therefore, requires persuasive proof of maximum medical improvement in the selection of a retroactive date of maximum medical improvement.<sup>27</sup> The determination of whether maximum medical improvement has been reached is based on the probative medical evidence of record and is usually considered to be the date of the evaluation by the attending physician which is accepted as definitive by OWCP.<sup>28</sup>

### **ANALYSIS -- ISSUE 3**

OWCP accepted that appellant sustained lumbar stenosis, displacement of lumbar intervertebral disc without myelopathy, and mechanical complications of internal orthopedic device. On September 16, 2008 it granted a schedule award for 17 percent of the left lower extremity and increased it to 26 percent by decision dated February 18, 2014.

---

<sup>23</sup> *Pamela J. Darling*, 49 ECAB 286 (1998).

<sup>24</sup> *Thomas J. Engelhart*, 50 ECAB 319 (1999).

<sup>25</sup> *Rozella L. Skinner*, 37 ECAB 398 (1986).

<sup>26</sup> FECA Transmittal No. 10-04 (issued January 9, 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1, n.5 (January 2010); *The Guides Newsletter* is included as Exhibit 4.

<sup>27</sup> *J.C.*, Docket No. 06-1018 (January 10, 2007); *D.R.*, 57 ECAB 720 (2006); *James E. Earle*, 51 ECAB 567 (2000).

<sup>28</sup> *Mark A. Halloway*, 55 ECAB 321, 325 (2004).

The Board finds that this case is not in posture for decision regarding appellant's left lower extremity impairment.

OWCP granted its schedule award for 26 percent permanent impairment of the left lower extremity based on the February 9, 2014 report of Dr. Gross, an OWCP medical adviser. In the report, Dr. Gross noted that he reviewed appellant's history and provided findings on examination. He referenced the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter* July/August 2009. Based on Table 2 of *The Guides Newsletter*, he rated appellant's left L5 and S1 as moderate/severe motor deficits. Dr. Gross noted that physical examination was not relevant and that clinical studies were not available for review. He determined that appellant had a net adjustment formula of +1. Dr. Gross concluded that appellant had 13 percent impairment for L5 and 13 percent impairment for S1 for a total of 26 percent impairment of the left lower extremity.

The Board finds, however, that Dr. Gross's impairment rating was not based on a complete record. He stated that clinical studies were not available for review, and accordingly, was not able to determine any grade modifiers, if any, based on these diagnostic studies. The record reflects a December 26, 2000 MRI scan report, a February 27, 2003 CT scan of the lumbar spine, x-ray reports of the lumbar spine dated February 5 and May 10, 2004, December 17, 2005, and May 18 and November 30, 2006, and an x-ray of the right foot on November 30, 2006. The Board has held that medical reports must be based on a complete and accurate factual and medical background. Medical opinions based on an incomplete or inaccurate history are of limited probative value.<sup>29</sup> Because Dr. Gross did not review relevant diagnostic testing or clinical studies, the Board finds that his impairment rating is of diminished probative value and is insufficient to establish the degree of appellant's permanent impairment.<sup>30</sup>

It is well established that proceedings under FECA are not adversarial in nature, and while the employee has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>31</sup> Once OWCP undertook development of the evidence by referring appellant to an OWCP medical adviser, it had an obligation to do a complete job and obtain a proper evaluation that would resolve the issue in this case.<sup>32</sup> The Board will set aside OWCP's February 18, 2014 decision and remand the case for Dr. Gross to review appellant's clinical studies in order to determine the extent of appellant's left lower extremity impairment. After such further development as deemed necessary, it shall issue a *de novo* decision on appellant's claim for a schedule award.

### CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment in compensation in the amount of \$4,732.35 for the period January 1, 2009 to

---

<sup>29</sup> *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>30</sup> *See C.M.*, Docket No. 14-83 (issued June 17, 2014).

<sup>31</sup> *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

<sup>32</sup> *Peter C. Belkind*, 56 ECAB 580 (2005); *Ayanle A. Hashi*, 56 ECAB 234 (2004).

December 31, 2011. The Board also finds that the case is not in posture for decision regarding appellant's entitlement to a schedule award for his left lower extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 18, 2014 overpayment decision is reversed. The February 18, 2014 schedule award decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.<sup>33</sup>

Issued: October 5, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

---

<sup>33</sup> James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.