

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

G.H., Appellant	)	
	)	
and	)	<b>Docket No. 22-0890</b>
	)	<b>Issued: January 9, 2023</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>HAMPTON VA MEDICAL CENTER,</b>	)	
<b>Hampton, VA, 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 May 26, 2022 appellant filed a timely appeal from April 5 and May 20, 2022 merit decisions 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.

**ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$18,277.91 for the period April 21 through July 17, 2021 because she continued to receive wage-loss compensation after she returned to work; (2) whether OWCP properly determined that she was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment; and (3) whether appellant has met her burden of proof to establish permanent impairment of her lungs, warranting a schedule award.

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

## **FACTUAL HISTORY**

On May 12, 2020 appellant, then a 57-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on April 24, 2020 she contracted COVID-19 while in the performance of duty. She stopped work on April 25, 2020. OWCP accepted the claim for the novel coronavirus (COVID-19). It paid appellant wage-loss compensation on the supplemental rolls from June 9 through August 1, 2020 and on the periodic rolls commencing August 2, 2020.

In a report of work status (Form CA-3) received on April 27, 2021 the employing establishment advised OWCP that she returned to her usual full-time regular employment on April 19, 2021.

On August 24, 2020 OWCP outlined appellant's entitlement to compensation benefits. An attached Form EN-1049 instructed that, if appellant worked during any portion of the covered period, and compensation payments were received by either paper check or payments sent by electronic funds transfer (EFT), she was to return the payment to OWCP even if she had already informed OWCP that she was working. OWCP noted that she was expected to monitor her EFT deposits carefully, at least every two weeks.

On April 24, 2021 OWCP paid appellant wage-loss compensation in the net amount of \$5,815.70 *via* EFT for the period March 28 through April 24, 2021.

In a report of work status (Form CA-3), the employing establishment advised that appellant had returned to her full-time usual employment on April 21, 2021.

On May 14, 2021 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On May 22, 2021 OWCP paid appellant wage-loss compensation in the net amount of \$5,815.70 *via* EFT for the period April 25 through May 22, 2021.

OWCP on May 25, 2021 expanded its acceptance of the claim to include dyspnea, diastolic heart failure, fatigue, and nonspecific muscle weakness.

By decision dated June 11, 2021, OWCP denied appellant's schedule award claim. It informed her that she could not receive a schedule award concurrently with wage-loss compensation. OWCP also informed appellant that, in order for it to pay a schedule award, her monthly compensation would have to be terminated. It requested that she advise whether she wanted to pursue a schedule award claim.

On June 19, 2021 appellant requested reconsideration. She asked that OWCP terminate her wage-loss compensation and process her schedule award claim.

In a development letter dated July 6, 2021, OWCP requested that appellant submit a detailed medical report from her physician addressing the extent of any permanent impairment due to her accepted employment injury in accordance the sixth edition of the American Medical

Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*.<sup>2</sup> It afforded her 30 days to submit the requested information.

OWCP continued to pay appellant wage-loss compensation on the periodic rolls by direct deposit for the periods May 23 through June 19, 2021 and June 20 through July 17, 2021. In a compensation termination worksheet, it clarified that she had returned to work on April 21, 2021.

On August 4, 2021 OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$18,277.91 for the period April 21 through July 17, 2021, because she returned to full-time employment on April 21, 2021, but received wage-loss compensation for total disability through July 17, 2021. Using her net compensation, it found that she had received an overpayment of \$830.81 from April 21 through 24, 2021, and \$5,815.70 each for the periods April 25 through May 22, 2021, May 23 through June 19, 2021, and June 20 through July 17, 2021, to find a total overpayment of \$18,277.91. OWCP further notified appellant of its preliminary finding that she was at fault in the creation of the overpayment because she accepted a payment that she knew or reasonably should have known, was incorrect. Additionally, it provided an overpayment action request form and informed her that, within 30 days, she could request a final decision based on the written evidence, or a prerecoumpment hearing. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation.

In an overpayment action request form dated August 22, 2021, received by OWCP on September 1, 2021 appellant requested a decision based on the written evidence. In an accompanying OWCP-20 form of even date, she provided the amounts of her income and expenses. Appellant related that she believed that she was entitled to the compensation payments as a coworker had told her that she would be covered by workers' compensation for a year after her return to work. She asserted that repaying the debt would cause financial hardship. Appellant submitted a copy of an earnings and leave statement.

