

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

M.B., Appellant  and  U.S. POSTAL SERVICE, TAMPA CARRIER ANNEX, Tampa, FL, Employer	) ) ) ) ) ) ) ) ) ) )	Docket No. 19-1108 Issued: October 19, 2020
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Appearances:  
 Appellant, pro se  
 Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
 ALEC J. KOROMILAS, Chief Judge  
 CHRISTOPHER J. GODFREY, Deputy Chief Judge  
 VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 17, 2019 appellant filed a timely appeal from a March 14, 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 appellant received an overpayment of compensation in the amount of \$1,503.90 for the period February 3 through 16, 2018, for which he was without fault

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

<sup>2</sup> The Board notes that following the March 14, 2019 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 additional evidence for the first time on appeal. *Id.*

as he received wage-loss compensation for days he was not entitled and (2) whether OWCP properly denied waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On February 27, 2016 appellant, then a 66-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained injury to his left leg, ankle, and knee on February 26, 2016 when he fell off a porch while in the performance of duty. On the reverse side of the form, appellant's immediate supervisor indicated that appellant's work schedule involved having rotating days off. OWCP accepted appellant's claim for disc displacement of the lumbosacral regions, and left knee and left ankle sprains, and paid wage-loss compensation for intermittent periods of disability from work on the supplemental rolls beginning April 30, 2016.

Appellant stopped work on February 8 and 9, 2018. OWCP paid him wage-loss compensation on the supplemental rolls for the period February 3 through 16, 2016.<sup>3</sup> Appellant had filed a claim for compensation (Form CA-7) on February 27, 2018 for the entire period February 3 through 16, 2016, but an employing establishment official indicated on the second page of the form that he only stopped work on February 8 and 9, 2018. A time analysis form (Form CA-7a), signed by appellant on February 27, 2018 and by an employing establishment official on the following day, only showed a collective 16-hour work stoppage on February 8 and 9, 2018 for medical treatment.

In a January 29, 2019 letter, OWCP advised appellant of its preliminary determination that he received an overpayment of compensation in the amount of \$1,503.90 for the period February 3 through 16, 2018 because he received an improper amount of wage-loss compensation. It noted that he received wage-loss compensation for the period February 3 through 16, 2018 despite the fact that he was only entitled to wage-loss compensation for the period February 8 through 9, 2018. OWCP indicated that appellant received \$1,761.00 in wage-loss compensation when he was only entitled to receive \$257.10.<sup>4</sup> It also made a preliminary determination that he was not at fault in the creation of the overpayment. OWCP advised appellant that he could submit evidence challenging the fact, amount, or finding of fault, and request waiver of the overpayment. It informed him that he could submit additional evidence in writing or at a precoupment hearing, but that a precoupment hearing must be requested within 30 days of the date of the written notice of overpayment. OWCP requested that appellant complete and return an overpayment recovery questionnaire (Form OWCP-20) within 30 days even if he was not requesting waiver of the

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<sup>3</sup> Appellant had last received wage-loss compensation for disability from work on September 15, 2017.

<sup>4</sup> OWCP provided a description of how it calculated the \$1,761.00 wage-loss compensation payment that appellant received on March 23, 2018 for the period February 3 through 16, 2018 (14 days). First, it indicated that his weekly pay rate of \$1,151.13 (based on his pay rate on the date of injury, *i.e.*, February 26, 2016) was multiplied by 75 percent to yield his adjusted weekly pay rate of \$880.50 (reflecting the  $\frac{3}{4}$  pay rate for a claimant with at least one dependent). OWCP advised that the adjusted weekly pay rate was then divided by seven days to derive the daily pay rate of \$125.7857142857143 which in turn was multiplied by 14 days (length of the payment period) to equal \$1,761.00. To obtain the payment that appellant should have received for February 8 through 9, 2018, it multiplied the daily pay rate by 2 days (proper length of the payment period) to equal \$251.57. The Board notes that \$1,151.13 multiplied by 75 percent actually equals \$863.35, rather than \$880.50, and that subtracting the described amount due appellant (\$251.57) from the described amount paid him (\$1,761.00) equals \$1,509.43, rather than the claimed \$1,503.90 overpayment.

overpayment. It also requested that he attach supporting documents to the Form OWCP-20, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records which supported the income and expenses listed. OWCP advised that, under 20 C.F.R. § 10.438, failure to submit the requested information within 30 days would result in denial of waiver of recovery of the overpayment.

The case record contains a January 18, 2019 manual adjustment form, certified by an OWCP official, which details the calculation of the \$1,503.90 overpayment by showing that appellant actually received \$1,761.00 in wage-loss compensation for the period February 3 through 16, 2018, but only was entitled to receive \$257.10 in wage-loss compensation for the period February 8 through 9, 2018. The document noted that the difference between these two figures constituted the overpayment of \$1,503.90.

