

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

C.M., Appellant)	
)	
and)	Docket No. 17-1696
)	Issued: February 15, 2019
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, Marianna, FL,)	
Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

On August 2, 2017 appellant filed a timely appeal from a July 12, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The Board assigned the appeal Docket No. 17-1696.¹

On March 19, 2015 appellant, then a 56-year-old dental officer (dentist), filed a traumatic injury claim (Form CA-1) alleging that she injured her right knee and left shoulder due to a work-related fall on March 16, 2015.² OWCP initially accepted the claim for left shoulder sprain, and subsequently expanded the acceptance to include left shoulder bicipital tendinitis and left shoulder bursitis. It also authorized two left shoulder surgical procedures, which were performed on July 27, 2016 and March 1, 2017. Following her latest surgery, appellant was released to return

¹ The Board notes that following the July 12, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

² Appellant was responding to a medical emergency when she lost control of the stretcher she was handling and fell to her hands and knees, landing on concrete.

to work in a limited-duty capacity effective April 2, 2017. However, the employing establishment was unable to accommodate appellant's work restrictions at the time. OWCP paid wage-loss compensation for temporary total disability beginning April 29, 2017, and placed appellant on the periodic compensation rolls.

On May 25, 2017 the employing establishment offered appellant a full-time, limited-duty assignment as a dental officer, which she accepted.³ Her scheduled work hours were 7:30 a.m. to 4:00 p.m., Monday through Friday. On May 26, 2017 at approximately 2:45 p.m., the rehabilitation field nurse assigned to appellant's claim contacted OWCP (CA-110 Notes) to advise that the employing establishment confirmed appellant had returned to work in a full-time, limited-duty capacity.

On May 27, 2017 OWCP disbursed payment in the amount of \$7,282.38 (net) for the 28-day period April 30 through May 27, 2017.

In a June 1, 2017 letter, OWCP informed appellant that it had preliminarily determined that she received an overpayment of compensation in the amount of \$520.17 for the period May 26 and 27, 2017. It explained that appellant received compensation benefits after returning to work on May 26, 2017.

In a June 15, 2017 fax, appellant explained that on "[May 26, 2017]" at approximately 1:30 p.m., she received a telephone notification regarding her limited light-duty assignment. She indicated she was not home at the time. Appellant further indicated that within one hour, she reviewed the document, signed it, and returned the e-mail with notification and documentation that she had a physical therapy appointment scheduled for May 27, 2017 at 10:00 a.m. She also indicated that the employing establishment was located 90 minutes away from her home, so she did not arrive at work until 12:30 p.m. Appellant requested that OWCP recalculate the balance due based on "3.5 hours." She provided a physical therapy appointment log that indicated she attended therapy on Friday, May 26, 2017 at 10:00 a.m. Appellant's next reported physical therapy appointment was on Wednesday, May 31, 2017.

By decision dated July 12, 2017, OWCP finalized its determination that appellant received an overpayment of compensation in the amount of \$520.17 for the period May 26 to 27, 2017, and that she was without fault in the creation of the overpayment. It also denied waiver of recovery of the overpayment.

The Board finds that the case is not in posture for decision. While appellant may not receive wage-loss compensation for temporary total disability and actual earnings for the same period,⁴ the current record does not clearly establish the date and time appellant resumed work. OWCP relied on secondhand information from its field nurse and did not obtain time and

³ Appellant signed the written offer acknowledging her acceptance at 2:08 p.m. on May 25, 2017.

⁴ See *R. W.*, Docket No. 13-1285 (issued November 13, 2013); *Danny E. Haley*, 56 ECAB 393, 400 (2005); see also Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1a (September 2018).

attendance information from the employing establishment to confirm the precise date and time appellant resumed work.⁵

Accordingly the Board shall set aside the July 12, 2017 overpayment decision and remand this case to OWCP. On remand OWCP should advise the employing establishment of its responsibility for submitting all relevant and probative factual evidence in its possession, including appellant's time and attendance and payroll information.⁶ Following this and such further development as deemed necessary, it shall issue a new preliminary notice of overpayment, if required.

IT IS HEREBY ORDERED THAT the July 12, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this order.

Issued: February 15, 2019
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

⁵ The employing establishment is responsible for submitting to OWCP all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means. Such evidence may be submitted at any time. 20 C.F.R. § 10.118(a).

⁶ See *T.L.*, Docket No. 17-1391 (issued July 3, 2018).