

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

_____	)	
<b>T.P., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-1271</b>
	)	<b>Issued: April 21, 2022</b>
<b>U.S. POSTAL SERVICE, MEDRANO POST</b>	)	
<b>OFFICE, Dallas, TX, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 18, 2021 appellant filed a timely appeal from a July 14, 2021 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 \$1,691.23, for the period November 20, 2020 through January 2, 2021, for which she was without fault, because she continued to receive wage-loss compensation for total disability

---

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

<sup>2</sup> The Board notes that a ppellant submitted additional evidence following the July 14, 2021 decision. 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 an appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on an appeal. *Id.*

after she returned to part-time, limited-duty work; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On June 13, 2017 appellant, then a 39-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day she tripped and sprained her right ankle while in the performance of duty. She stopped work on June 17, 2017.

OWCP initially accepted the claim for right ankle sprain. It subsequently expanded the acceptance of the claim to include right leg peroneal tendinitis, right lower leg tendon sheath abscess, right ankle ankylosis, and right ankle and foot ganglion cyst. OWCP paid appellant wage-loss compensation on the supplemental rolls as of July 29, 2017 and on the periodic rolls as of August 20, 2017.<sup>3</sup>

In a December 30, 2020 memorandum of telephone call (Form CA-110), appellant notified OWCP that she had returned to work on November 20, 2020.<sup>4</sup>

In a preliminary overpayment determination dated May 3, 2021, OWCP advised appellant that an overpayment of compensation in the amount of \$2,642.84, had been created during the period December 6, 2020 through January 2, 2021, because she continued to receive compensation for total disability after she returned to work. It related that she had received 44 days of overpayment during the period in question. OWCP also related that a preliminary finding had been made that appellant was at fault in the creation of the overpayment because she accepted a payment that she knew or reasonably should have known to be incorrect. It provided an overpayment action request form, informed appellant of her appeal rights, and instructed her to complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting documentation within 30 days.

On May 5, 2021 OWCP received a claim for compensation (Form CA-7) dated February 22, 2021 wherein appellant claimed intermittent disability from November 21, 2020 through January 2, 2021. On May 7, 2021 it received a Form CA-7 dated May 5, 2021, wherein appellant again claimed intermittent disability for the period November 21, 2020 through January 2, 2021. An accompanying time analysis form (Form CA-7a) reflected that appellant claimed 28.3 hours of leave without pay (LWOP) from November 21, 2020 to December 8, 2020; 23.8 hours of LWOP from December 9 to 23, 2020; and 9.97 hours of LWOP from December 24, 2020 to January 2, 2021, totaling 62.07 hours.

On June 10, 2021 OWCP notified appellant that a preliminary overpayment determination was made that she had received an overpayment of compensation in the amount of amount of \$1,691.23 for the period November 20, 2020 through January 2, 2021, because she continued to

---

<sup>3</sup> On December 5, 2020 OWCP paid appellant \$2,453.00 (gross)/\$1,681.81 (net) for the period November 8 through December 5, 2020.

<sup>4</sup> On January 2, 2021 OWCP paid appellant \$2,453.00 (gross)/\$1,681.81 (net) for the period December 6 through January 2, 2021.

receive wage-loss compensation for total disability after she returned to part-time, limited-duty work, effective November 20, 2020. It further found that she was without fault in the creation of the overpayment because she was not aware, nor could she reasonably have been expected to be aware, that OWCP had paid compensation incorrectly.

An attached OWCP overpayment memorandum and fiscal worksheet noted that appellant was on the periodic rolls and received gross compensation every 28 days through January 2, 2021. OWCP advised appellant that she had received gross compensation from November 20, 2020 through January 2, 2021 in the amount of \$2,642.84. However, appellant had returned to part-time, limited-duty work on November 20, 2020, and was entitled to \$951.61 of wage-loss compensation for 62.07 hours of LWOP during this same period. OWCP calculated that \$2,642.84 in wage-loss compensation that she was paid, minus the \$951.61 to which she was entitled, resulted in an overpayment of \$1,691.23 for the period November 20, 2020 through January 2, 2021. It explained that appellant was without fault because less than 30 days elapsed between the date that the electronic funds transfer (EFT) was made and the date OWCP was informed that she was back to work. OWCP provided an overpayment action request form, informed appellant of her appeal rights, instructed her to complete an enclosed Form OWCP-20 and submit supporting documentation including copies of tax returns, bank account statements, bills and cancelled checks, pay slips, and 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 a denial of waiver of recovery of the overpayment. No response was received.

On June 10, 2021 OWCP paid appellant \$951.61 for 62.07 hours of LWOP for the period November 20, 2020 through January 2, 2021.

