



## **FACTUAL HISTORY**

This case has been previously before the Board. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.<sup>2</sup> The relevant facts are as follows.

On August 11, 2017 appellant, then a 54-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day she tripped on an uneven sidewalk and fell injuring her left hand, right knee, and back while in the performance of duty. On September 19, 2017 OWCP accepted the claim for fracture of unspecified phalanx of a finger, left thumb sprain, left wrist carpal bone fracture, right knee abrasion, and lower back muscle, fascia and tendon strain.

In a work capacity evaluation (Form OWCP-5c) dated August 6, 2018, appellant's attending physician, Dr. Richard Harrison, a Board-certified orthopedic surgeon, indicated that she could return to her job with restrictions. Appellant returned to full-time modified work on August 7, 2018.

On August 13, 2018 appellant submitted a claim for compensation (Form CA-7) for leave without pay (LWOP) for total disability, based on physician's orders, for the period July 23 through August 3, 2018. Beginning August 30, 2018, she submitted CA-7 forms for intermittent LWOP for the period August 4 through October 26, 2018, with supporting time analysis forms (Form CA-7a) listing dates and hours of work claimed for medical appointments and therapy.

In a letter dated September 12, 2018, OWCP indicated that appellant would receive a net payment of \$3,250.82 for the period July 24 to August 18, 2018, and \$3,485.70 for the period August 19 to September 15, 2018. An attached EN-1049 instructed that, if appellant worked during any portion of the covered period, and compensation payments were received by paper check or electronic funds transfer (EFT), she was to return the payment to OWCP even if she had already advised OWCP that she was working. OWCP noted that she was expected to monitor her EFT deposits carefully, at least every two weeks.

In a preliminary overpayment determination letter dated October 31, 2018, OWCP advised appellant of its preliminary determination that she had received an \$8,471.78 overpayment of compensation because she received total disability compensation for the period August 7 through October 13, 2018 after she had returned to full-time modified work. It also made a preliminary finding that she was at fault in the creation of the overpayment because she had accepted payments that she knew, or reasonably should have known, to be incorrect. OWCP noted that, during the period July 24 through August 18, 2018, appellant received a net amount of \$3,250.82, which equated to \$1,500.38 for the period August 7 through 18, 2018; during the period August 19 through September 15, 2018 appellant received a net amount of \$3,485.70; and during the period September 16 through October 13, 2018 appellant again received a net amount of \$3,485.70. Therefore, because she had returned to full-time modified-duty employment on August 7, 2018 she was overpaid in the amount of \$8,471.78. OWCP advised appellant that she could submit evidence challenging the fact, amount, or finding of fault, and request waiver of recovery of the overpayment. Additionally, it informed her that, within 30 days, she could request a final decision

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<sup>2</sup> Docket No. 19-0509 (issued August 23, 2019).

based on the written evidence, or a prerecoupment hearing. OWCP requested that appellant complete the overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. It afforded her 30 days for a response.

On December 4, 2018 OWCP received appellant's Form OWCP-20. Appellant indicated that her monthly income was \$1,779.48 and listed her monthly of \$3,005.00. She reported a checking account balance of \$156.31 and a savings account balance of \$252.91, for a total of \$409.22 in assets. Appellant asserted that she submitted correct CA-7 forms for intermittent LWOP for the periods of overpayment, and therefore she was not at fault in the creation of the overpayment. She noted that she thought the excess payments were "catch-up" payments and requested waiver of recovery of the overpayment as repayment would result in great financial hardship.

By decision dated December 4, 2018, OWCP finalized the preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$8,471.78 occurred for the period August 7 through October 13, 2018. It found that appellant was at fault in the creation of the overpayment as she had accepted compensation payments she knew were incorrect. OWCP directed her to repay the overpayment through monthly payments of \$100.00.

On January 7, 2019 appellant appealed OWCP's December 4, 2018 decision to the Board.

