

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

S.F., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Detroit, MI, Employer

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**Docket No. 22-0740
Issued: July 5, 2023**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 11, 2022 appellant filed a timely appeal from a March 24, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, she asserted that she had been advised by OWCP that she was entitled to waiver of recovery of the overpayment. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the March 24, 2022 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,861.48 during the period April 15 through May 30, 2021, for which she was without fault, as she received compensation to which she was not entitled; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On April 20, 2021 appellant, then a 52-year-old sales and distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 15, 2021 she injured her right wrist and arm when picking up parcels, and repetitively moving and pushing on the window while in the performance of duty. By decision dated June 1, 2021, OWCP converted appellant's claim into an occupational disease claim as her injury occurred over time due to repetitive duties. It accepted the claim for right elbow lateral epicondylitis.

On July 13, 2021 appellant filed a claim for compensation (Form CA-7) for intermittent disability from work for the period April 15 to July 8, 2021 for leave without pay (LWOP) and loss of night premium.

In a supplemental rolls payment plate OWCP related that appellant would be paid compensation on the supplemental rolls in the net amount of \$5,326.50 for 32.00 days of total disability for the period April 15 through May 30, 2021. The weekly pay rate was reported as \$1,238.85. OWCP's compensation payment record reflects that on July 23, 2021 appellant received a net payment of \$5,326.50 for the period April 15 through May 30, 2021.

On July 20, 2021 OWCP noted that it had received correspondence from appellant advising that the continuation of pay (COP) paid by the employing establishment had been taken back and replaced with LWOP.

In letters dated July 23, 2021, the employing establishment informed OWCP that appellant was "claiming COP that has been retrieved." It noted that he was entitled to 32.00 hours of COP for the period April 15 to May 1, 2021 and 29.27 hours of COP for the period May 6 to 28, 2021.

In time analysis forms (Form CA-7a) dated July 23, 2021, signed by appellant and an employing establishment official, he claimed 60.41 hours of LWOP for the period April 15 to May 1, 2021, and 72.78 hours of LWOP from May 6 to 28, 2021. Some dates were annotated with the note "no work available" and some dates noted "doctor visit." In a second Form CA-7a covering the time period April 15 to May 28, 2021, signed only by the employing establishment, the employing established noted that appellant was entitled to 33.80 hours of LWOP from April 15 to May 1, 2021 and 29.27 hours of LWOP from May 6 to 28, 2021.

By decision dated August 24, 2021, OWCP denied appellant's claim for disability for the period April 15 through July 8, 2021. It noted she had previously been paid for 32 days during the period April 15 through May 30, 2021. OWCP reported that the employing establishment advised that appellant was "not entitled to full LWOP for the period April 15 to May 30, 2021, for which [she was] paid, now calls into question" whether she had been overpaid for that period.

In a letter dated August 24, 2021, OWCP requested that the employing establishment address why it had indicated that appellant was only entitled to 63.07 hours of LWOP during the

period April 15 to May 30, 2021. An August 26, 2021 agency response memorandum related that the information was correct, and appellant was only entitled to 63.07 hours of COP. By letter dated September 21, 2021, OWCP wrote to the employing establishment noting that it had indicated that appellant was only entitled to 63.07 hours of COP during the period April 15 through May 30, 2021. It asked that the employing establishment provide further clarification regarding the type of leave used, with a daily breakdown of COP, LWOP and work hours during the period in question. By letter dated September 21, 2021, the employing establishment responded to the request for clarification indicating that appellant was entitled to 63.07 hours of LWOP during the period April 15 to May 30, 2021.

In a September 22, 2021 supplemental rolls payment worksheet, OWCP calculated that appellant was entitled to 63.07 hours of compensation for the period April 15 to May 30, 2021. It noted the time lost was 63.07 hours with a weekly pay rate of \$1,238.85.

In a manual adjustment form dated September 22, 2021, OWCP noted that appellant had been paid for total disability for the period April 15 to May 30, 2021 when she was only entitled to 63.07 hours of LWOP during this period. It found that she had been paid \$5,326.50 when she was only entitled to \$1,465.02, resulting in an overpayment of \$3,861.48.

