

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

T.N., Appellant)
and) Docket No. 25-0594
U.S. POSTAL SERVICE, FREDERICKSBURG)
MAIN POST OFFICE, Fredericksburg, VA,)
Employer)
Issued: August 20, 2025

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 2, 2025 appellant filed a timely appeal from a June 2, 2025 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

ISSUE

The issue is whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,704.85, for which she was without fault, for the period May 6

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the June 2, 2025 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.*

through July 22, 2024, because she continued to receive wage-loss compensation for partial disability following her return to full-duty work.

FACTUAL HISTORY

This case has previously been before the Board on appeal on different issues.³ The facts and circumstances set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On March 19, 2015 appellant, then a 42-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on March 10, 2015 she experienced pain in her right shoulder "after finishing" her route while in the performance of duty. The form indicated that she worked seven days a week "as directed." OWCP accepted the claim for a closed fracture of the acromial end of the right clavicle. It subsequently expanded the acceptance of the claim to include an injury to the muscles/tendons of the right rotator cuff, a temporary aggravation of right shoulder bursitis, and a temporary aggravation of other specified arthropathies of the right shoulder. OWCP paid appellant wage-loss compensation on the supplemental rolls effective April 25, 2015, and on the periodic rolls effective March 6, 2016.

By decision dated November 6, 2023, OWCP reduced appellant's wage-loss compensation effective that date as she had the capacity to earn wages as an administrative assistant. It applied the formula set forth in *Albert C. Shadrick*⁴ to determine appellant's loss of wage-earning capacity (LWEC).

In a letter dated May 4, 2024, appellant related that she was attempting to return to her date-of-injury position as a rural carrier associate. On April 24, 2024 the employing establishment provided appellant with a job offer letter for the position of rural carrier associate effective May 4, 2024. In a letter dated May 6, 2024, OWCP requested that the employing establishment confirm appellant's return to work date.

On May 18, 2024 OWCP paid appellant wage-loss compensation based on her previously established LWEC determination for the period April 21 through May 18, 2024.

On June 4, 2024 the employing establishment directed appellant to report to duty on June 15, 2024.

After extensive development, by decision dated June 13, 2024 the Board reversed OWCP's LWEC determination.⁵

On June 15, 2024 OWCP paid appellant wage-loss compensation in the amount of \$612.00 based on her previously established LWEC determination for the period May 19 through June 15,

³ Docket No. 25-0366 (issued April 11, 2025); Docket No. 24-0370 (issued June 13, 2024); Docket No. 22-0721 (issued September 14, 2022).

⁴ 5 ECAB 376 (1953), codified at 20 C.F.R. § 10.403.

⁵ Docket No. 24-0370 (issued June 13, 2024).

2024 and, on July 23, 2024, OWCP paid appellant wage-loss compensation in the amount of \$612.00 based on her previously established LWEC determination for the period June 16 through July 23, 2024.

In a letter dated July 23, 2024, OWCP requested that the employing establishment confirm appellant's return to work date, salary information, and work. It provided 30 days for a response. On July 26, 2024 the employing establishment provided brief responses to OWCP's queries listing appellant's current salary as \$42,391.00 a year, noting that she had transferred to another facility, and relating that her effective return-to-work date was June 15, 2024.

In a July 30, 2024 memorandum of telephone call (Form CA-110), OWCP related that the employing establishment had reported that appellant returned to work on May 6, 2024 in Mechanicsville, Maryland for a shadow day, and that she was a part-time rural carrier associate with no set schedule.⁶ Her route was evaluated at 8.48 hours and 5 hours on Sunday. Appellant stopped work on May 29, 2024, and began working in Colonial Beach, Virginia on June 15, 2024.

On August 7, 2024 OWCP requested that the employing establishment provide appellant's gross earnings for the period May 6 through 29, 2024 while employed at Mechanicsville, Maryland and her current hourly pay rate and weekly hours worked in Colonial Beach, Virginia. The employing establishment responded on August 13, 2024 and related that appellant had no earnings from May 6 through 29, 2024. It provided her current hourly rate of pay effective June 5, 2024 of \$20.38, and indicated that she worked a variable schedule.

In an August 13, 2024 Form CA-110, the employing establishment related that appellant worked a total of 98.13 hours from May 6 through 29, 2024 earning a total of \$1,999.89.

On August 13, 2024 OWCP calculated that appellant was entitled to wage-loss compensation in the amount of \$15,582.36 due to total disability from work for the period November 6, 2023 through May 5, 2024. It had paid appellant wage-loss compensation based on her wage-earning capacity for November 6, 2023 through May 5, 2024 in the net amount of \$3,895.14. On August 13, 2024 OWCP paid appellant additional net wage-loss compensation in the net amount of \$11,687.22 for the period November 6, 2023 through May 5, 2024.