Appellant submitted medical evidence regarding her condition, but did not submit an impairment evaluation. Consequently, on September 22, 2021 OWCP referred her to a second opinion physician, Dr. Ashish Singh, a Board-certified internist, for an impairment evaluation.

By decision dated March 16, 2022, OWCP finalized its preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$18,277.91 for the period April 21 through July 17, 2021. It determined that she had not responded to its preliminary overpayment determination. OWCP found that appellant was at fault in the creation of the overpayment because she accepted compensation payments which she knew or should have known were incorrect. It required that she forward the full amount of \$18,277.91 within 30 days to repay the overpayment of compensation.

By decision dated April 5, 2022, OWCP reissued the final overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$18,277.91 for the period April 21 through July 17, 2021. It noted that she had responded to its preliminary overpayment determination, but found that she had not submitted financial documentation to support her reported income and expenses. OWCP again found that appellant was at fault in the

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<sup>2</sup> A.M.A., *Guides*, 6<sup>th</sup> ed. (2009).

creation of the overpayment as she accepted a payment that she knew or reasonable should have known to be incorrect. It again required that she forward \$18,277.91 within 30 days to repay the overpayment of compensation.

OWCP subsequently received a March 24, 2022 pulmonary function test (PFT) which demonstrated that appellant had a prebronchodilator forced vital capacity (FVC) of 2.24 or 99 percent of predicted, a forced expiratory volume in one second (FEV1) of 1.80, or 101 percent of predicted, and a ratio of FEV1 to FVC of 80 or 100 percent of predicted. It further revealed a diffusing capacity of the lungs for carbon monoxide (DLCO) of 14.93, or 79 percent of predicted.

In a report dated April 30, 2022, Dr. Singh discussed appellant's history of COVID-19 in April 2020 and subsequent diagnoses of diastolic heart failure, dyspnea, fatigue, and nonspecific muscle weakness. He found that her oxygen saturation was 95 percent at rest on room air and 94 percent on exertion. Dr. Singh noted that appellant used oxygen at night and as needed and continued to have shortness of breath with exertion. On examination, he found no visual dyspnea and normal breath sounds with no rales, ronchi, or crackles. Dr. Singh advised that a chest x-ray performed February 2, 2022 and a PFT performed on March 24, 2022 were both within normal limits. He found that appellant's shortness of breath did not correspond with the "objective findings of a normal respiratory examination, normal [PFT] and normal chest x-ray." Dr. Singh opined that her shortness of breath might result from muscle weakness due to COVID-19 or from medication. He found no active pulmonary diagnosis. Dr. Singh noted that appellant advised that she had Myasthenia gravis. Referencing the A.M.A., *Guides*, he determined that her FVC and FEV1 were over 80 percent of predicted, her FEV1/FVC was over 75 percent of predicted, and her DLCO was over 75 percent of predicted, which yielded a class 0 impairment according to Table 5-4 on page 88. Dr. Singh concluded that appellant had no pulmonary impairment.

OWCP forwarded Dr. Singh's second opinion report to Dr. David I. Krohn, a Board-certified internist serving as a district medical adviser (DMA). In a May 17, 2022 report, Dr. Krohn noted that appellant's prebronchodilator FVC was 2.24 or 99 percent of predicted, her FEV1 was 1.80, or 101 percent of predicted, her FEV1/FVC was 80 or 100 percent of predicted, and her DLCO was 11.93 or 79 percent of predicted. He advised that as the prebronchodilator PFT yielded normal findings, postbronchodilator testing was not needed. Dr. Krohn opined that, under Table 5-4 on page 88 of the A.M.A., *Guides*, appellant had a class 0 whole person impairment of the lungs. He noted that the A.M.A., *Guides* on page 87 provided that the impairment rating should not be moved out of its original class regardless of nonkey factors such as history. Dr. Krohn applied the calculation for converting a whole person impairment to an impairment of the lungs and concluded that appellant had no impairment due to lung dysfunction. He found that she had reached maximum medical improvement on April 30, 2022.

By decision dated May 20, 2022, OWCP denied modification of its June 11, 2021 decision regarding appellant's schedule award claim.

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

Section 8102(a) of FECA 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 duty.<sup>3</sup> Section 8129(a) of FECA provides, in pertinent part, that 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.<sup>4</sup>

Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.<sup>5</sup> OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant received an overpayment of compensation in the amount of \$18,277.91 for the period April 21 through July 17, 2021, because she continued to receive wage-loss compensation after she returned to work.

