

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

V.T., Appellant

and

**U.S. POSTAL SERVICE, POINT BREEZE
STATION, Philadelphia, PA, Employer**

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) **Docket No. 22-1036**
) **Issued: February 13, 2025**
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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 June 27, 2022, appellant filed a timely appeal from April 25 and May 23, 2022 merit decisions 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

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish disability from work for the period February 27 through March 11, 2022, causally related to her accepted employment injury; (2) whether appellant received an overpayment of compensation in the amount of \$2,870.78 because she received duplicate wage-loss compensation payments for the period

¹ 5 U.S.C. § 8101 *et seq.*

² By order dated December 26, 2024, the Board gave OWCP leave to produce the complete case record or show reason why the Director could not comply. *Order to Complete the Record within 30 Days*, Docket No. 22-1036 (issued December 26, 2024).

June 21 through July 18, 2020; and (3) whether OWCP properly determined that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

FACTUAL HISTORY

On September 12, 2019, appellant, then a 51-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained plantar fasciitis and a bone spur due to her repetitive work duties, including standing and walking several hours per day. She noted that she first became aware of her conditions on August 20, 2019, and realized their relationship to her federal employment on August 28, 2019. Appellant stopped work on August 20, 2019. On November 19, 2019, OWCP accepted the claim for right plantar fascial fibromatosis and right foot calcaneal spur. It paid appellant wage-loss compensation on the supplemental rolls effective August 22, 2019, and on the periodic rolls effective January 5, 2020.³ The case record indicates that appellant received her compensation payments *via* paper check.

On August 12, 2020, appellant informed OWCP that she had not received her periodic rolls payment for wage-loss during the period June 21 through July 18, 2020. OWCP advised her to report the missing payment in writing so that it could initiate a tracer on the paper check.

On August 14, 2020, OWCP received a letter dated July 30, 2020 in which appellant again noted that she had not received her periodic rolls payment for wage loss during the period June 21 through July 18, 2020. Appellant requested that OWCP stop payment and issue a new paper check in the amount of \$2,870.78 for the period June 21 through July 18, 2020.

On August 17, 2020, a tracer regarding the missing compensation payment was initiated by OWCP. In fiscal worksheet dated August 28, 2020, OWCP noted that it was “[r]eissuing a lost check as the check was marked as cancelled in compensation history and a fiscal note dated 8/27/20, shows that the money was again available for release.”

On September 4, 2020, OWCP issued appellant a supplemental rolls direct payment replacement check in the amount of \$2,870.78 for wage-loss compensation for the period June 21 through July 18, 2020. The reverse side of the paper check shows appellant’s endorsement, notes “for deposit only,” and includes bank markings indicating that the paper check was negotiated on September 14, 2020.

On June 21, 2021, appellant returned to full-time, limited-duty work at the employing establishment.

On October 1, 2021, OWCP found that the July 18, 2020 compensation check in the amount of \$2,870.78 for the period June 21 through July 18, 2020 “was cancelled [and] then cashed” by appellant. It determined that a debt had been created “when [it] posted the payment over cancellation.”

³ Appellant’s net wage-loss compensation payments from January 5 through September 12, 2020 were in the amount of \$2,870.78.

In a preliminary overpayment determination dated October 4, 2021, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$2,870.78 because she received duplicate wage-loss compensation payments for the period June 21 through July 18, 2020. It noted that its calculation was based on the difference between what was paid and what should have been paid. OWCP found that appellant received two paper compensation checks for the period June 21 through July 18, 2020, each totaling \$2,870.78, when she was only entitled to receive one compensation check in the amount of \$2,870.78 for that period. It further advised her of its preliminary determination that she was without fault in the creation of the overpayment because she had not been informed that cashing both payments for the same period would create an overpayment. OWCP requested that appellant complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, it informed her that, within 30 days, she could request a final decision based on the written evidence or a prerecoumment hearing.

In an overpayment action request form dated November 1, 2021, appellant requested a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review. She also requested waiver of recovery of the overpayment. Appellant submitted a completed Form OWCP-20 dated November 1, 2021 listing total monthly income of \$3,300.00 and total monthly expenses of \$3,970.00. She indicated that she had no assets. Appellant contended that repayment of the overpayment would cause severe financial hardship.

Following a preliminary review, by decision dated February 28, 2022, an OWCP hearing representative vacated the October 4, 2021 preliminary overpayment determination, finding that the case was not in posture for a prerecoumment hearing. The case was remanded for OWCP to explain its calculations regarding the amount of the overpayment. The hearing representative further found that appellant was at fault in creation of the overpayment as the evidence of record established that she was aware that she was entitled to receive only one compensation payment for the period June 21 through July 18, 2020. The hearing representative noted that, upon return of the case file, OWCP should issue a new preliminary overpayment determination explaining its calculation of the overpayment and declaring that appellant was at fault in creation of the overpayment.

OWCP subsequently received a March 9, 2022 form report from a healthcare provider with an illegible signature. The report noted that appellant had been off work since March 1, 2022 and that she may work with restrictions for four hours per day as of the date of the report.

On March 17, 2022, appellant filed claims for compensation (Form CA-7) for disability from work for the period February 12 through March 11, 2022.

