



## ISSUES

The issues are: (1) whether appellant has greater than eight percent permanent impairment of the left lower extremity, for which he received a schedule award; (2) whether he received an overpayment of compensation in the amount of \$145,275.33 for the period May 5, 2009 through December 30, 2010; and (3) whether OWCP properly denied waiver of recovery of the overpayment.

## FACTUAL HISTORY

This case was previously before the Board.<sup>3</sup> On November 29, 2007 appellant, then a 56-year-old air traffic organization specialist, injured his lower back while moving an office filing cabinet. OWCP assigned File No. xxxxxx650, which initially accepted the claim for lumbar sprain, but subsequently expanded it to include lumbar disc displacement at L4-5 and left ankle/foot deformity (drop foot). It also authorized a December 21, 2007 lumbar disc (L4-5) excision, performed by Dr. Thomas J. Kleeman, a Board-certified orthopedic surgeon. On January 15, 2008 appellant resumed his prior duties. On February 29, 2008 he slipped and fell in the employing establishment parking lot. OWCP assigned File No. xxxxxx696 and accepted cervical strain. Appellant returned to his regular duties on February 29, 2008. OWCP combined the November 29, 2007 and February 22, 2008 employment injuries and designated File No. xxxxxx650 as the master file.

By decision dated June 24, 2010, OWCP granted a schedule award for 38 percent permanent impairment of the left lower extremity (LLE). The award covered a period of 109.44 weeks from November 24, 2008 through December 30, 2010. OWCP based the schedule award on the April 15, 2010 report of its district medical adviser (DMA), Dr. David I. Krohn, a Board-certified internist. Applying the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Krohn found 38 percent LLE impairment under Table 16-12, Peripheral Nerve Impairment (LEI), A.M.A., *Guides* 535 (6<sup>th</sup> ed., 2<sup>nd</sup> prtg. 2009).

The June 24, 2010 schedule award was subsequently set aside by a hearing representative on October 20, 2010. On remand, OWCP referred appellant for a second opinion examination and later declared a conflict in medical opinion between the DMA and appellant's physician, Dr. Kleeman.<sup>4</sup>

Dr. Jonathan W. Sobel, a Board-certified orthopedic surgeon and impartial medical examiner (IME), evaluated appellant on May 18, 2011 and found five percent LLE impairment under Table 16-12, A.M.A., *Guides* 535 (6<sup>th</sup> ed., 2<sup>nd</sup> prtg. 2009).

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<sup>3</sup> Docket No. 12-0837 (issued March 1, 2013).

<sup>4</sup> In a report dated March 13, 2011, the DMA found five percent LLE impairment under Table 16-12, A.M.A., *Guides* 535 (6<sup>th</sup> ed., 2<sup>nd</sup> prtg. 2009). In contrast, Dr. Kleeman found 49 percent left lower extremity impairment under Table 16-12.

OWCP forwarded Dr. Sobel's report to a new DMA for review. In a June 14, 2011 report, Dr. Christopher R. Brigham, the DMA, found five percent LLE impairment due to a mild motor deficit involving the L5 nerve root.<sup>5</sup> Although he disagreed with the IME's rating methodology, the DMA essentially found the same five percent lower extremity impairment.

By decision dated June 21, 2011, OWCP found that appellant had five percent permanent impairment of the left lower extremity. It further found that the June 24, 2010 schedule award for 38 percent LLE impairment was issued in error. Additionally, OWCP issued a June 21, 2011 preliminary determination finding that appellant had received an overpayment of compensation in the amount of \$169,459.54 attributable to the erroneous June 24, 2010 schedule award. It also determined that appellant was not at fault in creating the overpayment.

In a February 2, 2012 decision, the hearing representative affirmed the June 21, 2011 schedule award for five percent LLE impairment. She also affirmed the overpayment of compensation in the amount of \$169,459.54. Although appellant was not at fault in creating the overpayment, the hearing representative found that he was not entitled to a waiver of recovery.

