

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

S.F., Appellant	)	
	)	
and	)	<b>Docket No. 18-0003</b>
	)	<b>Issued: April 19, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Washington, DC, Employer	)	
	)	

*Appearances:*  
Stephen Larkin, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 2, 2017 appellant, through counsel, filed a timely appeal from an August 9, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (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 \$13,384.24 for the period of July 8, 2007 through May 8, 2008; and (2) whether

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

appellant was at fault in the creation of the \$13,384.24 overpayment and, therefore, ineligible for waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On April 7, 2003 appellant, then a 58-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome as a result of her repetitive federal employment duties. By decision dated June 5, 2003, OWCP accepted the claim for bilateral carpal tunnel syndrome. Appellant stopped work and received wage-loss compensation. OWCP initially paid appellant wage-loss compensation on the supplemental rolls commencing June 16, 2003, and then paid benefits on the periodic rolls as of October 31, 2004.

In a report dated March 16, 2012, Dr. Daniel R. Ignacio, appellant's treating physician, Board-certified in physical medicine and rehabilitation, related that appellant had 49 percent permanent impairment of the right upper extremity and 35 percent permanent impairment of the left upper extremity. He explained that, regarding her right upper extremity, appellant had 3 percent diagnosis-based permanent impairment, as well as 14 percent permanent impairment for sensory deficit, 12 percent impairment for motor deficit, and 20 percent impairment for causalgia. Regarding her left upper extremity, Dr. Ignacio explained that appellant had 3 percent diagnosis-based permanent impairment, 12 percent permanent impairment for sensory deficit, 10 percent permanent impairment for motor deficit, and 10 percent permanent impairment for causalgia.

On June 13, 2012 appellant filed a claim for a schedule award (Form CA-7).

In a report dated July 22, 2012, Dr. Lawrence A. Manning, an orthopedic surgeon acting as OWCP's district medical adviser (DMA) reported that he did not concur with Dr. Ignacio's report. He explained that Dr. Ignacio had provided redundant ratings for diagnosis-based impairment, as well as sensory and motor deficit impairments.

OWCP prepared a statement of accepted facts (SOAF) on September 14, 2012, which related that appellant's claim was accepted for bilateral carpal tunnel syndrome, bilateral wrist tendinitis, and reflex sympathetic dystrophy (complex regional pain syndrome).

On February 5, 2013 OWCP referred appellant to Dr. Olumuyiwa Paul, a Board-certified orthopedic surgeon, for an impartial medical evaluation to resolve the conflict in medical opinion between the DMA and Dr. Ignacio with regard to the degree of appellant's permanent impairment.

In his February 20, 2013 report, Dr. Paul related that appellant's wrist sprain was rated under the diagnosis-based grid for tendinitis. He found that appellant had two percent permanent impairment of each wrist for tendinitis, which was the highest possible impairment rating for tendinitis. Dr. Paul also related that appellant's carpal tunnel syndrome resulted in five percent permanent impairment of each upper extremity, due to entrapment neuropathy. He concluded that appellant had seven percent permanent impairment of each upper extremity.

In an August 24, 2015 medical report, Dr. Manning, acting as OWCP's DMA, concurred with Dr. Paul's impairment rating and found that appellant sustained seven percent permanent impairment of her right upper extremity and seven percent permanent impairment of her left upper extremity.

By decision dated August 27, 2015, OWCP granted appellant a schedule award in the amount of \$26,515.54 for the period July 8, 2007 through May 8, 2008. The decision failed to note the nature and percentage of permanent impairment. The date of maximum medical improvement was noted as January 6, 2007 and the award covered a period of 43.68 weeks. The start date of the schedule award was adjusted to July 8, 2007 because appellant had received wage-loss compensation through July 7, 2007. OWCP noted that the award was based on the reports of Dr. Paul and OWCP's DMA.

