

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

O.M., Appellant

and

**DEPARTMENT OF THE ARMY, U.S. ARMY
MEDICAL COMMAND, Fort Polk, LA,
Employer**

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**Docket No. 19-0342
Issued: November 15, 2019**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 3, 2018 appellant filed a timely appeal from a November 20, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$67,261.65 for the period June 6, 2016 through

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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 additional evidence for the first time on appeal. *Id.*

January 6, 2018 because she continued to receive monetary compensation after the expiration of a schedule award; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On September 18, 2013 appellant, then a 58-year-old lead diagnostic radiologic technologist, filed a traumatic injury claim (Form CA-1) alleging that on September 16, 2013 she sustained an open wound and fracture to her right index finger when her hand slipped off of a door knob and her finger got caught between the door and door jamb while in the performance of duty. By decision dated January 21, 2014, OWCP accepted the claim for open wound to right index finger and fracture to right index finger. It paid appellant intermittent wage-loss benefits on the supplemental roll.

On April 4 and September 17, 2014, and June 1, 2015 appellant filed claims for schedule award (Form CA-7) compensation.

In a report dated July 29, 2015, Dr. Michael M. Katz, a Board-certified orthopedic surgeon, acting as OWCP's district medical adviser (DMA) related that appellant had 15 percent permanent impairment of the right upper extremity.

By decision dated August 13, 2015, OWCP granted appellant a schedule award for 15 percent permanent impairment of the fourth right finger. The award covered a period July 14 to 29, 2015. OWCP noted that appellant would not receive continuing payment as her award had already been paid in full.

OWCP issued a corrected decision on January 29, 2016. By decision dated January 29, 2016, it granted appellant a schedule award for 15 percent of the fourth ring finger. OWCP noted that her date of maximum medical improvement (MMI) was July 13, 2015, and that the award covered a period of 46.8 weeks from July 14, 2015 to May 3, 2016. It noted that appellant's initial payment of \$1,795.50 would cover the period July 14 to 29, 2015 and that he would subsequently receive \$3,203.00 in continuing compensation payments every four weeks.

In a memorandum dated January 29, 2016, OWCP indicated that the initial schedule award payment was adjusted to correct the amount owed to appellant for the period July 14 to 29, 2015. It noted that she was initially paid \$1,351.27, that she should have been paid \$1,795.50, and that she was owed \$444.23.

A fiscal worksheet dated February 12, 2018 related that appellant's schedule award had been keyed as payable for a finger, when it should have been keyed as a schedule award for the arm/right upper extremity, per the DMA report dated July 29, 2015. The schedule award payment was deleted to correct it from finger to arm. OWCP paid the schedule award from July 14 through 29, 2015. "Then it was deleted and mistakenly reentered as [leave without pay] LWOP July 30, 2015 [to] January 6, 2018. Could not use SA Start date of July 13, 2015 since lost wage paid for July 13, 2015. The correct SA Period is July 14, 2015 to June 5, 2016 per the adjudication screen enclosed." The overpayment period was identified as from June 6, 2016 through January 6, 2018. The total overpayment amount was identified as \$67,261.65.

By a preliminary determination dated September 12, 2018, OWCP declared an overpayment of compensation in the amount of \$71,120.57 had been created because the schedule award failed to expire on July 29, 2015. It also noted that the schedule award should have run

from July 30, 2015 to June 5, 2016, however appellant was overpaid for the period June 16, 2016 through June 6, 2018. Regarding calculation of the overpayment, OWCP related: “The periodic roll cycle net payment of \$3,280.00 divided by 28 (number of calendar days in a cycle) multiplied by 613 days (number of calendar days overpaid) = \$71,808.571. Currently owe \$71,120.57.” It further found that she was without fault in the creation of the overpayment and provided an overpayment recovery questionnaire (Form OWCP-20) for her completion. OWCP afforded appellant 30 days to respond and submit supporting financial documentation.

On October 10, 2018 appellant requested a telephonic conference with an OWCP representative, and requested a waiver of overpayment. She submitted a completed Form OWCP-20 and supporting financial documents along with her request. Appellant reported a total monthly income of \$3,043.14, and total monthly expenses of \$2,999.00. She additionally reported a cash-on-hand amount of \$45.00, a checking account balance of \$192.36, and a savings account balance of \$599.00, which totaled her assets at \$836.36. Appellant argued that imposing a repayment to recoup the overpayment would be a hardship on her and her dependent.

