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E.K., Appellant)	
)	
and)	Docket No. 20-1461
)	Issued: June 21, 2022
DEPARTMENT OF VETERANS AFFAIRS,)	
DALLAS VA MEDICAL CENTER, Dallas, TX,)	
Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On June 3, 2010 appellant, then a 50-year-old file clerk, filed a traumatic injury claim (Form CA-1) alleging that on May 26, 2010, she sustained injuries to her neck and back and stress due to trauma when a coworker pushed/shoved her with both hands on her back as she was leaving a printer area while in the performance of duty. OWCP accepted the claim for neck sprain and lumbar back sprain, and later expanded the acceptance of her claim to include bilateral cervicobrachial syndrome, left thoracic or lumbosacral neuritis or radiculitis, major depression, severe post-traumatic stress disorder (PTSD), brachial plexus disorders, displacement of the cervical intervertebral disc without myelopathy, chronic pain syndrome, intervertebral disc displacement of the lumbosacral region, and cervical radiculopathy. Appellant stopped work, claimed compensation for temporary total disability, and returned to work intermittently. After

¹ The Board notes that following the July 13, 2020 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.*

initially paying appellant wage-loss compensation on the supplemental rolls, it paid her on the periodic rolls beginning May 26, 2019.

Appellant returned to full-time, modified-duty work with restrictions on April 12, 2020, at an employing establishment facility in Denver, Colorado.

In a May 13, 2020 preliminary overpayment determination, OWCP advised appellant that she had been overpaid \$1,529.70 for the period April 5 through 25, 2020, because she continued to receive compensation for total disability following her return to work. It also determined that appellant was without fault in the creation of the overpayment. OWCP informed appellant that she had the right to submit evidence or argument if she disagreed with its findings. It also informed her that she had a right to a prerecoupment hearing before an OWCP hearing representative. Additionally, OWCP instructed appellant to complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation.

On May 27, 2020 OWCP received appellant's overpayment action request form and a completed Form OWCP-20. In an attached letter, appellant explained that, while her position was scheduled to begin on April 5, 2020, the start date was changed to April 12, 2020 and she started work in Colorado on April 13, 2020. She noted that she had not received any pay since beginning work on April 13, 2020 as she was still receiving FECA compensation and her employer would not pay her until she was removed from payment of workers' compensation. In an attached e-mail a representative from the employing establishment dated May 4, 2020, explained that appellant's pay could not be fixed until workers' compensation payments were removed from her profile by human resources and that no special pay could be processed until such corrections were made.

In a civilian leave and earnings statement for the pay period ending April 11, 2020 and dated April 17, 2020 from the employing establishment, no pay was noted for the pay period. It was noted that appellant used 80 hours of leave under the heading workers' compensation for that pay period. In a May 1, 2020 civilian leave and earnings statement for the pay period ending April 25, 2020, no pay was noted for the pay period. It was noted that appellant used 80 hours of leave under the heading workers' compensation for that pay period.

In a record of a telephone conversation (Form CA-110) dated June 30, 2020, appellant explained to OWCP's representative that her new employer refused to pay her for the first few weeks she worked because she was still in receipt of workers' compensation benefits. OWCP's representative notified appellant that they were not supposed to withhold her pay even if she was still in receipt of workers' compensation benefits. The representative advised appellant that she should send her employer a copy of the May 13, 2020 letter and explain that OWCP stopped her compensation.

By decision dated July 13, 2020, OWCP finalized its preliminary determination that appellant received an overpayment of compensation in the amount of \$1,529.70 for the period April 5 through 25, 2020 because she returned to full-duty work on April 5, 2020, but continued to receive compensation for temporary total disability through April 25, 2020. It determined that appellant was without fault in the creation of the overpayment, but denied waiver of recovery as there was no evidence of financial hardship. OWCP required recovery of the overpayment in full within 30 days.

The Board has duly considered this matter and finds that OWCP has not established that appellant received an overpayment of compensation.

Evidence submitted by appellant, including civilian leave and earnings statements dated April 17 and May 1, 2020 and an e-mail from the employing establishment dated May 4, 2020, established that appellant had not received any wages during the period of the overpayment. In the civilian leave and earnings statement for the pay period ending April 11, 2020 and dated April 17, 2020, no pay was noted for that period. It was noted that appellant used 80 hours of leave under the heading workers' compensation for that pay period. In a civilian leave and earnings statement for the pay period ending April 25, 2020 and dated May 1, 2020 from the employing establishment, no pay was noted for that period. It was noted that appellant used 80 hours of leave under the heading workers' compensation for that pay period.

An overpayment of compensation is created if an employee receives actual earnings during a period when FECA benefits for temporary total disability compensation is also paid.² As the evidence of record does not establish that appellant received any actual earnings during the period of the overpayment, the Board finds that OWCP did not establish fact of overpayment.

IT IS HEREBY ORDERED THAT the July 13, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 21, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

² *L.C.*, Docket No. 20-1058 (issued June 21, 2021); *A.H.*, Docket No. 20-0442 (issued January 26, 2021); *L.H.*, Docket No. 20-0115 (issued September 4, 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 6.200.1 (September 2018).