When the case was last on appeal, the Board set aside the hearing representative's February 2, 2012 decision. The Board noted the disagreement between the IME and the DMA regarding the appropriate methodology for rating appellant's left lower extremity impairment. Additionally, the Board explained that the IME was responsible for resolving the conflict in medical opinion, not the DMA. Because OWCP had not provided the IME an opportunity to review the DMA's opinion regarding the proper methodology for rating appellant's lower extremity impairment, the Board remanded the case for further development. With respect to the \$169,459.54 overpayment, that issue could not be resolved without first addressing the underlying issue regarding appellant's entitlement to a schedule award. The Board's March 1, 2013 order remanding case is incorporated herein by reference.<sup>6</sup>

On remand, OWCP referred appellant to a new IME, Dr. E. Neil Powell Jr., a Board-certified orthopedic surgeon. Dr. Powell examined appellant on August 14, 2013 and found eight percent LLE impairment based on motor and sensory deficits involving the L5 nerve root.<sup>7</sup> Appellant's work-related diagnoses included left foot drop, left-sided L4-5 herniated disc, without ongoing radiculopathy, and lumbar sprain -- resolved. Dr. Powell explained that appellant's ongoing residuals primarily involved his left foot drop condition, which was permanent. On physical examination, he noted 4/5 weakness involving the left tibialis anterior and extensor hallucis longus muscles. Dr. Powell also noted a very mild L5 sensory deficit, which was permanent. He further noted that most of appellant's clinical findings were consistent with an L5 radiculopathy. Additionally, Dr. Powell indicated that appellant's October 28, 2008

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<sup>5</sup> Dr. Brigham is Board-certified in occupational medicine. He explained that Table 16-12, A.M.A., *Guides* 534-36 (6<sup>th</sup> ed., 2<sup>nd</sup> prtg. 2009), was not the appropriate method of evaluating spinal nerve impairment under FECA. Instead, Dr. Brigham relied on *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009).

<sup>6</sup> See *supra* note 3.

<sup>7</sup> See Proposed Table 2, Spinal Nerve Impairment: Lower Extremity Impairments, *The Guides Newsletter* (July/August 2009).

electrodiagnostic study was consistent with clinical foot drop. Lastly, he found that appellant had reached maximum medical improvement as of February 25, 2011.

With respect to the L5 nerve root, Dr. Powell found a Class of Diagnosis (CDX) class 1 mild sensory deficit (one percent) and a mild motor deficit (five percent).<sup>8</sup> After adjustments for Functional History (GMFH 1) and Clinical Studies (GMCS 2), he calculated a net adjustment of +1.<sup>9</sup> Dr. Powell then adjusted the L5 motor deficit from five percent (default grade C) to seven percent (grade D). Dr. Powell indicated that the net adjustment for the sensory portion was zero. He combined the L5 motor (seven percent) and sensory (one percent) deficits for a total eight percent lower extremity impairment.<sup>10</sup>

OWCP referred the case to its DMA, Dr. Guillermo M. Pujadas, who in a report dated September 10, 2013, concurred with the IME's eight percent LLE spinal nerve (L5) impairment rating.<sup>11</sup>

By decision dated September 11, 2013, OWCP found that the current record established only eight percent LLE impairment under the A.M.A., *Guides* (6<sup>th</sup> ed., 2<sup>nd</sup> prtg. 2009). It based its finding on the IME's August 14, 2013 impairment rating and the DMA's September 10, 2013 concurrence.

OWCP also issued a September 11, 2013 preliminary determination of overpayment. It explained that appellant had previously received a schedule award for 38 percent LLE impairment; however, the weight of the medical evidence currently supported only 8 percent LLE impairment. As a result, OWCP overpaid appellant 86.4 weeks of compensation -- \$145,275.33 for the period May 5, 2009 through December 30, 2010.<sup>12</sup> It further indicated that appellant was not at fault in creating the overpayment.

