

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

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<b>C.G., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 23-1074</b>
	)	<b>Issued: February 27, 2024</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, Tampa, FL,</b>	)	
<b>Employer</b>	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 7, 2023 appellant filed a timely appeal from a July 19, 2023 merit decision 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 OWCP properly calculated that appellant received an overpayment of compensation in the amount of \$6,475.87 for the period April 6, 2017 through April 28, 2018, for which she was without fault, because she was paid compensation at an incorrect weekly pay rate; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$100.00 from appellant's continuing compensation payments every 28 days.

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

## **FACTUAL HISTORY**

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

On February 4, 2017 appellant, then a 54-year-old postal support employee, filed a traumatic injury claim (Form CA-1) alleging that on that date she was hit on the head by a shelf cage door while in the performance of duty. OWCP accepted the claim for a cervical sprain, herniated nucleus pulposus at C5-C6 with radiculopathy, and left rotator cuff sprain. It paid appellant wage-loss compensation on the supplemental rolls from April 6 through September 16, 2017, and on the periodic rolls commencing September 17, 2017.<sup>3</sup>

A July 31, 2017 supplemental rolls payment plate indicated that OWCP paid appellant wage-loss compensation for the period beginning April 6, 2017 at a weekly pay rate of \$910.31. On March 22, 2018 the employing establishment subsequently reported a discrepancy in the pay rate, indicating that the correct weekly pay rate was \$676.84 (base pay rate \$656.80, plus \$20.04 for night differential). It explained that a similar employee, at the same grade/step, working the same schedule at the same facility earned the same. On April 30, 2018 OWCP found that effective February 4, 2017 appellant's weekly pay rate was \$676.84.

By decision dated August 20, 2018, OWCP finalized a preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$8,152.55 for the period April 5, 2017 through April 28, 2018, for which she was without fault, because she was paid compensation at an incorrect weekly pay rate.

Appellant appealed to the Board. By decision dated June 14, 2019, the Board affirmed finding there was an overpayment of compensation as appellant had received an incorrect date-of-injury weekly pay rate for the period April 6, 2017 through April 28, 2018, but set aside the amount of overpayment as the amount of overpayment had not been properly calculated or explained.<sup>4</sup> OWCP was to clarify the calculation of the overpayment and issue a *de novo* decision.

On August 1, 2019 OWCP notified appellant of its preliminary overpayment determination that she had received an overpayment of compensation in the amount of \$5,324.83 for the period April 6, 2017 through April 28, 2018 as she was paid at an inaccurate pay rate. It found that she was without fault in the creation of the overpayment because she did not know, nor could she reasonably have been expected to know, that there was a discrepancy with the reported weekly pay rate and her compensation was paid incorrectly. Computation of overpayment worksheets were provided, which noted the periods and payments at the incorrect pay rate, and which indicated the payment due at the correct pay rate. OWCP provided an overpayment action request form and

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<sup>2</sup> Docket No. 20-0784 (issued May 11, 2021); Docket No. 18-1655 (issued June 14, 2019).

<sup>3</sup> OWCP initially paid appellant compensation for loss of wage-earning capacity. Appellant stopped work on April 28, 2018 and OWCP paid her total temporary disability compensation on the periodic rolls as of April 29, 2018.

<sup>4</sup> Docket No. 18-1655 (issued June 14, 2019).

further notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a preresoupment hearing.

On August 12, 2019 appellant requested a preresoupment hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on December 12, 2019. By decision dated February 12, 2020, an OWCP hearing representative set aside the April 23, 2020 preliminary overpayment determination for additional explanation of OWCP's calculations and a *de novo* decision.

On March 9, 2020 the employing establishment indicated that for the period June 14 through July 21, 2017, appellant received compensation in the amount of \$1,986.88 and for the period August 5, 2017 through April 28, 2018, she received compensation in the amount of \$7,602.48. Wage-earning capacity forms (CA Form 816) indicated that appellant had actual earnings of \$365.91 for the period June 14 to July 21, 2017; \$280.20 for the period July 22 through August 4, 2017; and \$199.33 for the period August 5, 2017 to April 28, 2018.

On April 23, 2020 OWCP notified appellant of its preliminary overpayment determination that she had received an overpayment in the amount of \$834.63 for the period April 6, 2017 through April 28, 2018 due to a discrepancy in the date of injury weekly pay rate. It determined that she received \$21,974.28 at the weekly pay rate of \$910.31 for the period April 6, 2017 through April 28, 2018 but was entitled to \$21,139.65 at the weekly pay rate of \$676.84 for the same period. OWCP indicated that the debt was reduced to reflect the \$1,100.00 already withheld from compensation payments and calculated an overpayment of \$834.63 (\$21,974.28 minus \$21,139.65). It found that appellant was without fault in the creation of the overpayment because she was not aware nor could she reasonable have been expected to know that there was a discrepancy with the reported weekly pay rate.