On August 23, 2024 appellant resigned from the employing establishment, citing health reasons.⁷

On September 3, 2024 OWCP issued a preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$1,704.85, for the period May 6 through July 22, 2024, because she returned to work on May 6, 2024, but continued to receive wage-loss compensation through July 22, 2024. It further notified her of its preliminary finding that she was at fault in the creation of the overpayment as she accepted a payment which she knew or should have known was incorrect. OWCP related that appellant received three

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.3b(2)(e) (March 2011)(part-time flexible employees, like rural carrier associates, do not have a fixed schedule and can work any schedule up to 40 hours per week and are also paid when actually employed).

⁷ Appellant's last day in pay status was August 25, 2024.

electronic funds transfers. Additionally, it provided an overpayment action request form and informed appellant that, within 30 days, she could request a final decision based on the written evidence or a prerecoupment hearing. OWCP requested that she complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation.

On September 11, 2024 appellant requested review of the written evidence by a representative of OWCP's Branch of Hearings and Review. She also submitted a completed Form OWCP-20.

Following a preliminary review, by decision dated November 22, 2024 OWCP's hearing representative set aside the September 3, 2024 preliminary overpayment determination and remanded the case for further development regarding the date that appellant returned to work and in what capacity, given the conflicting information provided by the employing establishment.

In letters dated November 26, 2024, OWCP requested that the Mechanicsville, Maryland and Colonial Beach, Virginia, employing establishments confirm appellant's respective return to work dates and the hours worked.

By a reply dated November 26, 2024, received by OWCP on November 27, 2024, the Colonial Beach, Virginia employing establishment confirmed that appellant began work at the Colonial Beach Post Office on June 15, 2024, and that she worked 105.61 hours from June 15 through August 25, 2024. By reply dated December 2, 2024, received by OWCP on December 6, 2024, the Mechanicsville, Maryland employing establishment confirmed that appellant had worked 4 to 8 hours a day, for a total of 98.8 hours, during the period May 6 through 29, 2024. It noted that appellant was required to have a "Break in Service" to be cleared from the Mechanicsville, Maryland employing establishment payroll in order to begin work at the Colonial Beach Post Office.

On March 6, 2025 OWCP issued a new preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$1,704.85, for the period May 6 through July 22, 2024, because she returned to full-time employment on May 6, 2024, but continued to receive wage-loss compensation through July 22, 2024. It further notified her of its preliminary finding that she was without fault in the creation of the overpayment. Additionally, OWCP provided an overpayment action request form and informed appellant that, within 30 days, she could request a final decision based on the written evidence or a prerecoupment hearing. It requested that she complete an enclosed Form OWCP-20 and submit supporting financial documentation. No response was received.

By decision dated June 2, 2025, OWCP finalized the preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$1,704.85 was created for the period May 6 through July 22, 2024. It determined that there was no compensation entitlement from May 6 through July 22, 2024 as any work stoppage was due to the required "Break in Service" and the work hours assigned were based on the irregular nature of her position and not her work injury. OWCP directed appellant to repay the entire overpayment.

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.⁸ 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.⁹

A claimant is not entitled to receive temporary total disability benefits and actual earnings for the same time period.¹⁰ OWCP regulations provide 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.¹¹

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to establish that appellant received an overpayment of compensation in the amount of \$1,704.85, for which she was without fault, for the period May 6 through July 22, 2024.

The record reflects that OWCP paid appellant wage-loss compensation based on the November 6, 2023 LWEC determination for the period May 6 through July 22, 2024. The Board reversed the November 6, 2023 LWEC determination by decision dated June 13, 2024. However, it is unclear from the record that OWCP reinstated appellant's wage-loss compensation benefits for total disability.

Appellant returned to her date-of-injury position for intermittent periods from May 6 through 29, 2024 and from June 15 through August 25, 2024. OWCP received documentation from the respective employing establishments demonstrating that appellant did not work for the period May 30 through June 14, 2024. The Board finds that OWCP failed to adequately support its determination that appellant received an overpayment as the record does not clearly establish the type of compensation that she received, or her period of employment due to the varying employment dates and hours supplied by the two employing establishments. As OWCP has not factually established that appellant received a payment to which she was not entitled, fact of overpayment has not been established. Therefore, OWCP has not met its burden of proof to establish fact of overpayment.¹²

⁸ *Supra* note 1 at § 8102(a).

⁹ *Id.* at § 8129(a).

¹⁰ See *T.L.*, Docket No. 23-0424 (issued December 28, 2023); *S.S.*, Docket No. 20-0776 (issued March 15, 2021); *C.H.*, Docket No. 19-1470 (issued January 24, 2020); *L.S.*, 59 ECAB 350 (2008).

¹¹ *T.L.*, *id.*; *S.S.*, *id.*; *C.H.*, *id.*; Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1a (September 2020).

¹² *C.N.*, Docket No. 24-0549 (issued April 2, 2025); *T.M.*, Docket No. 20-0967 (issued April 12, 2020).

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to establish that appellant received an overpayment in the amount of \$1,704.85, for which she was without fault, for the period May 6 through July 22, 2024.¹³

ORDER

IT IS HEREBY ORDERED THAT the June 2, 2025 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 20, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹³ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.