

receive monetary compensation after the expiration of a schedule award; and (2) whether OWCP properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of the recovery of the overpayment.

FACTUAL HISTORY

On October 8, 2011 appellant, then a 59-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral foot conditions due to the performance of her federal employment duties over 23 years. OWCP accepted bilateral lower extremity conditions of metatarsophalangeal sprain of foot, plantar fibromatosis, Achilles tendinitis, and tenosynovitis of foot and ankle. Appellant stopped work on January 24, 2012 and did not return. She received continuous wage-loss compensation beginning April 30, 2012 on the supplemental roll, and was placed on the periodic compensation rolls in November 2014.³

On June 14, 2016 appellant filed a schedule award claim (Form CA-7). On an OWCP EN1032 form, signed by her on November 7, 2016, she reported that she was not receiving benefits from the Office of Personnel Management (OPM), but was receiving monthly benefits from the Social Security Administration (SSA). At that time she remained on the periodic compensation rolls.

Following appropriate medical development, by decision dated December 21, 2016, OWCP granted appellant a schedule award for two percent permanent impairment of the right lower extremity and one percent permanent impairment of the left lower extremity. The award was for 8.64 weeks and was paid from December 11, 2016 through February 9, 2017.

Appellant telephoned OWCP on April 3, 2017 and inquired if her periodic rolls compensation would resume. A claims examiner informed appellant that her case would be reviewed regarding her return to the periodic rolls, and that she would be contacted once a determination was made.

On April 19, 2017 OWCP issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$2,248.55 for the period February 9 through March 4, 2017 because she continued to receive schedule award compensation after its expiration on February 9, 2017. Appellant was found to be at fault in the creation of the overpayment. OWCP explained that a payment was released through March 4, 2017, and she was only entitled to compensation for a partial day on February 9, 2017. It advised appellant of the steps to be taken if she disagreed with the preliminary determination and provided her an overpayment action request form and overpayment recovery questionnaire (Form OWCP-20). An overpayment worksheet of record explained the calculation of the overpayment.

On May 5, 2017 appellant requested a review of the written record by an OWCP hearing representative. She indicated on the overpayment action request that a claims examiner informed her that her periodic rolls payment would restart two months after expiration of the schedule award.

³ By decision dated March 19, 2013, OWCP denied appellant's claim for wage-loss compensation for October 24 and 25, 2011. The record indicates that appellant has three additional FECA claims accepted for back and upper extremity conditions. These claims have not been combined.

On the overpayment recovery questionnaire appellant listed income of \$2,035.00 in monthly SSA benefits, and expenses totaling \$3,153.47 with savings of \$2,300.00.

On May 24, 2017 OWCP finalized the overpayment of compensation. It determined that the preliminary determination that appellant was at fault was correct and, therefore, she was not entitled to waiver of recovery of the overpayment. OWCP requested repayment in full.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA⁴ and its implementing regulations⁵ 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. Section 10.404 of OWCP regulations states that compensation is provided for specified periods of time for the permanent loss or loss of use of certain members.⁶

OWCP procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.⁷

The procedures also provide that, if temporary total disability is interrupted to pay a schedule award, such payments must be resumed at the end of the schedule award if the claimant has not been reemployed or rated for a loss of wage-earning capacity at the time the award ends. It further notes that it may be necessary to obtain an election if the claimant is also receiving an annuity from OPM.⁸

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision regarding whether an overpayment of compensation was created.

The record supports that appellant was receiving compensation on the periodic rolls at the time that her schedule award compensation began on December 11, 2016. As noted, OWCP procedures provide that, if temporary total disability is interrupted to pay a schedule award, such payments must be resumed at the end of the schedule award if the claimant has not been reemployed or rated for a loss of wage-earning capacity at the time the award ends.⁹ There is no evidence of record that OWCP followed these procedures in this case, even though appellant telephoned OWCP inquiring on the matter. The Board thus finds that fact of overpayment is not

⁴ 5 U.S.C. § 8107

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* Effective May 1, 2009, OWCP began using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). See *J.L.*, Docket No. 14-0898 (issued March 26, 2015).

⁷ Federal (FECA) Procedure Manual, Part 6 -- *Initial Overpayment Actions*, Chapter 6.200.2(c) (May 2004).

⁸ *Id.* at Part 2 -- Claims, Chapter 2.808.7(5) (February 2013).

⁹ *Supra* note 6.

in posture for decision, as OWCP has not considered whether to reinstate appellant's temporary total disability after the expiration of her schedule award.

The Board will set aside the May 24, 2017 decision and remand the case to OWCP to follow its procedures regarding appellant's claim for resumption of periodic rolls compensation due to disability.¹⁰ Following this and such further development as deemed necessary, OWCP should render a *de novo* overpayment decision.

Based on the Board's finding regarding Issue 1, Issue 2 is rendered moot.

CONCLUSION

The Board finds that this case is not in posture for decision regarding whether an overpayment of compensation was created.

ORDER

IT IS HEREBY ORDERED THAT the May 24, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: March 23, 2018
Washington, DC

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

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

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

¹⁰ *Goldie Washington*, 31 ECAB 239 (1979).