On April 28, 2020 appellant requested a preresoupment hearing before OWCP's Branch of Hearings and Review. A telephonic hearing was held on November 12, 2020.

By decision dated January 27, 2021, an OWCP hearing representative set aside OWCP's April 23, 2020 preliminary decision for additional explanation of its calculations and a *de novo* decision.

On February 4, 2021 OWCP notified appellant of its preliminary overpayment determination that she had received an overpayment of compensation in the amount of \$2,984.61 for the period April 6, 2017 through April 28, 2018 because she was paid at an incorrect weekly pay rate. It provided calculations. OWCP then subtracted the \$1,100.00 payments previously collected from compensation benefits to reduce the overpayment to \$1,352.16. OWCP also advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. It advised her of her procedural rights.

On February 18, 2021 appellant requested a preresoupment hearing with OWCP's Branch of Hearings and Review.

A telephonic hearing was held on June 10, 2021. By decision dated August 25, 2021, an OWCP hearing representative set aside OWCP's February 4, 2021 preliminary overpayment

determination finding that while the entire date range of the overpayment was correct, there was insufficient explanation and documentation to support how the overpayment amount was calculated.<sup>5</sup> The hearing representative provided OWCP with specific instructions on how to calculate appellant's overpayment of compensation based on the correct lower weekly pay rate versus what she was actually paid with supporting documentation explaining all calculations for the period April 6, 2017 through April 28, 2018.<sup>6</sup> The hearing representative further instructed OWCP to credit appellant for the \$1,100.00 previously collected on the initial declared debt.

In a preliminary determination dated September 8, 2021, OWCP indicated that appellant received an overpayment of \$6,475.87 (\$7,575.87 minus \$1,100.00 paid) for the period April 6, 2017 through April 28, 2018 because an incorrect pay rate was used. It delineated specific periods within the period April 6, 2017 through April 28, 2018 and advised that appellant had received a total of \$21,974.28 at the weekly rate of \$910.81, but was entitled to \$14,398.41 at the weekly rate of \$676.84. The entitlement to wage-loss compensation of \$14,398.41 was based on the following: for the period April 6 through June 13, 2017 appellant was entitled to \$4,447.81 "based on temporary total disability (TTD)"; for the period June 14 through July 21, 2017, \$1,151.25 "based on wage-earning capacity (WEC)"; for the period July 22 through 31, 2017, \$277.18 "based on WEC"; for the period August 1 through 25, 2017, \$812.21 "based on 72 hours"; for the period August 26 through September 1, 2017 "excluded"; for the period September 2 through November 10, 2017, \$2,256.13 "based on 200 hours"; and for the period November 11, 2017 through April 28, 2018, \$5,453.82 "based on 480 hours due to variable work and leave hours." OWCP deducted the \$1,100.00 paid from the overpayment amount of \$7,575.87 and found that the remaining overpayment balance was \$6,475.87. Additionally, it advised that appellant was without fault in the creation of the overpayment as the pay rate used for payment of her compensation benefits was incorrect. OWCP informed appellant of her appeal rights and afforded her 30 days to complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation.

On September 14, 2021 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review.

On April 6, 2023 an OWCP hearing representative scheduled a prerecoupment hearing for May 9, 2023. She also provided appellant with a new Form OWCP-20.

On April 30, 2023 appellant submitted a completed OWCP-20 form dated May 1, 2023. She reported a monthly income of \$2,490.34 and monthly expenses of 3,041.27. She listed

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<sup>5</sup> Specifically, the worksheets for the periods documented entitlement to wage-loss compensation from August 5, 2017 through April 28, 2018, based on actual earnings, but appellant had no actual earnings from August 1 through November 10, 2017, as she was off work due to a heart attack.

<sup>6</sup> This included calculations for the periods of temporary total disability from April 6 through June 13, 2017; her actual earnings from June 14 through July 31, 2017; her entitlement to compensation for four hours per day from August 1 through November 10, 2017, when she had no actual earnings and excluding the period from August 26 through September 1, 2017 when she was on annual leave with no wage loss; and her actual earnings from November 11, 2017 through April 28, 2018.

\$2,455.69 in her checking account and \$85.12 in cash, for a total of \$2,540.81. Financial information was also submitted.