By decision dated July 14, 2021, OWCP finalized its preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$1,691.23 for the period November 20, 2020<sup>5</sup> through January 2, 2021 because she continued to receive wage-loss compensation for total disability after she returned to part-time, limited-duty work, effective November 20, 2020. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, as she had not responded to the June 10, 2021 preliminary overpayment determination as requested. OWCP required recovery of the overpayment by directing appellant to submit repayment for the full amount of \$1,691.23 within 30 days.

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

Section 8102 of FECA<sup>6</sup> provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>7</sup>

---

<sup>5</sup> The decision lists the date as November 20, 2021; however, this appears to be a typographical error.

<sup>6</sup> 5 U.S.C. § 8102.

<sup>7</sup> *Id.*

Section 8116 of FECA defines the limitations on the right to receive compensation benefits. This section of FECA provides that, while an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States, except in limited circumstances.<sup>8</sup> OWCP's procedures provide that an overpayment in compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.<sup>9</sup>

### ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation for the period November 20, 2020 through January 2, 2021, for which she was without fault, because she continued to receive wage-loss compensation for total disability after she returned to part-time, limited-duty work.

As noted above, a claimant is not entitled to receive wage-loss compensation benefits for total disability and actual earnings for the same time period.<sup>10</sup> The record establishes that appellant returned to part-time, limited-duty work on November 20, 2020, but she continued to receive compensation for total disability through January 2, 2021. Therefore, an overpayment of compensation for this period was created in this case.

The Board further finds, however, that this case is not in posture for decision with respect to the amount of the overpayment.

In the May 3, 2021 preliminary overpayment determination, OWCP informed appellant that an overpayment of compensation in the amount of \$1,691.23 for the period November 20, 2020 through January 2, 2021 had been created because she continued to receive wage-loss compensation for total disability after she returned to part-time, limited-duty work, effective November 20, 2020. The attached OWCP overpayment memorandum and fiscal worksheet noted that appellant was on the periodic rolls and received gross compensation every 28 days through January 2, 2021. OWCP advised appellant that she had received gross compensation from November 20, 2020 through January 2, 2021, in the amount of \$2,642.84. However, appellant was only entitled to \$951.61 of wage-loss compensation for 62.07 hours of LWOP during this same period. OWCP calculated that this resulted in an overpayment of \$1,691.23 for the period November 20, 2020 through January 2, 2021. Also on June 10, 2021, however, it paid appellant \$951.61 for 62.07 hours of LWOP for the period November 20, 2020 through January 2, 2021. In

---

<sup>8</sup> *Id.* at § 8116(a).

<sup>9</sup> *See C.S.*, Docket No. 18-0450 (issued July 31, 2020); *C.A.*, Docket No. 18-0092 (issued April 2, 2018); *Danny E. Haley*, 56 ECAB 393 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Action*, Chapter 6.200.2a (September 2018).

<sup>10</sup> 20 C.F.R. § 10.500(a); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1a (September 2018); *see V.J.*, Docket No. 20-1335 (issued March 11, 2021).

the July 14, 2021 decision, OWCP finalized its preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$1,691.23.

The Board finds that OWCP has not adequately explained how the overpayment was determined. The Board notes that OWCP did not acknowledge in its final overpayment determination that it had paid appellant \$951.61 for 62.07 hours of LWOP for the period November 20, 2020 through January 2, 2021. In overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated.<sup>11</sup> Due to the lack of an adequate explanation as to how the overpayment was calculated on the record as presented, the Board is unable to adequately review this aspect of the case. As the calculation of the overpayment was unclear, the Board finds that the amount of the overpayment is not in posture for decision.

Accordingly, the case must be remanded to OWCP.<sup>12</sup> On remand, OWCP shall prepare detailed calculations setting forth the exact amounts per pay period which appellant earned and the amount of wage-loss compensation to which she had been entitled, accounting for the \$951.61 for 62.07 hours of LWOP for the period November 20, 2020 through January 2, 2021, which she has already been paid. It shall then issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, and instructions for appellant to provide supporting financial information. After this, and other such further development as necessary, OWCP shall issue a *de novo* decision.<sup>13</sup>

### CONCLUSION

The Board finds that appellant received an overpayment of compensation for the period November 20, 2020 through January 2, 2021 for which she was without fault, because she continued to receive wage-loss compensation for total disability after she returned to part-time, limited-duty work. The Board further finds that the case is not in posture for decision regarding the amount of the overpayment.

---

<sup>11</sup> See *J.V.*, 20-0952 (issued February 2, 2022); *S.H.*, Docket No. 20-1189 (issued January 27, 2021); *R.E.*, Docket No. 19-1583 (issued May 27, 2020); *J.M.*, Docket No. 18-1505 (issued June 21, 2019); *Teresa A. Ripley*, 56 ECAB 528 (2005).

<sup>12</sup> *C.M.*, Docket No. 19-1852 (issued October 22, 2020).

<sup>13</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 14, 2021 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: April 21, 2022  
Washington, DC

Alec J. Koromilas, 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