

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

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**L.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Giddings, TX, Employer**

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**Docket No. 19-0800  
Issued: October 17, 2019**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 1, 2019 appellant filed a timely appeal from a February 11, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received a \$1,567.15 overpayment of compensation for the period March 17 through 31, 2018; and

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

<sup>2</sup> The Board notes that appellant submitted additional evidence to the Board 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.*

(2) whether OWCP properly found that appellant was at fault in creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On September 6, 2017 appellant, then a 57-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right shoulder strain earlier that day when pulling down a rolling door on his delivery vehicle while in the performance of duty. Following the employment incident, he worked in a light-duty capacity. By decision dated October 11, 2017, OWCP accepted the claim for a complete right rotator cuff tear.

On October 20, 2017 appellant underwent an OWCP-authorized right shoulder arthroscopy with rotator cuff repair, subacromial decompression, and labral debridement, performed by Dr. Brian Sullivan, a Board-certified orthopedic surgeon. OWCP paid appellant wage-loss compensation for total disability commencing February 3, 2018 by electronic funds transfer (EFT).

In a duty status report (Form CA-17) dated March 15, 2018, Dr. Sullivan released appellant to part-time, modified-duty work for two hours a day.

In a March 15, 2018 telephone memorandum (Form CA-110), OWCP indicated that appellant had called to advise that he would be returning to work effective March 17, 2018. It advised appellant that unspecified compensation payments would be issued on March 23, 2018.

In a March 16, 2018 claim for compensation (Form CA-7), appellant claimed wage-loss compensation for the period March 3 to 16, 2018.

On March 17, 2018 appellant returned to limited-duty work for two hours a day.

In a claim for compensation (Form CA-7) dated March 30, 2018, appellant claimed compensation for the period March 17 to 31, 2018. Time analysis forms (Form CA-7a) provided by the employing establishment indicate that appellant worked two hours per day on March 17, 19, 20, 21, 23, 24, 26, 27, 28, and 29, 2018, and used leave without pay (LWOP) for the remaining six hours per day. March 30 and 31, 2018 were appellant's scheduled days off.

In a letter dated April 2, 2018 (CA-1049), OWCP advised that appellant had been placed on the periodic rolls and outlined his entitlement to compensation benefits and his responsibility to return to work in connection with the accepted injury. In an attached EN1049 OWCP instructed appellant that, if he was to return to work, he was to advise OWCP immediately and if he worked during any portion of the covered period and compensation benefits were received *via* paper check or EFT he was to advise OWCP immediately so that the overpayment can be collected.

OWCP paid appellant \$3,029.83 in wage-loss compensation for the period March 3 through 31, 2018 by EFT.

OWCP paid appellant \$670.44 in wage-loss compensation for 30 hours for the period March 17 through 30, 2018 by EFT.

In a December 6, 2018 manual adjustment form, OWCP noted that appellant had returned to work on March 17, 2018 and had been paid wage-loss compensation on the periodic rolls through March 31, 2018. It subsequently paid him compensation for wage loss for the same period. OWCP noted that, based on appellant's net weekly pay rate of \$1,567.15, he had been overpaid \$1,567.15 for the period March 17 through 31, 2018.

In a December 14, 2018 Preliminary Overpayment Determination, OWCP informed appellant that it found that he received an overpayment in the amount of \$1,567.15 for the period March 17 through 31, 2018 as he had returned to work for six hours a day on March 17, 2018, but had received wage-loss compensation for total disability through March 31, 2018. It found that he was at fault in creating the overpayment because he accepted payments that he knew or reasonably should have known to be incorrect. OWCP informed appellant that he had the right to submit evidence or argument if he disagreed with its finding. It also informed him that he had a right to a precoupment hearing before an OWCP hearing representative. OWCP instructed appellant to complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting documentation.

In response, appellant requested that OWCP make a determination on the issues of fault and waiver based on the written evidence of record. He contended that OWCP misstated that he returned to work for six hours a day commencing March 17, 2018 although he had returned to work for only two hours a day. Appellant asserted that OWCP erred by issuing the March 30, 2018 payment for the period March 3 through 31, 2018 although he submitted a Form CA-7 on March 16, 2018 only for the period March 3 through 16, 2018. Alternatively, he contended that OWCP underpaid him for the period March 31 through April 13, 2018, which would have rectified any prior overpayment. Appellant did not provide financial information.