Appellant's then-representative timely requested a hearing, which was held on July 29, 2014. OWCP received over 300 pages of various financial records and a July 8, 2014 overpayment recovery questionnaire (OWCP-20). Appellant reported total monthly income of \$6,881.43, which included his federal retirement annuity, social security age-related benefits, as

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<sup>8</sup> *Id.*

<sup>9</sup> Net Adjustment (+1) = (GMFH 1 - CDX 1) + (GMCS 2 - CDX 1). *See* section 16.3d, A.M.A., *Guides* 521 (6<sup>th</sup> ed., 2<sup>nd</sup> prtg. 2009). Dr. Powell's net adjustment calculation did not include a grade modifier for Physical Examination (GMPE) because he already relied on appellant's neurological examination findings to define the impairment class.

<sup>10</sup> *See* Appendix A, A.M.A., *Guides* 604 (6<sup>th</sup> ed., 2<sup>nd</sup> prtg. 2009).

<sup>11</sup> Dr. Pujadas is a Board-certified orthopedic surgeon.

<sup>12</sup> The actual overpayment was \$150,601.60; however, OWCP credited appellant for eight payments received during the period September 26, 2012 through May 15, 2013, which totaled \$6,027.03. Of the total amount remitted, OWCP applied \$5,326.27 to reducing the principal and \$700.76 to accrued interest.

well as his spouse's social security disability benefits.<sup>13</sup> He also reported total monthly expenses of \$7,329.27.<sup>14</sup> Lastly, appellant reported liquid assets (checking/savings) totaling \$1,653.26.

On September 30, 2014 the hearing representative issued two separate decisions. One decision affirmed OWCP's September 11, 2013 finding that appellant had no more than eight percent impairment of the left lower extremity under the A.M.A., *Guides* (6<sup>th</sup> ed., 2<sup>nd</sup> prt. 2009). The other decision finalized OWCP's preliminary determination that appellant received an overpayment of compensation in the amount of \$145,275.33 for the period May 5, 2009 through December 30, 2010.<sup>15</sup> Although appellant was not at fault in creating the overpayment, the hearing representative denied waiver of recovery. She adjusted some of appellant's claimed (\$7,329.27) expenditures and eliminated others that had not been adequately documented. The hearing representative also excluded some expenditures that appeared to have been reported elsewhere (duplicate). After various adjustments and exclusions, she credited appellant with \$3,988.58 in monthly ordinary and necessary living expenses. Appellant's reported monthly income was \$6,881.43. Because of a more than \$2,500.00 monthly income surplus, the hearing representative found that requiring appellant to repay the overpayment would not defeat the purpose of FECA. Additionally, appellant did not claim, nor did the record reflect that he relinquished a valuable right upon notice or receipt of the overpaid benefits. Consequently, the hearing representative denied waiver of recovery of the overpayment. Lastly, she imposed a monthly repayment schedule of \$700.00.

### **LEGAL PRECEDENT -- ISSUES 1 & 2**

FECA provides that if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.<sup>16</sup> For a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and rationale.<sup>17</sup> Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well-reasoned and based upon a proper factual background, must be given special weight.<sup>18</sup>

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<sup>13</sup> Appellant retired in April 2011.

<sup>14</sup> Appellant indicated that his monthly rent/mortgage, including property tax was \$1,365.96. He also reported a monthly food/clothing expenditure of \$2,090.06. Additionally, appellant's monthly utilities were \$571.76. His unspecified "Other expenses" were \$1,341.46. Lastly, appellant reported monthly debt installment payments totaling \$1,960.03.

<sup>15</sup> The hearing representative noted that after the September 11, 2013 preliminary determination, OWCP received another payment (\$1,481.30), for a total of \$7,508.33. *See supra* note 12.

<sup>16</sup> 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994). The DMA, acting on behalf of OWCP, may create a conflict in medical opinion. 20 C.F.R. § 10.321(b).