By decision dated August 23, 2019,<sup>3</sup> the Board affirmed in part OWCP's December 14, 2018 decision, finding that an overpayment during the period August 7 through October 13, 2018 was established. The Board set aside in part OWCP's December 14, 2018 decision regarding the amount of the overpayment. The Board noted that appellant had filed several CA-7 forms claiming compensation and accompanying time analyses CA-7a forms following her return to work on August 7, 2018; however, the record did not reflect that OWCP developed the issue of her entitlement to intermittent wage-loss compensation regarding her time lost from work as set forth on her claims for compensation prior to the calculation of the overpayment. The Board therefore found that OWCP's December 4, 2018 overpayment decision did not clearly explain how the amount of the overpayment was calculated. The Board instructed that on remand OWCP was to determine whether appellant was entitled to additional wage-loss compensation during the period August 7 to October 13, 2018. OWCP was then to determine the exact amount of the overpayment of compensation which occurred during the relevant period, if any. As such, the fault finding was rendered moot.

In a letter dated November 20, 2019, OWCP informed appellant that her debt had been voided in accordance with the Board's decision.

In a January 16, 2020 manual adjustment form, OWCP noted that appellant had returned to modified part-time work on August 7, 2018. It detailed that she received a gross amount of \$9,503.34 and a net payment in the amount of \$8,471.78 during the period August 7 to October 13, 2018. However, the correct gross entitlement was \$4,617.52 for the period August 7 through October 13, 2018. OWCP calculated the net overpayment by subtracting the difference

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<sup>3</sup> *Id.*

from the gross, which it then noted as \$4,885.82, HB credit (\$677.18), BLI Credit (\$51.00), and OLI Credit (\$303.38) for a net difference of \$3,854.26.<sup>4</sup>

In a preliminary overpayment determination letter dated January 24, 2020, OWCP advised appellant of its preliminary determination that she had received an \$3,854.26 overpayment of compensation because she received total disability compensation for the period August 7 through October 13, 2018. It also made a preliminary finding that she was at fault in the creation of the overpayment because she had accepted payments that she knew, or reasonably should have known, to be incorrect. OWCP noted that, during the period August 7 through October 13, 2018, appellant received compensation improperly paid in the net payment amount of \$8,471.78. Appellant's compensation due based on intermittent wage loss for medical appointments during the period August 7 through October 13, 2018 was a payment amount of \$4,617.52. This resulted in an overpayment in the net amount of \$3,854.26. OWCP advised appellant that she could submit evidence challenging the fact, amount, or finding of fault, and request waiver of recovery of the overpayment. Additionally, it informed her that, within 30 days, she could request a telephonic conference, a final decision based on the written evidence, or a prerecoument hearing. OWCP requested that appellant complete the overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. It afforded her 30 days for a response.

Appellant requested a prerecoument hearing before a representative of OWCP's Branch of Hearings and Review on February 18, 2020. The hearing was held on June 11, 2020

By decision August 11, 2020, OWCP's hearing representative found that the decision should be vacated and the case remanded. She noted that appellant maintained that her full work shift was 9.2 hours for the dates of September 5, 7, 10, 13, and 14, 2018. The hearing representative determined that OWCP must request that the claimant clarify the number of hours worked and leave work status. She also related OWCP should calculate appellant's correct entitlement to compensation during all claimed periods using the recurrence pay rate and the correct number of hours to be paid.

In a letter dated August 28, 2020, the employing establishment stated that appellant worked 24 hours during the period September 5 through 14, 2018. It also stated that for the period of August 7, 2018 through January 9, 2019 her LWOP was 8 hours per day.

In a memorandum dated September 15, 2020, OWCP stated that it would utilize the *Shadrick* formula to calculate the claimant's partial wage loss during the overpayment period.

In a preliminary overpayment determination letter dated September 17, 2020, OWCP advised appellant of its preliminary determination that she had received an \$3,854.26 overpayment of compensation because she received total disability compensation for the period August 7 through October 13, 2018 after she had returned to full-time modified work. It also made a preliminary finding that she was at fault in the creation of the overpayment because she had accepted payments that she knew, or reasonably should have known, to be incorrect. OWCP noted that during the period August 7 through October 13, 2018 appellant received compensation improperly paid in the net payment amount of \$8,471.76. Appellant's compensation due based on

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<sup>4</sup> OWCP did not explain the discrepancy between the gross amounts listed as appellant's "correct" entitlement.

intermittent wage loss during the period August 7 through October 13, 2018 was a payment amount of \$4,617.52. This resulted in an overpayment in the net amount of \$3,854.26. OWCP advised appellant that she could submit evidence challenging the fact, amount, or finding of fault, and request waiver of recovery of the overpayment. Additionally, it informed her that, within 30 days, she could request a final decision based on the written evidence, or a prerecoupment hearing. OWCP requested that appellant complete the overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. It afforded her 30 days for a response.