By decision dated February 11, 2019, OWCP finalized the preliminary determination of a \$1,567.15 overpayment of compensation for the period March 17 through 31, 2018. It divided the \$3,029.83 payment for March 3 through 31, 2018 "by 29 days" and multiplied that number by the 15 calendar days appellant was overpaid to find he was overpaid a total of \$1,567.15. OWCP further found that appellant had been entitled to six hours of wage-loss compensation for each of 10 workdays from March 17 through 29, 2018, equaling \$1,340.89. It then subtracted \$1,340.89 from \$1,567.15 to equal \$226.26. OWCP noted the \$670.44 duplicate payment, but concluded that it should not be included in the overpayment. It determined that appellant was at fault in the creation of the overpayment and therefore he was not entitled to waiver of recovery of the overpayment. OWCP required recovery in full within 30 days.

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

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup>

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<sup>3</sup> 5 U.S.C. § 8102(a).

Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.<sup>4</sup> Section 10.500 of OWCP's regulations provides that compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.<sup>5</sup> A claimant is not entitled to receive temporary total disability (TTD) benefits and actual earnings for the same time period.<sup>6</sup> OWCP procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation for TTD.<sup>7</sup>

### ANALYSIS -- ISSUE 1

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

OWCP found that appellant received an overpayment of compensation because he received a duplicate compensation payment for the period March 17 through 31, 2018. As appellant received duplicate compensation payments for the same time period, he received an overpayment of compensation.<sup>8</sup> The Board therefore finds that appellant received an overpayment of compensation.

However, the Board further finds that the case is not in posture for decision with regard to the amount of the overpayment. In its December 14, 2018 preliminary overpayment determination, OWCP found an overpayment of compensation in the amount of \$1,567.15, equivalent to his weekly pay rate, for the period March 17 through 31, 2018, as he was paid compensation for total disability after he had returned to work for six hours a day. The record establishes, however, that appellant had returned to work for only two hours a day. OWCP did not explain this discrepancy. Additionally, although appellant had 30 hours a week of wage loss from March 17 through 31, 2018, OWCP found a \$1,567.15 overpayment, equal to 40 hours. This inconsistency remains unresolved. Furthermore, OWCP issued duplicate payments for the period at issue: a March 30, 2018 payment of \$3,029.83 for the period March 3 through 31, 2018, followed by an April 30, 2018 payment of \$670.44 for 30 hours of wage loss from March 17 through 30, 2018. Due to these inconsistencies, the Board is unable to adequately review this aspect of the case. A claimant is entitled to an overpayment decision that clearly explains how the

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<sup>4</sup> *Id.* at § 8116(a).

<sup>5</sup> 20 C.F.R. § 10.500(a).

<sup>6</sup> *See K.E.*, Docket No. 18-0687 (issued October 25, 2018); *M.S.*, Docket No. 16-0289 (issued April 21, 2016); *L.S.*, 59 ECAB 350, 352-53 (2008).

<sup>7</sup> *C.L.*, Docket No. 19-0242 (issued August 5, 2019); *K.E., id.*; Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1(a) (September 2018).

<sup>8</sup> *E.S.*, Docket No. 19-0261 (issued July 3, 2019). *See also R.M.*, Docket No. 12-0380 (issued June 20, 2012).

amount was calculated.<sup>9</sup> The Board finds, therefore, that the amount of overpayment has not been established.

On remand OWCP shall determine the exact amount of overpayment in compensation which occurred when it issued duplicate compensation payments for the period March 17 through 31, 2018. It should then issue a new preliminary overpayment determination, with an appropriate overpayment action request form, an overpayment recovery questionnaire, and instructions for him to provide supporting financial information. After OWCP has further developed the case record, a *de novo* decision shall be issued.<sup>10</sup>

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 11, 2019 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: October 17, 2019  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>9</sup> *C.G.*, Docket No. 18-1655 (issued June 14, 2019); *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).

<sup>10</sup> As the case is not in posture for decision regarding the amount of overpayment, the issue of waiver is moot. *See S.F.*, Docket No. 18-0003 (issued April 19, 2018); *see also R.L.*, Docket No. 11-1251 (issued January 27, 2012).