<sup>17</sup> *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

<sup>18</sup> *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>19</sup> FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>20</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2<sup>nd</sup> prtg. 2009).<sup>21</sup>

No schedule award is payable for a member, function or organ of the body that is not specified in FECA or in the implementing regulations.<sup>22</sup> The list of scheduled members includes the eye, arm, hand, fingers, leg, foot, and toes.<sup>23</sup> Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.<sup>24</sup> By authority granted under FECA, the Secretary of Labor expanded the list of scheduled members to include the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina, and skin.<sup>25</sup>

Neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.<sup>26</sup> However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.<sup>27</sup> The sixth edition of the A.M.A., *Guides* (2<sup>nd</sup> prtg. 2009) provides a specific methodology for rating spinal nerve extremity impairment.<sup>28</sup> It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine. FECA-approved methodology is premised on evidence of radiculopathy

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<sup>19</sup> 5 U.S.C. § 8107(c).

<sup>20</sup> 20 C.F.R. § 10.404.

<sup>21</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); see also Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

<sup>22</sup> *W.C.*, 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

<sup>23</sup> 5 U.S.C. § 8107(c). For a total or 100 percent loss of use of a leg, an employee shall receive 288 weeks of compensation. 5 U.S.C. § 8107(c)(2).

<sup>24</sup> *Id.* at § 8107(c)(13) and (14).

<sup>25</sup> *Id.* at § 8107(c)(22); 20 C.F.R. § 10.404(b).

<sup>26</sup> *Id.* at § 8107(c); 20 C.F.R. § 10.404(a) and (b); see *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

<sup>27</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.5c(3) (February 2013).

<sup>28</sup> The methodology and applicable tables were initially published in *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009). *Id.*

affecting the upper and/or lower extremities. The appropriate tables for rating spinal nerve extremity impairment are incorporated in the procedure manual.<sup>29</sup>

If a claimant who has received a schedule award calculated under a previous edition of the A.M.A., *Guides* is entitled to additional benefits, the increased award will be calculated according to the sixth edition.<sup>30</sup> Should the subsequent calculation result in a percentage of impairment lower than the original award, as sometimes occurs, a finding should be made that the claimant has no more than the percentage of impairment originally awarded, that the evidence does not establish an increased impairment, and that OWCP has no basis for declaring an overpayment.<sup>31</sup> However, where both the prior and subsequent awards were calculated under the sixth edition of the A.M.A., *Guides*, a subsequent determination that there is a lesser degree of impairment than previously awarded may support a finding of overpayment.<sup>32</sup>

### **ANALYSIS -- ISSUES 1 & 2**

OWCP properly declared a conflict in medical opinion based on the differing opinions regarding the extent of appellant's left lower extremity impairment. Whereas his treating physician, Dr. Kleeman, found 49 percent impairment, the then-DMA, Dr. Krohn, found only 5 percent left lower extremity impairment. On remand, OWCP referred appellant to Dr. Powell, who found eight percent left lower extremity impairment due to motor and sensory deficits involving the L5 nerve root. The IME's August 14, 2013 report reveals that he applied the FECA-approved methodology for rating spinal nerve extremity impairment. Dr. Pujadas, the latest DMA, concurred with the IME's eight percent left lower extremity rating.

When a case is referred to an IME to resolve a conflict, the resulting medical opinion, if sufficiently well-reasoned and based upon a proper factual background, must be given special weight.<sup>33</sup> The Board finds that OWCP properly deferred to Dr. Powell's August 14, 2013 opinion. The IME provided a well-reasoned report based on a proper factual and medical history. Additionally, Dr. Powell's report included detailed findings on physical examination and medical rationale supporting his opinion and provided a thorough review of the record. As the IME, Dr. Powell's August 14, 2013 opinion is entitled to special weight.<sup>34</sup> Accordingly, OWCP properly found that appellant currently had only an eight percent left lower extremity impairment under the sixth edition of the A.M.A., *Guides* (2<sup>nd</sup> prtg. 2009).