By decision dated November 20, 2018, OWCP finalized the overpayment of compensation, finding that appellant was overpaid in the amount of \$67,261.65 for the period June 6, 2016 through January 6, 2018 because she received continued schedule award compensation after her schedule award had expired on June 5, 2016. Regarding calculation of the overpayment OWCP related: “The following reflects the calculation of the final overpayment amount, *i.e.*, the difference between what was paid and what should have been paid: $\$3,203/28 = \$114.39 \times .6$ (Fraction of the Day from the SA Calculator in file dated August 19, 2015 = \$68.63. Overpayment period: June 6, 2016 - January 6, 2018 $\$67,330.28 - \$68.63 = \$67,261.65$.” It also determined that appellant was without fault in the creation of the overpayment. In addition, OWCP denied waiver of recovery of the overpayment of compensation finding that there was no evidence to support that she was financially unable to repay her overpayment, and ordered appellant to forward payment in the amount of \$100.00 every 30 days.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA³ and its implementing regulations⁴ 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 20 C.F.R. § 10.404 states that compensation is provided for specified periods of time for the permanent loss or loss of use of certain members.⁵

OWCP’s procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.⁶

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* Effective May 1, 2009, OWCP began using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). See *E.V.*, Docket No. 17-2026 (issued July 11, 2018).

⁶ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1(f) (September 2018).

ANALYSIS -- ISSUE 1

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

In both its preliminary determination and its finalized overpayment decision, OWCP found that appellant received an overpayment of compensation because she was paid after the expiration of her schedule award on June 5, 2016. In its decision dated January 29, 2016, it granted her a schedule award for 15 percent permanent impairment of the fourth ring finger. While OWCP did not issue a corrected schedule award, to reflect that the schedule award was actually payable for permanent impairment of the right upper extremity, the record reflects that the 46.8 weeks of compensation was actually paid for 15 percent permanent impairment of appellant's right upper extremity. It related in the January 29, 2016 schedule award decision that appellant's date of MMI was July 13, 2015, and that the award covered a period of 46.8 weeks from July 14, 2015. However, OWCP continued to pay appellant's award of compensation past the date of its expiration. As it continued to pay her compensation until January 6, 2018, appellant received an overpayment of compensation.⁷ Therefore, the Board finds that OWCP properly determined that appellant received an overpayment of compensation.

However, the case is not in posture for decision with regard to the amount of the overpayment. In its preliminary determination dated September 12, 2018, OWCP found an overpayment of compensation in the amount of \$71,120.57, for which appellant was without fault, for the period June 16, 2016 through January 6, 2018, because she was paid after the expiration of her schedule award. OWCP also noted in the conclusion of the preliminary memorandum that an overpayment in the amount of \$71,120.57 had occurred covering the period July 14 to 29, 2015. However, in its finalized overpayment decision dated November 20, 2018, OWCP found an overpayment of compensation in the amount of \$67,261.65 for the period June 6, 2016 through January 6, 2018. OWCP's preliminary determination and finalized decision related discrepancies with regard to both the amount of the overpayment and the dates of the overpayment. Due to these inconsistencies, the Board is unable to adequately review this aspect of the case.

5 U.S.C. § 8124(a) provides: "[OWCP] shall determine and make a finding of facts and make an award for or against payment of compensation." Also, 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. It has a responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that the claimant can understand the basis for the decision, as well as the precise defect and the evidence needed to overcome the denial of his traumatic injury claim.⁸

⁷ See *N.C.*, Docket No. 18-1070 (issued January 9, 2019); *E.E.*, Docket No. 14-1908 (issued April 22, 2015).

⁸ See *S.B.*, Docket No. 19-0634 (issued September 19, 2019).

A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.⁹ The Board finds that the overpayment decision in this case does not provide such an explanation. Therefore, the amount of overpayment has not been established.

On remand OWCP shall determine the exact amount of the overpayment in compensation, and the correct dates on which the overpayments occurred. It should then issue a new preliminary overpayment determination, with an appropriate overpayment action request form, an overpayment recovery questionnaire, and instructions for appellant to provide supporting financial information. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁰

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this opinion.

Issued: November 15, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁹ See *A.J.*, Docket No. 18-1152 (issued April 1, 2019); *J.W.*, Docket No. 15-1163 (issued January 13, 2016); see also *O.R.*, 59 ECAB 432 (2008) with respect to overpayment decisions, OWCP must provide clear reasoning showing how the overpayment was calculated); see *Jenny M. Drost*, 56 ECAB 587 (2005) (to comply with OWCP's overpayment procedures, an overpayment decision must contain a clearly written explanation indicating how the overpayment was calculated).

¹⁰ As the case is not in posture for decision regarding the amount of overpayment, the issue of waiver of recovery of the overpayment is moot.