

fault, because he received an additional compensation payment to which he was not entitled; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On October 13, 2017 appellant, then a 54-year-old dispatcher/industrial painter facilities services assistant, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral carpal tunnel syndrome due to factors of his federal employment. He indicated that he first became aware of his condition and realized his condition was causally related to factors of his federal employment on March 1, 2018. OWCP accepted the claim for bilateral carpal tunnel syndrome and bilateral ulnar neuropathy. It paid appellant wage-loss compensation on the supplemental rolls from August 2, 2018 through January 17, 2019.

On January 22, 2019 Dr. Waldo L. Ferrer, a Board-certified family practitioner, diagnosed right ulnar neuropathy and right carpal tunnel syndrome. He opined that appellant reached maximum medical improvement (MMI). Dr. Ferrer indicated that he did not provide impairment ratings under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)³ and that appellant would need to be referred to an outside physician.

On February 6, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a February 14, 2019 development letter, OWCP requested that appellant submit an impairment evaluation from his attending physician addressing whether he had reached MMI and, if so, the extent of any permanent impairment in accordance with the A.M.A., *Guides*.⁴ It afforded him 30 days to submit the necessary evidence.

On March 7, 2019 appellant requested that OWCP refer him to a physician who could perform an impairment rating pursuant to the sixth edition of the A.M.A., *Guides* as his treating physician was unable to do so.

On September 22, 2020 OWCP referred appellant, together with a statement of accepted facts (SOAF) and the medical record, to Dr. William P. Curran, Jr., a Board-certified orthopedic surgeon. In a report dated September 23, 2020, Dr. Curran noted appellant's accepted conditions for the right upper extremity were right cubital and right carpal tunnel syndromes. He reviewed his medical records, examined appellant and provided his findings. Dr. Curran noted findings of a healed tender surgical incision of the posteromedial aspect of the right elbow, a surgical incision on the volar aspect of the right wrist, palpable tenderness of the posteromedial aspect of the right elbow and volar aspect of the right wrist, positive Tinel's sign at the right elbow and wrist, and positive Phalen's test at the right wrist. Sensory examination of the right upper extremity revealed diminished sensation of the C8-T1 dermatomes of the right forearm and digits four and five,

³ A.M.A., *Guides* (6th ed. 2009).

⁴ *Id.*

weakness of the right digital interossei, moderate atrophy of the right hypothenar eminence, and weakness of grip strength testing of dominant right upper extremity.

Referring to the sixth edition of the A.M.A., *Guides* Dr. Curran applied the diagnosis-based impairment (DBI) method of evaluating permanent impairment referencing Table 15-23, page 449, for entrapment/compression neuropathy impairment and assigned a grade modifier for clinical studies (GMCS) of 1 for conduction delay. He also reported a grade modifier for functional history (GMFH) of 3 for constant symptoms and a grade modifier for physical findings (GMPE) of 3 due to weakness. Dr. Curran concluded that, according to page 448 of the A.M.A., *Guides*, appellant had five percent right upper extremity permanent impairment for right carpal tunnel syndrome.

With regard to right cubital tunnel syndrome, Dr. Curran again referenced Table 15-23, page 449 and assigned a GMCS of 1 for conduction delay. He also reported a GMFH of 3 for constant symptoms and a GMPE of 3 due to weakness. Dr. Curran concluded that, according to page 448 of the A.M.A., *Guides*, appellant had five percent right upper extremity permanent impairment for right cubital tunnel syndrome. He combined the right carpal tunnel syndrome and right cubital syndrome to yield 10 percent permanent impairment of the right upper extremity. Dr. Curran found that appellant reached MMI on January 22, 2019.

On October 28, 2020 OWCP referred appellant's case to Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA). It requested that he review Dr. Curran's September 23, 2020 report and provide an opinion on permanent impairment under the standards of the A.M.A., *Guides*.⁵ On November 20, 2020 Dr. Fellars, reviewed the impairment rating by Dr. Curran. He found that appellant reached MMI on September 23, 2020, the date of Dr. Curran's examination. Using Table 15-23 at page 449, he rated appellant's right carpal tunnel syndrome. The DMA found GMCS of 1 for testing documenting conduction delay. He noted GMFH of 3 for constant symptoms and GMPE of 3 for documented weakness in his digital interossei musculature, atrophy of the hypothenar eminence, decreased sensation, and weakness in grip strength. The DMA averaged the grade modifiers for a grade 2 category for five percent permanent impairment of the right upper extremity for right carpal tunnel syndrome.

With regard to the right cubital tunnel syndrome, he found a GMCS of 1 for conduction delay. The DMA also reported a GMFH of 3 for constant symptoms and a GMPE of 3 due to weakness. The three grade modifiers of history, physical findings, and test results resulted in an average grade modifier for a grade 2 category. He concluded that appellant had five percent permanent impairment of the right upper extremity for right cubital tunnel syndrome. The DMA referenced the A.M.A., *Guides*, page 448, noting that when there were multiple simultaneous neuropathies in the same upper extremity the second is rated at 50 percent of the impairment. Therefore, appellant would have 7.5 percent permanent impairment, which rounds up to eight percent permanent impairment of the right upper extremity for right carpal tunnel syndrome and right cubital tunnel syndrome. The DMA explained that his evaluation of permanent impairment of the right upper extremity differed from Dr. Curran's because he applied the criteria for rating

⁵ A.M.A., *Guides* (6th ed. 2009).

multiple simultaneous neuropathies set forth on page 448 of the A.M.A., *Guides*. Therefore the DMA assigned eight percent permanent impairment of the right upper extremity.