Appellant previously received an award for 38 percent left lower extremity permanent impairment. Because the June 24, 2010 schedule award was also calculated under the sixth

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<sup>29</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

<sup>30</sup> *Id.* at Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.9d (February 2013).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at Chapter 2.808.9e.

<sup>33</sup> *Supra* note 18.

<sup>34</sup> *Id.*

edition of the A.M.A., *Guides* (2<sup>nd</sup> prtg. 2009), the latest eight percent award resulted in an overpayment of compensation benefits.<sup>35</sup> The record reveals that OWCP overpaid appellant \$145,275.33 for the period May 5, 2009 through December 30, 2010.<sup>36</sup> Accordingly, the Board affirms the hearing representative's findings with respect to the fact and amount of the above-noted overpayment. Moreover, the Board affirms the hearing representative's determination that appellant was not at fault in creating the overpayment.<sup>37</sup>

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

OWCP may consider waving an overpayment only if the individual to whom it was made was not at fault in either accepting or creating the overpayment.<sup>38</sup> An individual who is without fault in creating or accepting an overpayment is nonetheless subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>39</sup> Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a current or former beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.<sup>40</sup> Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, relinquished a valuable right or changed his position for the worse.<sup>41</sup>

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<sup>35</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.9e (February 2013).

<sup>36</sup> The above-noted figure does not reflect payment(s) received after OWCP issued its September 11, 2013 preliminary determination. *See supra* notes 12 and 15.

<sup>37</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.9e(3) (February 2013) (“[w]here a schedule award decision establishes a lesser impairment after a greater award has been paid, the resulting overpayment will have a finding of without fault”).

<sup>38</sup> 20 C.F.R. § 10.433(a).

<sup>39</sup> 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

<sup>40</sup> 20 C.F.R. § 10.436(a), (b). For an individual with no eligible dependents the asset base is \$4,800.00. The base increases to \$8,000.00 for an individual with a spouse or one dependent, plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(b) (June 2009).

<sup>41</sup> 20 C.F.R. § 10.437(a), (b) (June 2009).

An individual is deemed to need substantially all of his current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>42</sup>

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP.<sup>43</sup> This information is necessary for determining whether a waiver of recovery of the overpayment is warranted.<sup>44</sup> The information is also used to determine an appropriate repayment schedule, if necessary.<sup>45</sup> Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>46</sup>

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

Although appellant was not at fault in creating the overpayment, this alone does not entitle him to waiver of recovery of the overpayment. In this instance, the hearing representative properly determined that recovery of the overpayment would neither defeat the purpose of FECA nor would it be against equity and good conscience.

The record establishes that appellant has sufficient income to meet his current ordinary and necessary living expenses. On his July 8, 2014 overpayment recovery questionnaire (OWCP-20), appellant reported monthly income of \$6,881.43. This figure included appellant's federal retirement annuity (\$6,083.43 -- net), his social security age-related benefits (\$187.00), and his spouse's social security disability benefits (\$611.00). An individual is deemed to need substantially all of his current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>47</sup> According to appellant, his monthly expenses (\$7,329.27) exceeded his monthly income by \$447.84. However, the hearing representative did not fully credit appellant for his reported monthly expenses. Of the claimed \$7,329.27 in monthly expenditures, the hearing representative credited appellant with only \$3,988.58 in documented ordinary and necessary ongoing monthly living expenses.

Appellant reported a monthly mortgage expenditure of \$1,365.96, and monthly household utilities of \$571.76. Both expenditures are supported by the record, and the hearing representative gave appellant full credit for the amounts claimed. Appellant also claimed monthly food/clothing expenditures totaling \$2,090.06, which the hearing representative reduced. She also reduced appellant's "Other expenses" that reportedly totaled \$1,341.46.