On October 14, 2020 OWCP received appellant's Form OWCP-20. Appellant indicated that her monthly income was \$3,116.34, and listed total monthly expenses of \$2,992.00. She asserted that she reported every claim correctly therefore she was not at fault in the creation of the overpayment.

By decision dated November 5, 2020, OWCP finalized the preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$3,854.26 occurred for the period August 7 through October 31, 2018.<sup>5</sup> It found that appellant was at fault in the creation of the overpayment as she had accepted compensation payments she knew were incorrect.

### **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>

Section 8116(a) 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 regulations provide that compensation for wage loss due to disability is available only for periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.<sup>9</sup> An overpayment is created when a claimant returns to work, but continues to receive wage-loss compensation.<sup>10</sup>

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<sup>5</sup> The decision alternated between finding that the overpayment ended on October 13 or 31, 2018.

<sup>6</sup> *Supra* note 1.

<sup>7</sup> *Id.* at § 8102.

<sup>8</sup> *Id.* at § 8116(a).

<sup>9</sup> 20 C.F.R. § 10.500(a).

<sup>10</sup> *Danny E. Haley*, 56 ECAB 393 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.1a (September 2020).

## ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to establish amount of overpayment.

The Board, in its August 23, 2019 decision found that fact of overpayment had been established for the period August 7 through October 13, 2018. However, the Board remanded the case for OWCP to determine the amount of the overpayment.<sup>11</sup> Findings made in prior Board decisions are res judicata absent further merit review by OWCP under section 8128 of FECA.<sup>12</sup>

The Board notes with regard to the amount of the overpayment, that the record reflects that appellant had filed several claims for compensation (Form CA-7) and accompanying time analysis forms (Form CA-7a) following her return to work on August 7, 2018. OWCP's September 17, 2020 preliminary notice and November 5, 2020 final overpayment stated that it calculated her entitlement to wage-loss compensation following August 7, 2018 using the *Shadrick* formula. However, the Board had instructed OWCP in its August 23, 2019 decision to determine appellant's entitlement to compensation for the specific hours claimed on her outstanding Form CA-7 claims, and to then explain how it calculated the overpayment of compensation, if any. In the August 11, 2020 decision, the hearing representative again instructed OWCP to determine the actual hours of lost time on the dates claimed, and then determine her entitlement to compensation for the hours claimed based on the recurrent pay rate of \$1,304.38. However, the evidence of record does not substantiate that OWCP determined appellant's entitlement to specific hours of wage-loss claimed on her CA-7 claim forms. OWCP did not address her claimed or actual wage-loss compensation during the period in question. Instead, it noted that appellant worked more than a 40-hour workweek, and that it had therefore used the *Shadrick* formula to calculate the overpayment for the period August 7 to October 13, 2018. OWCP however did not identify the number of hours of compensation she was entitled to for the specific dates and hours she claimed on her CA-7 forms. Due to these omissions, the Board is unable to adequately review this aspect of the case to determine the amount of overpayment of compensation, if any. A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.<sup>13</sup> The Board finds that the overpayment decision in this case does not provide such an explanation. Therefore, the amount of overpayment has not been established.

As the record does not accurately reflect the amount of overpayment, OWCP's November 5, 2020 decision must be reversed.

## CONCLUSION

The Board finds that OWCP has not met its burden of proof to establish amount of overpayment.

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<sup>11</sup> Docket No. 19-0509 (issued August 23, 2019).

<sup>12</sup> A.A., Docket No. 20-1399 (issued March 10, 2021); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

<sup>13</sup> *R.B.*, Docket No. 20-0022 (issued October 28, 2020); *C.G.*, Docket No. 18-1655 (issued June 14, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 5, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 27, 2023  
Washington, DC

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

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

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