OWCP subsequently paid appellant wage-loss compensation on the supplemental rolls for the period February 12 through 26, 2022.

In a development letter dated March 21, 2022, OWCP informed appellant of the deficiencies of her disability claim. It advised her of the type of additional medical evidence needed and afforded appellant 30 days to submit the necessary evidence.

In a preliminary overpayment determination dated April 13, 2022, OWCP again notified appellant that she had received an overpayment of compensation in the amount of \$2,870.78 because she received duplicate wage-loss compensation payments for the period June 21 through July 18, 2020. It related that on July 18, 2020 she was issued a compensation check in the amount of \$2,870.78 for the period June 21 through July 18, 2020. After appellant reported that she had not received the July 18, 2020 check, OWCP issued a replacement check on September 4, 2020, in the amount of \$2,870.78 for the same period. It provided its calculation of the overpayment and found that she was at fault in the creation of the overpayment because she accepted a payment that she knew or reasonably should have known, to be incorrect. OWCP provided appellant with an overpayment action request form and a Form OWCP-20 for her completion. It again requested that she provide documentation including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records which supported income and expenses listed, and allotted 30 days for her to respond. Additionally, OWCP again informed appellant that, within 30 days, she could request a final decision based on the written evidence or a prerecoupment hearing. No response was received.

By decision dated April 25, 2022, OWCP denied appellant's claim for compensation for disability from work for the period February 27 through March 11, 2022. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period due to her accepted employment injury. OWCP noted that appellant had not responded to its March 21, 2022 development letter.

By decision dated May 23, 2022, OWCP finalized the April 13, 2022 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$2,870.78 as she had received duplicate compensation payments for the period June 21 through July 18, 2020. Additionally, it found that she was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. OWCP required recovery of the overpayment in full within 30 days.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁶ For each period of disability claimed, the employee has the

⁴ *Supra* note 1.

⁵ See *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁷

Whether a particular injury causes an employee to become disabled from work and the duration of that disability, are medical issues that must be proven by a preponderance of the reliable, probative, and substantial medical evidence.⁸ The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the specific employment factors identified by the claimant.⁹

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish disability from work for the period February 27 through March 11, 2022, causally related to her accepted employment injury.

In support of her claim for compensation, appellant submitted a March 9, 2022 form report from a healthcare provider with an illegible signature, which indicated that appellant had been off work since March 1, 2022 and that she may work with restrictions, four hours per day as of the date of the report. However, the Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.¹¹ Thus, this report is insufficient to establish appellant's disability claim.

As the medical evidence of record is insufficient to establish disability from work during the claimed period due to her accepted employment injury, the Board finds that she has not met her burden of proof.

⁷ T.W., Docket No. 19-1286 (issued January 13, 2020).

⁸ A.S., Docket No. 20-0406 (issued August 18, 2021); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁹ T.L., Docket No. 20-0978 (issued August 2, 2021); V.A., Docket No. 19-1123 (issued October 29, 2019).

¹⁰ See C.T., Docket No. 20-0786 (issued August 20, 2021); M.J., Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹¹ See J.E., Docket No. 22-0683 (issued November 10, 2022); M.A., Docket No. 19-1551 (issued April 30, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

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.¹² 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.¹³

OWCP's procedures explain that an overpayment is created if the claimant is determined not to be entitled to compensation already paid.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP failed to meet its burden of proof to establish an overpayment of compensation in the amount of \$2,870.78 for the period June 21 through July 18, 2020.

On August 14, 2020, appellant advised OWCP in writing that she had not received her periodic rolls payment of wage-loss compensation for the period June 21 through July 18, 2020. She requested that OWCP stop payment and issue a new paper check in the amount of \$2,870.78 for the period June 21 through July 18, 2020. On August 17, 2020, a tracer regarding the missing compensation payment was initiated by OWCP. In fiscal worksheet dated August 28, 2020, OWCP noted that it was "[r]eissuing a lost check as the check was marked as cancelled in compensation history and a fiscal note dated 8/27/20, shows that the money was again available for release."

The case record provided to the Board includes a September 4, 2020 supplemental rolls direct payment replacement check in the amount of \$2,870.78 for wage-loss compensation for the period June 21 through July 18, 2020. The reverse side of the paper check shows appellant's endorsement, notes "for deposit only," and includes bank markings indicating that the paper check was negotiated on September 14, 2020. OWCP, however, has not established that appellant ever received the initial periodic rolls payment for the period June 21 through July 18, 2020, as OWCP's payment records indicate that it was cancelled. The evidence of record therefore does not establish that she received an overpayment of compensation in the amount of \$2,870.78 for the period June 21 through July 18, 2020.

¹² 5 U.S.C. § 8102(a).

¹³ *Id.* at § 8129(a).

¹⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1 (September 2020).

Accordingly, the Board finds that OWCP failed to meet its burden of proof.¹⁵

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work for the period February 27 through March 11, 2022, causally related to her accepted employment injury. The Board further finds that OWCP has not established that she received an overpayment of compensation in the amount of \$2,870.78 for the period June 21 through July 18, 2020.

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2022 decision of the Office of Workers' Compensation Programs is affirmed. The May 23, 2022 decision is reversed.

Issued: February 13, 2025
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

¹⁵ In light of the Board's disposition of Issue 2, Issue 3 is rendered moot.