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<sup>42</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(b).

<sup>43</sup> 20 C.F.R. § 10.438(a).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* § 10.438(b).

<sup>47</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(b) (June 2009).

Additionally, the hearing representative substantially reduced appellant's claimed \$1,960.03 in monthly debt installment payments.

With respect to monthly installment payments, appellant reported that he owed AccessOne \$3,713.12. The debt was the result of calendar year 2014 unreimbursed medical expenditures (co-payments). On his July 8, 2014 overpayment recovery questionnaire (OWCP-20), appellant reported a monthly payment obligation of \$620.00 for AccessOne. However, the AccessOne statement for April 2014 reflects that appellant was expected to pay a monthly minimum of \$119.30 per month. Appellant explained that he paid more than the minimum monthly requirement because he wanted to repay the debt in full by the end of the calendar year. The hearing representative only credited appellant with the minimum monthly requirement (\$119.30), which effectively reduced his claimed monthly expenditures by \$500.70.

Appellant's July 8, 2014 OWCP-20 also noted a \$7,725.78 debt to F.A.A. Credit Union (Visa). However, the supporting documentation reflected that he made a payment on July 7, 2014 that reduced his outstanding balance to \$6,425.78. With respect to this debt, appellant claimed a monthly installment obligation of \$833.00. His July 9, 2014 account statement indicated a required minimum monthly payment of \$205.53. Consequently, the hearing representative reduced the F.A.A. Credit Union (Visa) repayment obligation to the creditor's required monthly minimum. The result was an additional reduction of \$627.47 in claimed monthly installment payments.

The Board finds that the hearing representative properly adjusted appellant's reported monthly debt installment obligations to reflect the particular creditor's minimum required payment.<sup>48</sup>

Appellant claimed an additional \$507.03 in monthly installment payments for several other consumer credit cards (Kohl's, Sears - 1, Sears - 2, Sam's Club/Discover, Capital One, and JC Penny). The latest Sam's Club/Discover statement showed a zero balance as of March 27, 2014, yet appellant claimed a monthly installment obligation of \$253.06 through June 2014. There was also a zero balance on one of the listed Sears credit cards (#7279). For that particular Sears card, appellant claimed a monthly installment payment of \$15.04. In light of the above-noted zero balance credit cards, appellant's claimed monthly debt installment obligation is further reduced by \$268.10.

The combined reductions for AccessOne, F.A.A. Credit Union (Visa), Sam's Club/Discover, and Sears total \$1,396.27. Assuming *arguendo* that appellant's remaining reported monthly expenditures are acceptable (\$5,933.00), he has a monthly income surplus of \$948.43. Because appellant's monthly surplus exceeds \$50.00, recovery of the overpayment would not defeat the purpose of FECA.<sup>49</sup> For the same reason, recovery would not be against equity and good conscience. The record does not support that appellant would experience severe

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<sup>48</sup> *Id.* at Chapter 6.200.6a(3) (June 2009).

<sup>49</sup> 20 C.F.R. § 10.436(a); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(b) (June 2009).

financial hardship in attempting to repay the debt.<sup>50</sup> Accordingly, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>51</sup>

**CONCLUSION**

Appellant has no more than eight percent permanent impairment of the left lower extremity. The Board further finds that he received an overpayment of compensation in the amount of \$145,275.33 for the period May 5, 2009 through December 30, 2010. Although appellant was not at fault in creating the overpayment, he is not entitled to waiver of recovery.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 30, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 12, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>50</sup> 20 C.F.R. § 10.437(a). Moreover, there is no evidence of detrimental reliance. *Id.* at § 10.437(b).

<sup>51</sup> The hearing representative imposed a \$700.00 monthly repayment schedule. Because appellant is not currently receiving FECA compensation benefits, the manner in which OWCP recovers the overpayment is not an issue currently before the Board. *See Judith A. Cariddo*, 55 ECAB 348, 353 (2004).