

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

A.B., Appellant

and

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Chamblee, GA, Employer

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**Docket No. 20-0167
Issued: May 3, 2021**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

On October 28, 2019 appellant filed a timely appeal from an October 18, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards docketed the appeal as No. 20-0167.²

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On May 18, 2010 appellant, then a 31-year-old airway transportation systems specialist, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his right wrist

¹ The Board notes that appellant timely requested oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). Given the disposition of the case, appellant's request for oral argument is denied.

² The Board notes that during the pendency of this appeal, OWCP issued an April 30, 2020 decision, which vacated and remanded the October 18, 2019 decision, and a *de novo* August 10, 2020 decision. The April 30 and August 10, 2020 decisions, however, are null and void as the Board and OWCP may not simultaneously have jurisdiction over the same issue. As the Board had jurisdiction over the wage-loss compensation issue, OWCP may not issue a decision regarding the same issue on appeal before the Board. *See* 20 C.F.R. § 10.626; *see also Terry L. Smith*, 51 ECAB 182 (1999); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

³ Docket No. 15-1530 (issued January 14, 2016).

when he fell due to a jet blast while in the performance of duty. He stopped work and returned on May 24, 2010. OWCP accepted appellant's claim for right wrist sprain and subsequently expanded acceptance of his claim to include aggravation of osteoarthritis, primarily involving the hand/wrist, and post-traumatic stress disorder (PTSD).

On March 18, 2011 appellant stopped work again. On August 24, 2014 appellant returned to full-time, modified duty at the employing establishment at the downgraded position of transportation assistant. OWCP paid wage-loss compensation for his loss of wage-earning capacity (LWEC) beginning August 24, 2014. Effective November 12, 2014 appellant retired from federal employment due to disability.

On February 15 and 26, 2018 appellant filed claims for wage-loss compensation (Forms CA-7) requesting wage-loss compensation for total disability for the period April 4, 2011 through April 16, 2012 and for "other wage loss" from June 28, 2013 through August 23, 2014 due to "downgrade." He asserted that he had returned to work at a lower-paying job.

In an April 17, 2018 decision, OWCP denied appellant's claims for wage-loss compensation for total disability for the period April 4, 2011 through April 16, 2012 and for "other wage loss" due to a downgrade position for the period June 28, 2013 through August 23, 2014.

On May 15, 2018 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. He submitted a settlement agreement from the Merit Systems Protection Board (MSPB), which cancelled appellant's removal, effective March 1, 2014, and reassigned him to the position of transportation assistant. The agreement further indicated that appellant was entitled to five months of back pay for the period March 9 through August 25, 2014.

By decision dated July 11, 2019, an OWCP hearing representative affirmed the April 17, 2018 decision with modification. He affirmed the denial of appellant's wage-loss compensation for total disability from April 4 through November 10, 2011, but determined that appellant was entitled to wage-loss compensation for total disability for the periods November 11, 2011 through April 16, 2012 and from June 28, 2013 through March 8, 2014 because the evidence of record was insufficient to support that the employing establishment had light-duty work for appellant within his physical restrictions prior to the August 24, 2014 job offer.⁴ The hearing representative also found that appellant was entitled to wage-loss compensation for loss of wage-earning capacity for the period March 8 through August 23, 2014 when he received back wages based on a reduced salary as a transportation assistant. He remanded the case for further development of the factual evidence from the employing establishment regarding appellant's specific earnings and withholdings for the period March 8 through August 23, 2014.

By *de novo* decision dated October 18, 2019, OWCP indicated that, based on the information provided by the employing establishment, appellant was entitled to wage-loss compensation for the periods March 11 through March 22, 2014 and April 6 through August 9, 2014. It denied appellant's wage-loss compensation claim for the periods March 23 through April 5, 2014 and August 10 through 23, 2014, finding that the evidence of record failed to establish that appellant sustained a loss of wage-earning capacity during that period.

⁴ The hearing representative correctly noted that appellant was not entitled to wage-loss compensation for the period from April 17, 2012 through June 27, 2013 because he had been awarded a schedule award for the same period.

The Board, having duly considered this matter, finds that this case is not in posture for decision.

Section 8124 of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.⁵ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.⁶ As well, 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.⁷

The Board finds that in its October 18, 2019 decision, OWCP failed to properly explain the findings with respect to the issue presented so that appellant could understand the basis for the decision, *i.e.*, why he was not entitled to wage-loss compensation for loss of wage-earning capacity for the periods March 23 to April 5, 2014 and August 10 to 23, 2014. OWCP merely noted that appellant's pay rate for the date-of-injury job was greater than the current pay of the job held at the time of injury. OWCP's procedures indicate that if a claimant is entitled to compensation for partial wage loss after return to work, the claims examiner should compute entitlement using the principles developed in the *Albert C. Shadrick*⁸ decision, now codified at 20 C.F.R. § 10.403, in order to calculate the adjustment in the employee's compensation.⁹ The Board finds, however, that in this case, OWCP did not explain in detail nor provide its calculations, consistent with OWCP's procedures, of how appellant's wage-earning capacity was calculated, such that appellant could determine that the calculation was correct.¹⁰ Accordingly, the Board will set aside the October 18, 2019 decision and remand the case for OWCP to make its findings of facts and provide reasons for its decision pursuant to the standards set forth in 20 C.F.R. § 10.403.¹¹ After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

⁵ 5 U.S.C. § 8124(a).

⁶ 20 C.F.R. § 10.126.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

⁸ 5 ECAB 376 (1953).

⁹ Federal (FECA) Procedure Manual, *supra* note 8, *Determining Wage-Earning Capacity Based on Actual Earnings* Chapter 2.815.3(b) (June 2013). *See P.B.*, Docket No. 19-0329 (issued December 31, 2019); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

¹⁰ *See C.M.*, Docket No. 19-1852 (issued October 22, 2020); *see also B.F.*, Docket No. 17-0317 (issued June 7, 2017).

¹¹ *See R.S.*, Docket No. 19-1605 (issued May 28, 2020).

IT IS HEREBY ORDERED THAT the October 18, 2019 merit decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: May 3, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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