On September 24, 2021 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$3,861.48 had been created for the period April 14 through May 30, 2021 because appellant was paid for total disability when she only used intermittent LWOP for a total of 63.07 hours. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20), along with supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support his reported income, assets, and expenses. It advised her that it would deny waiver if she failed to furnish the requested financial information within 30 days. OWCP provided an appeal request form, and further notified appellant that, within 30 days of the date of the letter, she could contest the overpayment and request a final decision based on the written evidence, or a prerecoupment hearing.

On October 23, 2021 appellant requested a prerecoupment hearing asserting that she was unaware of any overpayment. A telephonic hearing before an OWCP hearing representative was held on February 9, 2021.

By decision dated March 24, 2022, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$3,861.48 for the period April 15 through May 30, 2021 because she received compensation for total disability when she was only entitled to 63.07 hours of LWOP for this period. He further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because she had not completed a Form OWCP-20.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 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.⁴ 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.⁵

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.⁶ Section 10.500 of OWCP's regulations provides that compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.⁷ A claimant is not entitled to receive temporary total disability benefits along with actual earnings or paid leave for the same time period.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP has established that appellant received an overpayment of compensation during the period April 15 through May 30, 2021, for which she was without fault, as she received compensation to which she was not entitled.

OWCP's compensation payment records reflect that on July 23, 2021 it paid appellant wage-loss compensation in the amount of \$5,326.50 for 32 days of total disability for the period April 15 through May 30, 2021. During this period, however, appellant claimed compensation for intermittent disability. As she was paid compensation to which she was not entitled, an overpayment of compensation was created.

The Board further finds, however, that OWCP has not established the amount of the overpayment.

In a letter dated August 24, 2021, OWCP requested that the employing establishment address why it had indicated that appellant was only entitled to 63.07 hours of LWOP during the period April 15 through May 30, 2021. In an August 26, 2021 response the employing establishment indicated that she was only entitled to 63.07 hours of COP. By letter dated September 21, 2021, OWCP wrote to the employing establishment noting that it had indicated that appellant was only entitled to 63.07 hours of COP during the period April 15 through May 30, 2021. It asked that the employing establishment provide further clarification including a daily breakdown regarding the type of leave used, with a daily breakdown of COP, LWOP and work hours during the period in question. By letter dated September 21, 2021, the employing

⁴ *Id.* at 8102(a).

⁵ *Id.* at § 8129(a).

⁶ *Supra* note 4.

⁷ 20 C.F.R. § 10.500(a).

⁸ *Id.* at 10.401(a); *A.B.*, Docket No. 18-1206 (issued March 24, 2021); *K.K.*, Docket No. 19-0978 (issued October 21, 2019); *M.S.*, Docket No. 16-0289 (issued April 21, 2016); *E.V.*, Docket No. 10-1284 (issued February 3, 2011); *L.S.*, 59 ECAB 350, 352-53 (2008).

establishment responded to the request for clarification indicating that appellant was entitled to 63.07 hours of LWOP during the period April 15 through May 30, 2021. OWCP thereafter calculated appellant's overpayment based on the employing establishment's statement that appellant was only entitled to 63.07 hours of LWOP, without receiving the requested clarification from the employing establishment regarding a daily breakdown of the leave used during this period, as well as work hours.

The Board, therefore, finds that the record is unclear as to how OWCP calculated the amount of overpayment. The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated.⁹ Accordingly, the case must be remanded to OWCP to explain its calculations of the overpayment regarding the number of hours of compensation to which appellant is entitled, and her hourly rate. It shall then issue a new preliminary overpayment determination, with an overpayment action request form, a new Form OWCP-20, and instructions for appellant to provide updated supporting documentation. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁰

CONCLUSION

The Board finds that this case is not in posture for a decision.

⁹ See *J.V.*, Docket No. 20-0952 (issued February 2, 2022); *S.H.*, Docket No. 20-1189 (issued January 27, 2021); *Teresa A. Ripley*, 56 ECAB 528 (2005).

¹⁰ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2022 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.

Issued: July 5, 2023
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