The case record contains an electronic payment record showing that, on March 23, 2018, appellant received \$1,761.00 in wage-loss compensation for the period February 3 through 16, 2018. It also contains a January 18, 2019 worksheet indicating that he was entitled to receive \$257.10 in wage-loss compensation for the period February 8 through 9, 2018 based on his recurrent weekly pay rate of \$1,199.80. The worksheet reflects that multiplying the \$1,199.80 figure by 75 percent yielded the adjusted weekly pay rate of \$899.85 (reflecting the  $\frac{3}{4}$  pay rate for a claimant with at least one dependent). The \$899.85 figure was divided by seven days to derive the daily pay rate of \$128.55 which was then multiplied by two days (proper length of the payment period) to equal \$257.10.

In a February 10, 2019 overpayment action request form, received by OWCP on February 15, 2019, appellant advised that he disagreed with the amount of the overpayment and would not submit a Form OWCP-20 because he was not requesting waiver of recovery of the overpayment. He indicated that he agreed to immediately pay \$1,408.80 if OWCP agreed with his overpayment computation.

In an undated statement, received by OWCP on February 15, 2019, appellant argued that he should have received \$352.20 in wage-loss compensation for the period February 8 through 9, 2018, rather than the \$257.10 that OWCP had calculated. He asserted that, therefore, the overpayment should have been reduced by the difference between his and OWCP's figures. Appellant indicated that his weekly pay rate of \$1,151.13 (based on his date-of-injury pay rate) should have been multiplied by 75 percent to yield an adjusted weekly pay rate of \$880.50 (reflecting the  $\frac{3}{4}$  pay rate for a claimant with at least one dependent).<sup>5</sup> He asserted that the \$880.50 figure should have been divided by five days to derive a daily pay rate of \$176.10. Appellant indicated that the \$176.10 figure then should have been multiplied by two days (payment for February 8 through 9, 2018) to equal \$352.20. He concluded that the overpayment should have been \$1,408.80, rather than \$1,503.90.<sup>6</sup>

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<sup>5</sup> The Board notes that \$1,151.13 multiplied by 75 percent actually equals \$863.35, rather than \$880.50.

<sup>6</sup> Appellant also argued that he received improper amounts of wage-loss compensation in April and November 2018.

By decision dated March 14, 2019, OWCP finalized its preliminary determination that appellant received an overpayment of compensation in the amount of \$1,503.90 for the period February 3 through 16, 2018. It determined that his calculation of the overpayment was incorrect because he was paid based on calendar days and not based on workdays.<sup>7</sup> OWCP found that appellant was not at fault in the creation of the overpayment, but that the overpayment was not subject to waiver of recovery because he had not submitted financial information warranting such waiver. It directed him to repay the overpayment in full by forwarding a payment in the amount of \$1,503.90.

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

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 his duty.<sup>8</sup> When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.”<sup>9</sup>

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>10</sup>

Section 8105(a) of FECA provides: “If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of his monthly pay, which is known as his basic compensation for total disability.”<sup>11</sup> Section 8101(4) of FECA defines “monthly pay” for purposes of computing compensation benefits as follows: “[T]he monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is

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<sup>7</sup> OWCP indicated that appellant received wage-loss compensation on the periodic rolls for the period in question, but he actually received wage-loss compensation on the supplemental rolls.

<sup>8</sup> 5 U.S.C. § 8102(a).

<sup>9</sup> *Id.* at § 8129(a).

<sup>10</sup> *Id.* at § 8116(a).

<sup>11</sup> *Id.* at § 8105(a). Section 8110(b) of FECA provides that total disability compensation will equal three fourths of an employee’s monthly pay when the employee has one or more dependents. 5 U.S.C. § 8110(b).

greater....”<sup>12</sup> OWCP’s regulations define “disability” as “the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.”<sup>13</sup>

OWCP’s procedures provide that, if the employee has an irregular work schedule, or if the claimant is placed on the periodic rolls for temporary total disability, payment is made on a “calendar day” basis. An “irregular work schedule” is one in which the claimant works different days each week, has a rotating day off, or is otherwise variable. The claimant receives pay for every day of the week during the period of disability, at the rate of one-seventh of the weekly compensation rate for each day.<sup>14</sup> OWCP’s procedures further provide, “Computation is as follows: Weekly pay rate x compensation rate = amount (rounded to the nearest \$.01) x no. days of entitlement ÷ 7 days per week.”<sup>15</sup>

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

The Board finds that appellant received an overpayment of compensation in the amount of \$1,503.90 for the period February 3 through 16, 2018, for which he was not at fault as he received wage-loss compensation for days he was not entitled

Appellant received wage-loss compensation for the period February 3 through 16, 2018 despite the fact that he was only entitled to wage-loss compensation for the period February 8 through 9, 2018. The case record does not contain evidence demonstrating that appellant had employment-related disability for the periods February 3 through 7, 2016 and February 10 through 16, 2016.<sup>16</sup> Therefore, an overpayment of wage-loss compensation has been established.