Appellant resumed full-time work on April 21, 2021. OWCP, however, continued to pay her wage-loss compensation for total disability through July 17, 2021, resulting in an overpayment of compensation. Appellant was not entitled to receive temporary total disability benefits and actual earnings for the same period.<sup>7</sup>

In determining the amount of the overpayment, OWCP calculated the net amount of wage-loss compensation that appellant had received from April 21 through July 17, 2021 to find an overpayment of \$18,277.91. Thus, the Board finds that she received an overpayment of compensation in the amount of \$18,277.91 during the above-noted period.<sup>8</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129(a) of FECA provides that an overpayment of compensation shall be recovered by OWCP unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or be against equity and

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8129(a).

<sup>5</sup> *Id.* at § 8116(a).

<sup>6</sup> *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *K.P.*, Docket No. 19-1151 (issued March 18, 2020); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.300.4g (September 2020).

<sup>7</sup> *J.R.*, Docket No. 20-0025 (issued December 13, 2021); *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *S.N.*, Docket No. 19-1018 (issued November 12, 2019).

<sup>8</sup> *J.R.*, *id.*

good conscience.”<sup>9</sup> No waiver of payment is possible if appellant is at fault in helping to create the overpayment.<sup>10</sup>

Section 10.433(a) of OWCP’s regulations provides that an individual is at fault in the creation of an overpayment who: (1) made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; (2) failed to furnish information which the individual knew or should have known to be material; or (3) with respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.<sup>11</sup> With respect to whether an individual is not at fault, section 10.433(b) provides that whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual’s capacity to realize that he or she is being overpaid.<sup>12</sup>

The Board has held that an employee who receives payments from OWCP in the form of direct deposit may not be at fault the first or second time incorrect funds are deposited into his or her account, as the acceptance of the resulting overpayment lacks the requisite knowledge.<sup>13</sup> The Board has also held in cases involving a series of incorrect payments, where the requisite knowledge is established by a letter or telephone call from OWCP or simply with the passage of time and a greater opportunity for discovery, the claimant will be at fault for accepting the payments subsequently deposited.<sup>14</sup> Previous cases have held that receiving one or two erroneous direct deposit payments does not necessarily create the requisite knowledge to find that a claimant was at fault in the creation of the overpayment.<sup>15</sup>

### ANALYSIS -- ISSUE 2

The Board finds, that OWCP improperly determined her at fault in the creation of the overpayment of compensation for the period April 21 through May 22, 2021.

Appellant returned to work on April 21, 2021, but continued to receive compensation *via* EFT every 28 days. The first EFT deposit following her return to work was made by OWCP on April 24, 2021 and covered the period March 28 through April 24, 2021. The second EFT deposit following appellant’s return to work was made by OWCP on May 22, 2021 and covered the period April 25 through May 22, 2021.

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<sup>9</sup> 5 U.S.C. § 8129; *see A.S.*, Docket No. 17-0606 (issued December 21, 2017).

<sup>10</sup> *J.B.*, Docket 19-1244 (issued December 20, 2019); *Robert W. O’Brien*, 36 ECAB 541, 547 (1985).

<sup>11</sup> 20 C.F.R. § 10.433(a); *see C.L.*, Docket No. 19-0242 (issued August 5, 2019); *see also* 20 C.F.R. § 10.430.

<sup>12</sup> *Id.* at § 10.433(b); *C.L., id.*; *see also supra* note 6 at Chapter 6.300.4(d) (September 2020).

<sup>13</sup> *See R.S.*, Docket No. 20-0177 (issued September 3, 2021); *M.J.*, Docket No. 19-1665 (issued July 29, 2020); *Tammy Craven*, 57 ECAB 689 (2006).

<sup>14</sup> *See L.G.*, Docket No. 20-1342 (issued September 3, 2021); *C.H.*, Docket No. 19-1470 (issued January 24, 2020); *see also Karen Dixon*, 56 ECAB 145 (2004).

<sup>15</sup> *L.G., id.*; *V.S.*, Docket No. 13-1278 (issued October 23, 2013).

