

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

A.R., Appellant)	
)	
and)	Docket No. 22-0750
)	Issued: September 28, 2022
DEPARTMENT OF THE AIR FORCE,)	
HILL AIR FORCE BASE, UT, Employer)	
)	

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 April 15, 2022 appellant filed a timely appeal from a March 25, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$3,733.15 for the period February 28 through March 27, 2021 for which he was without

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the March 25, 2022 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.*

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

FACTUAL HISTORY

On May 22, 2018 appellant, then a 58-year-old egress technician, filed a traumatic injury claim (Form CA-1) alleging that on May 11, 2018 he sprained his left shoulder, and experienced lumbosacral pain as well as back and neck muscle spasm when, during its removal, he prevented an ejection seat of an aircraft from hitting his coworker while in the performance of duty. He stopped work on the date of injury and returned to work on May 21, 2018. OWCP initially accepted the claim for left shoulder sprain and back muscle spasm. It subsequently expanded the acceptance of the claim to include left shoulder rotator cuff tear.

By decision dated November 25, 2019, OWCP granted appellant a schedule award for 25 percent permanent impairment of the left upper extremity. The period of the award ran for 78 weeks from September 19, 2019 through March 17, 2021, with a payment of \$3,683.13 each four weeks.

On March 26, 2021 OWCP paid appellant schedule award compensation of \$2,401.02 for the period February 28 through March 17, 2021. On March 27, 2021 it paid him schedule award compensation of \$3,733.15 for the period February 28 through March 27, 2021. However, the payment plate for the period February 28 through March 27, 2021 shows a compensation payment of \$3,683.13.

In a preliminary overpayment determination dated April 16, 2021, OWCP notified appellant of its preliminary finding that he had received a \$3,733.15 overpayment of schedule award compensation for the period February 28 through March 27, 2021, because it had issued an “extra, full schedule award payment issued in addition to the final supplemental schedule award payment.” It advised him of its preliminary determination that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method and informed him that he could request waiver of recovery of the overpayment. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records supporting income and expenses. Additionally, OWCP provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing. No response was received.

OWCP, by decision dated March 25, 2022, finalized its preliminary overpayment determination, finding that appellant had received a \$3,733.15 overpayment of schedule award compensation because it paid him an extra, full schedule award payment. It noted that his schedule award ended on March 17, 2021. OWCP advised that it had issued a schedule award payment for the period February 28 through March 17, 2021, but that, due to an error, it had subsequently issued an additional full schedule award payment for the period February 28 through March 27, 2021. It found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, because he had not submitted any evidence in

response to the preliminary overpayment determination. OWCP required recovery of the overpayment by directing him to repay the full amount within 30 days of the date of the decision.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA³ and its implementing regulations⁴ 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.⁵ FECA provides for 312 weeks of compensation for 100 percent loss or loss of use of an upper extremity⁶ and the implementing regulations provides that compensation for proportionate periods of time is payable for partial loss.⁷

OWCP's procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of schedule award compensation for the period February 28 through March 27, 2021 for which he was without fault.

On November 25, 2019 OWCP granted appellant a schedule award for 25 percent permanent impairment of the left upper extremity. The period of the award ran for 78 weeks from September 19, 2019 through March 17, 2021. On March 26, 2021 OWCP paid appellant schedule award compensation of \$2,401.02 for the period February 28 through March 17, 2021. On March 27, 2021 it paid him an extra schedule award compensation payment for the period February 28 through March 27, 2021. As OWCP had already properly paid appellant schedule award compensation for the period February 28 through March 17, 2021, the Board finds that the fact and period of the overpayment have been established.

The Board further finds that the case is not in posture for decision with regard to the amount of the overpayment. In this regard, the compensation payment history reflects that on March 27, 2021 OWCP paid appellant schedule award compensation of \$3,733.15 for the period February 28

³ *Id.*

⁴ 20 C.F.R. § 10.404.

⁵ *Id.*

⁶ 5 U.S.C. § 8107(c)(2).

⁷ *Supra* note 4.

⁸ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1f(1)(i) (September 2020); *see V.R.*, Docket No. 22-0086 (issued May 3, 2022); *T.C.*, Docket No. 20-0302 (issued November 12, 2020).

through March 27, 2021. However, the payment plate for the same period shows a schedule award compensation payment of \$3,683.13. Thus, the amount of the overpayment remains unclear.

The case will, therefore, be remanded for OWCP to properly calculate the amount of the overpayment of compensation. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.⁹

CONCLUSION

The Board finds that appellant received an overpayment of schedule award compensation for the period February 28 through March 27, 2021 for which he was without fault because he received schedule award compensation to which he was not entitled. The Board further finds that this case is not in posture for decision with regard to the amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2022 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: September 28, 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

⁹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.