By decision dated July 19, 2023, OWCP's hearing representative finalized its preliminary overpayment determination of September 28, 2021, finding that appellant had received an overpayment of compensation in the amount of \$6,475.87 (\$7,575.87 minus \$1,100.00 paid) for the period April 6, 2017 through April 28, 2018 based on an incorrect weekly pay rate of \$910.31 when the correct weekly pay rate was \$676.84. The hearing representative also found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as her income exceeded her expenses by \$283.40 each month. OWCP required recovery of the overpayment by deducting \$100.00 from appellant's continuing compensation payments every 28 days.

### **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>7</sup> Pay rate for compensation purposes is defined in section 8101(4) as the monthly pay at the time of injury, the time disability begins, or the time disability recurs, if the recurrence is more than six months after returning to full-time work, whichever is greater.<sup>8</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>9</sup>

If the claimant is entitled to compensation for partial wage loss after return to work, the claims examiner should compute entitlement using the *Shadrick* formula and authorize compensation on a 28-day payment cycle.<sup>10</sup>

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

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

The Board previously found that fact of overpayment had been established for the period April 6, 2017 through April 28, 2018 as appellant received compensation based on the weekly pay rate of \$910.31 when she should have received compensation based on the weekly pay rate of \$676.84.<sup>11</sup> Findings made in prior Board decisions are *res judicata* absent further merit review by

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<sup>7</sup> 5 U.S.C. § § 8102(a).

<sup>8</sup> *Id.* at § 8101(4).

<sup>9</sup> *Id.* at § 8129(a).

<sup>10</sup> *See N.C.*, Docket No. 18-1070 (issued January 9, 2019); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

<sup>11</sup> Docket No. 18-1655 (issued June 14, 2019).

OWCP under section 8128 of FECA.<sup>12</sup> The Board, however, remanded the case for OWCP to issue a *de novo* decision explaining its calculation of the amount of the overpayment.<sup>13</sup>

On remand, in a preliminary overpayment determination dated September 8, 2021, OWCP found that the overpayment amount totaled \$6,475.87 (\$7,575.87 minus \$1,100.00 paid) for the period April 6, 2017 through April 28, 2018. It delineated specific time frames within the period April 6, 2017 through April 28, 2018 and advised that appellant had received a total of \$21,974.28, but was entitled to \$14,398.41. OWCP determined that appellant's entitlement to wage-loss compensation of \$14,398.41 was based on the following, without further explanation: for the period April 6 through June 13, 2017 appellant was entitled to \$4,447.81 "based on temporary total disability (TTD)"; for the period June 14 through July 21, 2017, \$1,151.25 "based on wage-earning capacity (WEC)"; for the period July 22 through 31, 2017, \$277.18 "based on WEC"; for the period August 1 through 25, 2017, \$812.21 "based on 72 hours"; for the period August 26 through September 1, 2017 "excluded"; for the period September 2 through November 10, 2017, \$2,256.13 "based on 200 hours"; and for the period November 11, 2017 through April 28, 2018, \$5,453.82 "based on 480 hours due to variable work and leave hours."

OWCP only vaguely noted the basis for its calculations of appellant's entitlement to wage-loss compensation. Therefore, the Board finds that OWCP has not sufficiently explained how it determined the amount of compensation that appellant should have been paid for the period April 6, 2017 through April 28, 2018. The Board has long held that a claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.<sup>14</sup> As OWCP's calculation of the amount of overpayment remains unclear, the case must, therefore, be remanded for OWCP to clarify the amount of compensation to which appellant was entitled, including a detailed explanation of its calculations.<sup>15</sup> It shall then issue a new preliminary overpayment determination with an overpayment action request form, a Form OWCP-20, and instructions for providing updated supporting financial documentation. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision which fully explains its calculations supporting the amount of the overpayment, as previously ordered by the Board.<sup>16</sup>

### CONCLUSION

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

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<sup>12</sup> *M.J.*, Docket No. 20-1565 (issued January 24, 2023); *B.D.*, Docket No. 20-1365 (issued December 21, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

<sup>13</sup> *Supra* note 15.

<sup>14</sup> *See A.J.*, Docket No. 18-1152 (issued April 1, 2019); *J.W.*, Docket No. 15-1163 (issued January 13, 2016); *see also O.R.*, 59 ECAB 432 (2008) with respect to overpayment decisions, OWCP must provide clear reasoning showing how the overpayment was calculated); *see Jenny M. Drost*, 56 ECAB 587 (2005) (to comply with OWCP's overpayment procedures, an overpayment decision must contain a clearly written explanation indicating how the overpayment was calculated).

<sup>15</sup> *See G.K.*, Docket No. 22-0024 (issued June 7, 2022); *A.V.*, Docket No. 21-0887 (issued May 12, 2022).

<sup>16</sup> In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 19, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 27, 2024  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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