

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

J.W., Appellant)	
)	
and)	Docket No. 19-1547
)	Issued: October 26, 2020
U.S. POSTAL SERVICE, DEARBORN POST OFFICE, Chicago, IL, Employer)	
)	

Appearances:
Stephanie N. Leet, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 12, 2019 appellant, through counsel, filed a timely appeal from a January 17, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² The Board notes that OWCP issued an overpayment decision on August 22, 2018. However, the Board lacks jurisdiction over that decision as it was issued more than 180 days from the filing of the current appeal. *See* 20 C.F.R. § 501.3(e)-(f).

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUE

The issue is whether OWCP properly determined the amount of appellant's January 17, 2019 schedule award compensation.

FACTUAL HISTORY

On April 26, 2013 appellant, then a 59-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she experienced bilateral shoulder and knee pain as the result of factors of her federal employment, including over 30 years of lifting, pushing, pulling, bending and standing. She noted that she first became aware of her conditions on September 4, 2012 and realized their relation to her federal employment on April 9, 2013. OWCP accepted the claim for: bilateral knee osteoarthritis; tear of medial meniscus bilateral knees; tear of later meniscus of the right knee; sprain of right shoulder; calcifying tendinitis of the left shoulder; sprain of right shoulder to include glenoid labrum lesion; and right rotator cuff strain. Appellant stopped work on January 28, 2017. OWCP paid her wage-loss compensation on the periodic rolls effective March 5, 2017. Appellant underwent an OWCP-approved right knee total arthroplasty on May 11, 2017. She returned to full-time limited-duty work on January 2, 2018. Compensation payments continued on the periodic compensation rolls through June 23, 2018.

In a preliminary determination dated July 19, 2018, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$12,176.37 for the period January 2 through April 28, 2018 as she had knowingly accepted compensation after returning to full-time limited duty on January 2, 2018. It noted that the original period of the overpayment ran from January 2 through June 23, 2018, but the period of the overpayment was reduced as appellant had returned two checks which were credited to her account; therefore, the period of the overpayment was January 2 through April 28, 2018. OWCP advised that appellant was at fault in the creation of the overpayment as she had accepted a payment that she knew or reasonably should have known was incorrect. It informed her of her review rights and instructed her to complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation within 30 days.

On August 4, 2018 appellant requested a telephone conference with an OWCP hearing representative. She disagreed with the overpayment amount and contended that OWCP had not deducted all the returned monies. Appellant completed an overpayment recovery questionnaire. She explained that she realized that she was receiving incorrect compensation and therefore she had her bank stop incoming direct deposits from OWCP. Included in appellant's evidence was a

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that following the January 17, 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.*

copy of a stop payment for electronic credit effective May 4, 2018. She also submitted a February 6, 2018 check made out to the U.S. Department of Labor in the amount of \$2,888.84 which referenced appellant's overpayment. The record also includes an OWCP compensation termination calculation worksheet, which noted an overpayment amount of \$18,063.21 followed by the comment that appellant had returned all workers' compensation payments since she returned to work.

By decision dated August 22, 2018, OWCP finalized its overpayment determination for the period January 2 through April 28, 2018 in the amount of \$12,176.37, for which appellant was at fault as she had knowingly accepted compensation after returning to work.⁵

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

The case record contains a November 15, 2018 internal memorandum wherein OWCP set forth a detailed accounting of appellant's overpayment. OWCP verified that appellant had returned a compensation payment for the period April 29 through May 26, 2018 in the amount of \$2,943.42 and for the period May 27 through June 23, 2018 in the amount \$2,943.42.⁶ It advised that the outstanding compensation payments which were declared an overpayment covered the period January 2 through April 28, 2018 for a total overpayment in the amount of \$12,176.37.⁷ OWCP indicated that the recovery of the overpayment would come from appellant's schedule award.