By notice dated April 5, 2017, OWCP made a preliminary determination that an overpayment of compensation in the amount of \$13,384.24 had been created for the period July 8, 2007 through May 8, 2008 because appellant was overpaid for her schedule award. It further found that she was at fault in the creation of the overpayment because she accepted a payment that she knew or reasonably should have known that she was not entitled to receive. OWCP explained that appellant was incorrectly paid \$26,515.54 based on 14 percent permanent impairment of her left upper extremity and 14 percent permanent impairment of her right upper extremity. However, appellant was only entitled to seven percent permanent impairment of her left upper extremity and seven percent permanent impairment of her right upper extremity in the amount of \$13,131.30, resulting in an overpayment of \$13,384.24. OWCP informed her of her appeal rights and instructed her to complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation within 30 days.

An accompanying July 30, 2015 payroll computer printout indicated that seven percent permanent impairment of the upper extremity resulted in 21.84 weeks of compensation amounting to \$13,131.30. The comments section noted that the schedule award was based on seven percent permanent impairment of the right upper extremity. An August 25, 2015 payroll computer printout noted 14 percent permanent impairment of an upper extremity and 14 percent permanent impairment of an upper extremity resulted in 43.68 weeks of compensation amounting to a \$26,515.54 schedule award. The comments section indicated that the schedule award was based on seven percent permanent impairment of the right upper extremity and seven percent permanent impairment of the left upper extremity.

In a June 5, 2017 overpayment action request, appellant contested the preliminary overpayment determination and finding of fault and requested a telephone conference. No evidence was submitted with her request.

By decision dated August 9, 2017, OWCP finalized the preliminary overpayment determination finding that appellant was overpaid in the amount of \$13,384.24 for the period July 8, 2007 through May 8, 2008 because she was paid \$26,515.54 for seven percent permanent impairment of the left upper extremity and seven percent permanent impairment of the right upper extremity when she should have only received \$13,131.30.<sup>3</sup> OWCP also found that appellant was at fault in the creation of the overpayment and, thus, not entitled to waiver of recovery. Recovery was directed by repayment of the full amount within 30 days.

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<sup>3</sup> OWCP's claims examiner reported that he attempted to reach appellant by telephone and no financial documents were received in support of her claim.

## LEGAL PRECEDENT -- ISSUE 1

Section 8149 of FECA delegates to the Secretary of Labor the authority to prescribe rules and regulations for the administration and enforcement of FECA. The Secretary of Labor has vested the authority to implement the FECA program with the Director of OWCP.<sup>4</sup> 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>5</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. Through its implementing regulations, OWCP adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter *A.M.A. Guides*)<sup>6</sup> as the appropriate standard for evaluating schedule losses.<sup>7</sup>

Section 8129(a) of FECA provides that when an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor.<sup>8</sup> When OWCP makes a determination that an overpayment of compensation has occurred because the claimant received an erroneous schedule award, it must properly resolve the schedule award issue. Before the amount of the overpayment can be determined, the evidence must establish the degree of permanent impairment.<sup>9</sup>

## ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision regarding whether appellant received a \$13,384.24 overpayment of compensation for the period of July 8, 2007 through May 8, 2008.<sup>10</sup>

In its overpayment determination, OWCP found that an overpayment of compensation occurred because appellant was incorrectly paid \$24,515.54 based on 14 percent permanent impairment of the left upper extremity and 14 percent permanent impairment of the right upper extremity. It found that she was only entitled to seven percent permanent impairment for each upper extremity in the amount of \$13,131.30, resulting in an overpayment of \$13,384.24.

When OWCP makes a determination that an overpayment of compensation has occurred because the claimant received an erroneous schedule award, it must first properly calculate the

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<sup>4</sup> See 20 C.F.R. §§ 1.1-1.4.

<sup>5</sup> For a complete loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

<sup>6</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>7</sup> 20 C.F.R. § 10.404. See also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>8</sup> 5 U.S.C. § 8129(a).

<sup>9</sup> See *L.S.*, Docket No. 08-1247 (issued December 12, 2008); *Richard Saldibar*, 51 ECAB 585 (2000).