As noted above, the Board has held that an employee who receives payments from OWCP in the form of a direct deposit may not be at fault for the first or second incorrect deposit since the acceptance of the overpayment, at the time of receipt of the direct deposit, lacks the requisite knowledge.<sup>16</sup>

There is no documentation to demonstrate that appellant had knowledge at the time her bank received direct deposits from OWCP on April 24 and May 22, 2021 that the payments were incorrect.<sup>17</sup> The Board thus finds that she was without fault in accepting the two direct deposits covering the period of the overpayment from April 21 through May 22, 2021.<sup>18</sup>

As the case is not in posture for decision regarding the issue of waiver of recovery of the overpayment for the period April 21 through May 22, 2021, the case must be remanded for OWCP to determine whether appellant is entitled to waiver of recovery of the overpayment covering that period.<sup>19</sup> Following any further development deemed necessary, it shall issue a *de novo* decision regarding waiver.

The Board further finds, however, that appellant was at fault in the creation of the overpayment resulting from the subsequent direct deposit payments for the period May 23 through July 17, 2021.

In an August 24, 2020 letter, OWCP notified appellant that, to avoid an overpayment of compensation, she must immediately notify it of her return to work and that she was required to reimburse OWCP for compensation paid during a period which she worked. It further informed her that she should monitor her EFT deposits carefully. Although OWCP may have been negligent in making incorrect payments, this does not excuse a claimant from accepting payments he or she knew or should have known to be incorrect.<sup>20</sup> In cases involving a series of incorrect payments, where the requisite knowledge is established by documentation from OWCP or simply with the passage of time and opportunity for discovery, the claimant will be at fault for accepting the payments subsequently deposited.<sup>21</sup> By the time of the payments covering the period May 23 through July 17, 2021, appellant knew or should have known that she was not entitled to receive wage-loss compensation for temporary total disability following her return to work. As she accepted payments which she knew or should have known to be incorrect for the period May 23 through July 17, 2021, the Board finds that OWCP properly found that she was at fault in the creation of the overpayment for this period.<sup>22</sup>

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<sup>16</sup> See *M.J.*, Docket No. 19-1665 (issued July 29, 2020); see also *George A. Hirsch*, 47 ECAB 520 (1996).

<sup>17</sup> See *M.T.*, Docket No. 20-1353 (issued May 9, 2022); *B.W.*, Docket No. 19-0239 (issued September 18, 2020); *K.E.*, Docket No. 19-0978 (issued October 25, 2018).

<sup>18</sup> See *L.G.*, *supra* note 14.

<sup>19</sup> *D.R.*, Docket No. 21-0234 (issued November 17, 2022); *C.C.*, Docket No. 19-1268 (issued April 2, 2021).

<sup>20</sup> See *M.T.*, *supra* note 17; *C.G.*, Docket No. 15-0701 (issued December 9, 2015).

<sup>21</sup> See *C.W.*, Docket No. 19-1653 (issued March 23, 2021); *S.D.*, Docket No. 17-0309 (issued August 7, 2018).

<sup>22</sup> See *L.G.*, *supra* note 14; *V.S.*, *supra* note 15; see also *J.K.*, Docket No. 20-0606 (issued March 11, 2021).

### LEGAL PRECEDENT -- ISSUE 3

The schedule award provisions of FECA,<sup>23</sup> and its implementing federal regulations,<sup>24</sup> 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. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.<sup>25</sup> The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.<sup>26</sup>

No schedule award is payable for a member, function, or organ of the body that is not specified in FECA or in the implementing regulations.<sup>27</sup> The list of schedule members includes the eye, arm, hand, fingers, leg, foot, and toes. Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.<sup>28</sup> By authority granted under FECA, the Secretary of Labor expanded the list of schedule members to include the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina, and skin.<sup>29</sup> Neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole.<sup>30</sup> Compensation for total loss of use of a single lung is 156 weeks.<sup>31</sup>

Although FECA does not specifically provide for compensation for whole person impairment, the measurement of lung function warrants special consideration. Table 5-4, Pulmonary Dysfunction, A.M.A., *Guides* page 88, provides whole person impairment ratings based on a designated class (0-4) of impairment. Depending on the assigned class, the range of whole person impairment due to pulmonary dysfunction is 0 to 65 percent. OWCP procedures provide that lung impairment should be evaluated in accordance with the A.M.A., *Guides* insofar as possible. It further provides that schedule awards are based on the loss of use of both lungs and the percentage for the particular class of whole person respiratory impairment will be multiplied

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<sup>23</sup> 5 U.S.C. § 8107(c).