By decision dated December 17, 2020, OWCP granted appellant a schedule award for eight percent permanent impairment of the right upper extremity. The period of the award ran for 24.96 weeks from September 23, 2020 through March 16, 2021.⁶

In a preliminary overpayment determination dated April 16, 2021, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$2,851.61 for the period February 28 through March 27, 2021, because “a schedule award payment was issued.” It explained that his case was identified “as having an extra full schedule award payment issued in addition to the final supplemental schedule award payment.” OWCP also made a preliminary overpayment determination that he was without fault in the creation of the overpayment. It advised appellant that he could submit evidence challenging the fact or amount of the overpayment, or request waiver of recovery of the 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 recovery of the overpayment. It also requested that he submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP advised appellant that it would deny waiver of recovery of the overpayment if he failed to furnish the requested financial information within 30 days. It provided him with an overpayment action request form and 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 received a May 5, 2021 overpayment action request form. Appellant requested a precoupment hearing regarding possible waiver of recovery of the overpayment. He indicated that he was requesting waiver of recovery of the overpayment because he was found to be without fault and his right hand and elbow were permanently deformed. Appellant submitted a Form OWCP-20, signed on May 5, 2021. He reported monthly income from other benefits of \$2,668.00. Appellant reported monthly expenses of \$1,350.00 for rent/mortgage, \$150.00 for food, \$100.00 for clothing, \$250.00 for utilities, \$100.00 for installment debt, and \$225.00 for miscellaneous expenses. He noted \$500.00 of cash on hand, and a \$325.00 checking account balance. Appellant submitted no supporting financial information.

By decision dated June 11, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$2,851.61 for the period February 28 through March 27, 2021, because OWCP paid him “an extra full schedule award payment issued in addition to the final supplemental schedule award payment.” OWCP determined that although appellant was without fault in the creation of the overpayment, the overpayment was not subject to waiver of recovery because appellant did not

⁶ OWCP noted a schedule award payment of \$4,623.00 for the period September 23 through November 7, 2020, \$2,814.00 for the period November 8 through December 5, 2020, \$2,814.00 for the period December 6, 2020 through January 2, 2021, \$2,814.00 for the period January 3 through 30, 2021, \$2,814.00 for the period January 31 through February 27, 2021, \$2,814.00 for the period February 28 through March 27, 2021, and a supplemental schedule award payment of \$1,703.60 for the period February 28 through March 16, 2021.

provide the requested information regarding income, expenses, and assets necessary to determine whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. It requested that recovery of the overpayment be in a lump-sum payment of \$2,851.61.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA⁷ 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.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

The schedule award provisions of FECA¹⁰ and its implementing regulations¹¹ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. Section 10.404 of the regulations provides that compensation is provided for specified periods of time for the permanent loss or loss of use of certain members.¹² FECA provides for 312 weeks of compensation for 100 percent loss or loss of use of an upper extremity (arm)¹³ and the implementing regulations provide that compensation for proportionate periods of time is payable for partial loss.¹⁴

OWCP’s procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.¹⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation for the period February 28 through March 27, 2021, for which he was without fault, because he received compensation to which he was not entitled.

⁷ *Supra* note 1.

⁸ 5 U.S.C. § 8102(a).

⁹ *Id.* at § 8129(a).

¹⁰ *Id.* at § 8107.

¹¹ 20 C.F.R. § 10.404.

¹² *Id.*

¹³ 5 U.S.C. § 8107(c)(1).

¹⁴ *Supra* note 11.

¹⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1f.(1)(i) (September 2020).

Appellant received a compensation payment for the period February 28 through March 27, 2021 and a compensation payment for the period February 28 through March 16, 2021. However, he was only entitled to receive compensation for the period February 28 through March 16, 2021, which was the period remaining in his schedule award. Therefore, the fact of overpayment is established.¹⁶

The Board further finds that this case is not in posture for decision regarding the amount of the overpayment.

In the present case, OWCP concluded in its final overpayment decision dated June 11, 2021, that appellant received a compensation payment of \$2,851.61 for the period February 28 through March 27, 2021. However, for the reasons explained above, appellant was only entitled to receive a payment for the remainder of his approved schedule award, February 28 through March 16, 2021. Without explanation, OWCP found that for the period February 28 through March 27, 2021 appellant was overpaid in the amount of \$2,851.61, an amount that did not conform with the previous full monthly payments which were \$2,814.00. In this regard, although case query indicated that it paid appellant \$2,851.61 for the period in question, the actual payment plate indicates that only \$2,814.00 was paid out to appellant. As such, the Board finds that OWCP failed to provide adequate findings and calculations in support of its June 11, 2021 decision. OWCP is required by statute and regulation to make findings of fact and to provide a statement of reasons.¹⁷ A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.¹⁸ The Board will, therefore, remand the case for OWCP to further explain its calculation of the amount of the overpayment.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for the period February 28 through March 27, 2021, for which he was without fault, because he received additional compensation to which he was not entitled. The Board further finds that the case is not in posture for decision regarding the amount of the overpayment.

¹⁶ See *K.H.*, Docket No. 18-0171 (issued August 2, 2018).

¹⁷ 5 U.S.C. § 8124(a) provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation. 20 C.F.R. § 10.126 provides that its final decision shall contain findings of fact and a statement of reasons. See also *Order Remanding Case, H.B.*, Docket No. 19-0356 (issued March 20, 2020); *Order Remanding Case, H.O.*, Docket No. 19-0198 (issued July 3, 2019).

¹⁸ *R.B.*, Docket No. 20-0022 (issued October 28, 2020); *O.R.*, 59 ECAB 432 (2008).

ORDER

IT IS HEREBY ORDERED THAT the June 11, 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.¹⁹

Issued: September 1, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹⁹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.