By decision dated January 17, 2019, OWCP granted appellant a schedule award for 3 percent permanent impairment of her left upper extremity, 3 percent permanent impairment of her right upper extremity, 16 percent permanent impairment of left lower extremity, and 21 percent permanent impairment of her right lower extremity. The period of the award ran for 125.28 weeks from September 25 through December 8, 2018. The award payment and period calculated were noted as \$8,402.68 from September 25 to December 8, 2018 and appellant's continuing payment every four weeks was noted as \$3,137.00. OWCP further noted in the decision, however, that a current overpayment existed in the case and that the following deductions would be made: \$8,176.37 for the initial period of September 25 through December 8, 2018; and \$3,000.00 from the first continuing payment period of December 10, 2018 through January 5, 2019. It indicated that the remaining balance of \$1,000.00 would be deducted from the next payment period of January 6 through February 2, 2019, which would satisfy the overpayment.

LEGAL PRECEDENT

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

⁵ See *supra* note 2.

⁶ "RFC Cancellation Reports" dated May 30 and June 26, 2018 noted receipt of two checks from appellant, each in the amount of \$2,943.42.

⁷ The amount of monies appellant received for each period during the overpayment period was listed.

performance of duty.⁸ Section 8129(a) of FECA provides, in pertinent part: “When an overpayment has been made to an individual under this subchapter 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 an individual is entitled.”⁹

Section 10.411 of OWCP’s regulations provides in pertinent part:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”¹⁰

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹¹ Section 10.126 of Title 20 of the Code of Federal Regulations provides that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.¹² OWCP’s procedures provide that the reasoning behind OWCP’s evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.¹³ These requirements are supported by Board precedent.¹⁴

ANALYSIS

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

Preliminarily the Board notes that appellant does not contest the merits of the January 17, 2019 schedule award decision. Rather, appellant contends that OWCP’s January 17, 2019 schedule award was improperly offset by an August 22, 2018 overpayment in the amount of \$12,176.37 as it did not take into account all the monies she had already repaid.

The record reflects that appellant had repaid at least a portion of the overpayment. In this regard, the record includes a copy of appellant’s February 6, 2018 check to U.S. Department of

⁸ 5 U.S.C. § 8102(a).

⁹ *Id.* at § 8129(a).

¹⁰ 20 C.F.R. § 10.441 (a); *see G.G.*, Docket No. 19-0684 (issued December 23, 2019).

¹¹ 5 U.S.C. § 8124(a).

¹² 20 C.F.R. § 10.126.

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

¹⁴ *C.M.*, *Order Remanding Case*, Docket No. 20-0428 (issued August 25, 2020); *R.P.*, Docket No. 18-1128 (issued December 17, 2018); *R.B.*, Docket No. 16-1696 (issued September 7, 2017); *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

Labor in the amount of \$2,888.84, which referenced appellant's overpayment. Furthermore, OWCP's July 10, 2018 compensation termination calculation worksheet indicated that appellant had returned all workers' compensation payments she received since she returned to work. Nevertheless, it offset the entire amount of the overpayment, totaling \$12,176.37, from appellant's schedule award without taking into account that she had previously repaid at least a portion of the overpayment. The Board finds, therefore, that it is unclear how and/or on what basis OWCP calculated the amount of the offset from appellant's schedule award.

Section 8124(a) of FECA¹⁵ and section 10.126 of its implementing regulations¹⁶ require that final decisions of OWCP contain findings of fact and a statement of reasons. A decision denying a claim should contain a correct description of the basis for the denial in order that the parties of interest have a clear understanding of the precise defect of the claim and the kind of evidence which would overcome it.¹⁷ The Board finds that OWCP's January 17, 2019 decision was incomplete as it failed to make findings regarding how, and on what basis, the amount of the offset against appellant's schedule award was calculated to recover the outstanding overpayment of compensation. Consequently, OWCP has not fulfilled its responsibility under section 8124(a) of FECA and section 10.126 of its implementing regulations.¹⁸ The case will therefore be remanded to OWCP for a proper decision, to include findings of fact and a statement of reasons. Following any further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

¹⁵ *Supra* note 11.

¹⁶ *Supra* note 12.

¹⁷ *J.V.*, Docket No. 18-1077 (issued August 26, 2020); *O.M.*, Docket No. 19-0342 (issued November 15, 2019); *Patrick Michael Duffy*, 43 ECAB 280 (1991).

¹⁸ *See J.V., id.*; *see also J.R.*, Docket No. 19-0746 (issued June 9, 2020); *L.D.*, Docket No. 19-0350 (issued October 22, 2019).

ORDER

IT IS HEREBY ORDERED THAT the January 17, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 26, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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