<sup>24</sup> 20 C.F.R. § 10.404.

<sup>25</sup> For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6<sup>th</sup> ed. 2009); *supra* note 6 at Chapter 2.808.5a (March 2017); *see also id.* at Chapter 3.700, Exhibit 1 (January 2010).

<sup>26</sup> *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>27</sup> *R.C.*, Docket No. 21-1332 (issued July 1, 2022); *W.C.*, 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

<sup>28</sup> *Supra* note 1 at § 8107(c)(13) and (14).

<sup>29</sup> *Id.* at § 8107(c)(22); 20 C.F.R. § 10.404(b).

<sup>30</sup> *Id.* at § 8107(c); *id.* at § 10.404(a); *see J.C.*, Docket No. 21-0426 (issued October 12, 2021); *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

<sup>31</sup> *Id.* at § 10.404(b).



by 312 weeks (twice the award for loss of function of one lung) to obtain the number of weeks payable.<sup>32</sup>

### ANALYSIS -- ISSUE 3

The Board finds that appellant has not met her burden of proof to establish permanent impairment of the lungs, warranting a schedule award.

On April 30, 2022 Dr. Singh, an OWCP referral physician, found that appellant had no visual dyspnea and normal breath sounds with no rales, ronchi, or crackles. He noted that her oxygen saturation was 95 percent at rest on room air and 94 percent on exertion. Dr. Singh advised that a February 22, 2022 chest x-ray and a March 24, 2022 PFT yielded normal findings. He opined that appellant's symptoms of shortness of breath failed to correspond to the normal findings on examination and found that it could result from COVID-19 related muscle weakness or medication. Dr. Singh determined that she had no currently active pulmonary diagnosis. He reviewed the results of appellant's PFT and found that her FVC and FEV1 were over 80 percent of predicted, her FEV1/FVC was over 75 percent of predicted, and her DLCO was over 75 percent of predicted, which yielded a class 0 impairment according to Table 5-4 on page 88 of the A.M.A., *Guides*. Dr. Singh concluded that she had no pulmonary impairment.

On May 17, 2022 Dr. Krohn, a DMA, reviewed Dr. Singh's report and the results of appellant's PFT. He found that her prebronchodilator FVC was 2.24 or 99 percent of predicted, her FEV1 was 1.80 or 101 percent of predicted, her FEV1/FVC was 80 or 100 percent of predicted, and her DLCO was 11.93 or 79 percent of predicted. Dr. Krohn advised that as appellant's PFT prebronchodilator had yielded normal findings, postbronchodilator testing was not needed. He found that she had a class 0 whole person impairment of the lungs using Table 5-4 on page 88. Dr. Krohn indicated that the impairment rating should not be moved from its class based on nonkey factors such as history. He applied the calculation for converting a whole person impairment to an impairment of the lungs and found that appellant had no impairment due to lung dysfunction. The Board notes that the A.M.A., *Guides* provides that the key factor used to determine the impairment class is the loss of pulmonary function as demonstrated by the relevant objective test results for the condition rated, and that nonkey factors are history and physical examination.<sup>33</sup> The first step is to determine the impairment class according to the key factors, and then use the key factors to add or subtract from the default impairment found through application of the key factor.<sup>34</sup> As appellant's test results, the key factor, placed her at zero percent impairment of the lungs, she has not established permanent impairment of the lungs.<sup>35</sup>

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.

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<sup>32</sup> *Supra* note 6 at Chapter 2.808.5c(1); *id.* at Chapter 3.700.4d(1)(c).

<sup>33</sup> A.M.A., *Guides* 86; *see also* B.C., Docket No. 18-1389 (issued January 11, 2019); D.W., Docket No. 17-0974 (issued January 16, 2018).

<sup>34</sup> *Id.*

<sup>35</sup> B.C., *supra* note 33.

**CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$18,277.91 for the period April 21 through July 17, 2021, because she continued to receive wage-loss compensation after she returned to work. The Board further finds that OWCP improperly found her at fault in the creation of the overpayment for the period April 21 through May 22, 2021, but properly found her at fault for the period May 23 through July 17, 2021. The case will be remanded to OWCP to consider waiver of recovery of the overpayment for the period May 23 through July 17, 2021. The Board finds that appellant has not met her burden of proof to establish permanent impairment of the lungs, warranting a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 5, 2022 overpayment decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board. The May 20, 2022 schedule award decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2023  
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