The case record contains a January 18, 2019 manual adjustment form, certified by an OWCP official, which details the calculation of the \$1,503.90 overpayment by showing that appellant actually received \$1,761.00 in wage-loss compensation for the period February 3 through 16, 2018, but only was entitled to receive \$257.10 in wage-loss compensation for the period February 8 through 9, 2018. The case record contains an electronic payment record showing that, on March 23, 2018, appellant actually received \$1,761.00 in wage-loss compensation for the period February 3 through 16, 2018. It also contains a January 18, 2019 worksheet detailing the calculation of the \$257.10 in wage-loss compensation to which appellant was entitled for the period February 8 through 9, 2018 based on his recurrent weekly pay rate of

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<sup>12</sup> *Id.* at § 8101(4). The Board has held that if an employee has one recurrence of disability which meets the requirements of 8101(4), any subsequent recurrence would also meet such requirements and would entitle the employee to a new recurrence pay rate. *Carolyn E. Sellers*, 50 ECAB 393 (1999).

<sup>13</sup> 20 C.F.R. § 10.5(f).

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.8 (February 2013).

<sup>15</sup> *Id.*

<sup>16</sup> Appellant filed a compensation claim for the entire period February 3 through 16, 2018, but employing establishment officials indicated that he only stopped work on February 8 and 9, 2018.

\$1,199.80.<sup>17</sup> The worksheet reflects that multiplying the \$1,199.80 figure by 75 percent yielded the adjusted weekly pay rate of \$899.85 (reflecting the  $\frac{3}{4}$  pay rate for a claimant with at least one dependent).<sup>18</sup> The \$899.85 figure was then divided by seven days to derive the daily pay rate of \$128.55 which was then being multiplied by two days (proper length of the payment period) to equal \$257.10.<sup>19</sup>

Appellant acknowledged that he received \$1,761.00 in wage-loss compensation for the period February 3 through 16, 2018. However, he argued that he should have received \$352.20 in wage-loss compensation for the period February 8 through 9, 2018, rather than the \$257.10 that OWCP calculated he should have received for the same period and that, therefore, the overpayment should have been reduced by the difference between his and OWCP's calculated figures. Appellant argued that the difference was due to the fact that he felt that the adjusted weekly pay rate should have been divided by five days, rather than by seven days (calendar days per week).

However, the Board notes that appellant's calculation was incorrect because it was based on the improper assumption that his wage-loss compensation payments should have been based on a calculation which involved dividing the adjusted weekly pay rate by five days, rather than by the seven calendar days of the week. OWCP's procedures provide that wage-loss compensation payments for a claimant with an "irregular work schedule," such as when a claimant has a rotating day off, are based on calendar days, *i.e.*, the seven days of the calendar week.<sup>20</sup> The record establishes that appellant had an irregular work schedule with rotating days off and, therefore, OWCP properly calculated his wage-loss compensation based on calendar days.<sup>21</sup> For these reasons, the Board finds that OWCP properly determined that appellant received a \$1,503.90 overpayment for the period February 3 through 16, 2018.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good

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<sup>17</sup> On February 8, 2018 appellant sustained a recurrence of disability and therefore was entitled to receive wage-loss compensation at the recurrent pay rate effective that date (a rate which was higher than the previously employed date-of-injury pay rate). *See supra* note 12.

<sup>18</sup> *See supra* notes 11 and 15.

<sup>19</sup> *See supra* note 15.

<sup>20</sup> *See supra* note 14.

<sup>21</sup> Moreover, the Board notes that appellant's calculation of wage-loss compensation due for the period February 8 through 9, 2018 improperly used the date-of-injury weekly pay rate, rather than the recurrent weekly pay rate properly used by OWCP. In addition, his calculation contains mathematical errors. In its January 29, 2019 preliminary determination, OWCP detailed a calculation which also improperly used the date-of-injury weekly pay rate and contained mathematical errors. However, OWCP's actual determination of the \$1,503.90 overpayment was properly calculated in accordance with the manual adjustment form, worksheet, and payment records described above. In his undated statement received by OWCP on February 15, 2019, appellant also argued that he received improper amounts of wage-loss compensation in April and November 2018. There is no final decision of OWCP within the Board's jurisdiction regarding this matter and, therefore it is not currently before the Board. *See* 20 C.F.R. § 501.2(c).

conscience.<sup>22</sup> Section 10.438 of OWCP's regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>23</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>24</sup> Appellant, however, had the responsibility to provide financial information to OWCP,<sup>25</sup> and he did not do so.

Consequently, as appellant did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.<sup>26</sup>

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$1,503.90 for the period February 3 through 16, 2018, for which he was without fault as he received wage-loss compensation for days he was not entitled. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

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<sup>22</sup> 5 U.S.C. § 8129.

<sup>23</sup> 20 C.F.R. § 10.438.

<sup>24</sup> *See supra* note 22.

<sup>25</sup> *See supra* note 23.

<sup>26</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 14, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2020  
Washington, DC

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

Christopher J. Godfrey, Deputy Chief Judge  
Employees' Compensation Appeals Board

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