<sup>10</sup> See generally *R.W.*, Docket No. 14-0195 (issued October 10, 2014).

schedule award.<sup>11</sup> The Board notes that the August 27, 2015 schedule award decision, which the overpayment determination relies on, was not properly issued. While the schedule award decision granted appellant \$26,515.54 for the period July 8, 2007 through May 8, 2008, it failed to identify the percentage and nature of permanent impairment awarded as required under the Federal (FECA) Procedure Manual.<sup>12</sup> The August 27, 2015 decision found that appellant's schedule award covered a period of 43.68 weeks at a 66 and 2/3 compensation rate. The August 9, 2017 overpayment decision found that appellant should have only received an award for seven percent permanent impairment of the right upper extremity and seven percent permanent impairment of the left upper extremity. It relied on an August 25, 2015 payroll computer printout, which noted 14 percent impairment for the arm and 14 percent impairment for the arm, resulting in 43.68 weeks of compensation in the amount of \$26,515.54. The decision also referenced a July 30, 2015 payroll computer printout as the amount appellant should have been awarded, which indicated seven percent impairment for the arm and seven percent impairment for the arm resulting in 21.84 weeks of compensation in the amount of \$13,131.30.

The Board notes that, while the August 27, 2015 schedule award decision failed to identify the percentage and nature of impairment, OWCP's overpayment decision indicated that appellant was entitled to seven percent permanent impairment of the left upper extremity and seven percent permanent impairment of the right upper extremity.<sup>13</sup> For complete or 100 percent impairment of an arm, a claimant is entitled to a maximum of 312 weeks of compensation. With respect to seven percent impairment of the left upper extremity, appellant would be entitled to seven percent of 312 weeks of compensation, or 21.84 weeks. With respect to seven percent impairment of the right upper extremity, she would be entitled to seven percent of 312 weeks of compensation, or 21.84 weeks. Taking the 21.84 weeks of compensation for the left upper extremity and adding it to the 21.84 weeks of compensation for the right upper extremity would result in a total 43.68 weeks of compensation at the 66 and 2/3 percent weekly pay rate. The Board notes that the August 27, 2015 schedule award decision noted that the award covered a period of 43.68 weeks. While the August 25, 2015 computer payroll printout indicated that appellant received a 14 percent award for each upper extremity, the \$26,515.54 amount awarded was calculated using the correct 43.68 weeks of compensation based on seven percent permanent impairment of each upper extremity.<sup>14</sup> The July 30, 2015 computer payroll printout, which indicated that appellant should have only been awarded \$13,131.30, incorrectly calculated the award based on 21.84 weeks of entitlement, which pertains to seven percent permanent impairment of one upper extremity only.<sup>15</sup> As such, the record before the Board is unclear if an overpayment of compensation occurred. Thus, the Board finds that the overpayment issue is not in posture for decision as OWCP failed to properly resolve the

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<sup>11</sup> See *W.M.*, Docket No. 13-0291 (issued June 12, 2013).

<sup>12</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.8 (February 2013).

<sup>13</sup> *M.W.*, Docket No. 11-0574 (issued October 21, 2011).

<sup>14</sup> See 5 U.S.C. § 8107(c)(2); 20 C.F.R. § 10.404.

<sup>15</sup> *T.K.*, Docket No. 12-0271 (issued June 21, 2012).

underlying issue of appellant's entitlement to a schedule award.<sup>16</sup> As the fact of overpayment is not clearly established by the record, the Board will set aside OWCP's August 9, 2017 decision for further development of the evidence.<sup>17</sup> Following such further development as it deems necessary, OWCP shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 9, 2017 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: April 19, 2018  
Washington, DC

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

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

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

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<sup>16</sup> *M.F.*, Docket No. 16-1089 (issued December 14, 2016).

<sup>17</sup> As the issues of fact of overpayment requires further development, Issue 2 is not in posture for decision. *R.L.*, Docket No. 11-1251 (issued January 27, 2012).