

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

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Y.H., Appellant	)	
	)	
and	)	<b>Docket No. 19-1194</b>
	)	<b>Issued: November 5, 2019</b>
	)	
DEPARTMENT OF HOMELAND SECURITY,	)	
FEDERAL LAW ENFORCEMENT TRAINING	)	
CENTER, Glynco, GA, Employer	)	
	)	

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*Appearances:*  
*Appellant, pro se*  
*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 May 7, 2019 appellant filed a timely appeal from an April 29, 2019 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,109.86 for the period February 3 through March 2, 2019, for which she was not at fault; and (2) whether OWCP abused its discretion by denying waiver of recovery of the overpayment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On November 23, 2015 appellant, then a 51-year-old training technician, filed a traumatic injury claim (Form CA-1) alleging that while in the performance of duty on November 18, 2015, she experienced a slightly swollen and sore left knee as a result of banging her left knee against the side of her computer desk. OWCP accepted the claim for contusion, initial encounter, sprain, initial encounter, effusion, and other specified arthritis of the left knee.

On May 8, 2018 appellant filed a claim for a schedule award (Form CA-7).

By decision dated November 5, 2018, OWCP granted appellant a schedule award for 12 percent permanent impairment of the left leg. The award covered a period of 34.56 weeks from June 15, 2018 through February 11, 2019, plus a fraction of a day. Appellant's weekly pay of \$1,116.94 was multiplied by her augmented compensation rate of 66 2/3 percent for employees with no eligible dependents, yielding a weekly compensation rate of \$744.63. After cost-of-living adjustments, the weekly compensation was increased to \$776.25 per week, totaling \$3,105.00 in continuing payments every four weeks.

In a manual adjustment form, OWCP documented that it paid appellant an additional sum of \$3,109.86 for the period February 3 through March 2, 2019 after her schedule award compensation ended. Copies of fiscal worksheets were provided.

By notice dated March 28, 2019, OWCP informed appellant of its preliminary determination that an overpayment of compensation in the amount of \$3,109.86 had been created for the period February 3 through March 2, 2019. It explained that the overpayment occurred because a computer system error continued to make an additional schedule award payment on March 2, 2019 after the period of the schedule award had ended. OWCP found that appellant was not at fault in the creation of the overpayment because she received a compensation payment deposited by electronic funds transfer (EFT) and less than 30 days had elapsed since the EFT deposit was made, which did not allow her ample time to receive and review a statement from her financial institution showing the details of the improper payment. Specifically, it noted that on March 2, 2019 she received a payment by direct deposit for the period February 3 through March 2, 2019. However, 30 days had not passed since the EFT deposit was made and, therefore, she would not have been reasonably aware of receiving the payment as of that day. OWCP advised appellant that she could submit evidence challenging the fact, amount, or fault finding and request waiver of recovery of the overpayment. Additionally, it informed her that, within 30 days, she could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation.

In an overpayment action request signed April 9, 2019, appellant checked a box requesting a final decision based on written evidence. She also requested waiver of recovery of the overpayment as repayment would be against equity and good conscience and result in financial loss.

Appellant submitted a Form OWCP-20 completed on April 9, 2019, in which she listed monthly income of \$3,092.00, monthly expenses of \$3,375.00, and assets of \$100.12.

By decision dated April 29, 2019, OWCP finalized the preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$3,109.86 because she received an additional schedule award payment for the period February 3 through March 2, 2019, and that she was not at fault in the creation of the overpayment. It denied waiver of recovery of the overpayment as there was no evidence to support that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP noted that appellant had not submitted financial documentation in support of her completed Form OWCP-20. Therefore, it set repayment at \$100.00 per month.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provisions of FECA<sup>2</sup> and its implementing regulations<sup>3</sup> 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 provides that compensation is awarded for specified periods of time for the permanent loss or loss of use of certain members.<sup>4</sup>

OWCP's procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that this case is not in posture for decision regarding whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,109.86 for the period February 3 through March 2, 2019, for which she was not at fault.

OWCP granted appellant a schedule award for 12 percent permanent impairment of the left leg on November 5, 2018 for the period June 15, 2018 through February 11, 2019 plus a fraction of a day, for a total of 34.56 weeks. The evidence of record establishes that on March 2, 2019 she received a schedule award payment for the period February 3 through March 2, 2019. Consequently, the payment appellant received from OWCP for the period after February 11, 2019, the date the schedule award expired, constituted an overpayment of compensation.<sup>6</sup> The Board accordingly affirms OWCP's finding of fact of overpayment.

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<sup>2</sup> *Id.*

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> *Id.* Effective May 1, 2009, OWCP began determining schedule awards in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009); Federal (FECA) Procedure Manual, Part 2 – Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6 (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *A.B.*, Docket No. 18-0922 (issued January 3, 2019); *E.V.*, Docket No. 17-2026 (issued July 11, 2018).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1f (1)(i) (September 2018).

<sup>6</sup> *A.B.*, Docket No. 18-0922 (issued January 3, 2019); *R.S.*, Docket No. 17-1985 (issued March 23, 2018).

With regard to the amount and period of the overpayment, OWCP found an overpayment of compensation in the amount of \$3,109.86 for the period February 3 through March 2, 2019.

The Board finds, however, with regard to the period of the overpayment, that the record reflects that, based on the November 5, 2018 schedule award decision, appellant was entitled to receive schedule award compensation through February 11, 2019. OWCP did not exempt the period February 3 through 11, 2019 during which she was entitled to receive a schedule award payment from its overpayment calculation. Therefore, the Board finds that the period and amount of the overpayment have not been established.

The Board will set aside OWCP's finding regarding the period and amount of the overpayment. The case will be remanded for OWCP to properly calculate the period and amount of the overpayment of compensation. Following this and other such further development as it deems necessary, OWCP shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that OWCP correctly determined the fact of overpayment of compensation. The Board further finds, however, that the period and amount of the overpayment are not in posture for a decision.<sup>7</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 29, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further action consistent with this decision of the Board.

Issued: November 5, 2019  
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>7</sup> In light of the Board's disposition as to Issue 1, Issue 2 is rendered moot.