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<b>T.W., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 25-0406</b>
	)	<b>Issued: June 3, 2025</b>
<b>U.S. POSTAL SERVICE, SAPULPA POST</b>	)	
<b>OFFICE, Sapulpa, OK, Employer</b>	)	
	)	

*Alan J. Shapiro, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

## DECISION AND ORDER

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

## JURISDICTION

On March 21, 2025 appellant, through counsel, filed a timely appeal from a February 28, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the February 28, 2025 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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 \$15,971.86 during the period May 7 through August 10, 2024 because he continued to receive wage-loss compensation for total disability following his return to work; and (2) whether OWCP properly determined that appellant was at fault in creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

## **FACTUAL HISTORY**

On April 26, 2021 appellant, then a 47-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that he developed a shoulder condition due to factors of his federal employment, including continuous pulling and lifting trays of mail and packages. He noted that he first became aware of his condition and realized its relation to his federal employment on April 17, 2021. OWCP accepted the claim for aggravation of bursitis of the shoulders and impingement syndrome of the shoulders.<sup>4</sup>

OWCP paid appellant wage-loss compensation on the supplemental rolls, effective November 19, 2022, and on the periodic rolls, effective March 26, 2023.

On October 16, 2023 appellant underwent OWCP-authorized revision of a recurrent, retracted, full-thickness right rotator cuff tear with removal of deep orthopedic implants, bio-inductive augmentation of the right rotator cuff, and arthroscopic debridement of a degenerative anterior labral tear. OWCP continued to pay appellant wage-loss compensation for total disability on the periodic rolls.

In a May 1, 2024 report, Dr. M. Stephen Wilson, Board-certified in physiatry and pain medicine, diagnosed bursitis and impingement of the shoulders, status post right rotator cuff repair revision, and left rotator cuff tear. He returned appellant to work effective May 7, 2024 for no more than two consecutive days a week, with restrictions against continuous lifting more than 15 pounds, intermittent lifting over 20 pounds, and no overhead lifting.

In a June 7, 2024 report, Dr. Wilson noted that appellant had returned to work for two days a week. He renewed prior work restrictions.

In an August 9, 2024 report of work status (Form CA-3), the employing establishment indicated that appellant returned to full-time modified-duty work with restrictions on May 7, 2024. The employing establishment indicated that no job offer was provided, and that neither appellant nor his work unit notified management of his return to work.

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<sup>4</sup> On October 7, 2022 appellant underwent OWCP-authorized arthroscopic repair of a high-grade, partial-thickness tear of the right rotator cuff.

An August 12, 2024 overpayment referral memorandum indicates that OWCP terminated appellant's compensation as he had returned to full-time work as noted on the August 9, 2024 Form CA-3.<sup>5</sup>

In an October 1, 2024 memorandum of telephone call (Form CA-110), appellant notified OWCP that he was working part-time light duty with restrictions and was "not being paid for time he is not working." OWCP advised appellant to file a claim for compensation (Form CA-7) with a time analysis form (Form CA-7a).

OWCP received copies of cancelled paper wage-loss compensation checks for the following periods, each in the amount of \$4,658.46: April 21 through May 18, 2024; May 19 through June 15, 2024; June 16 through July 13, 2024; and July 14 through August 10, 2024.

In a preliminary overpayment determination dated October 9, 2024, OWCP notified appellant of its preliminary finding that he had received an overpayment of compensation in the amount of \$15,971.86 for the period May 7 through August 10, 2024, because he continued to receive wage-loss compensation payments following his return to full-time work. It also advised appellant of its preliminary determination that he was at fault in the creation of the overpayment as he cashed compensation checks which covered the periods he had worked. OWCP provided him with an overpayment action request form and notified him that, within 30 days of the date of the letter, he could request a final decision based on the written evidence, or a prerecoupment hearing. It requested that appellant complete and return an overpayment recovery questionnaire (Form OWCP-20) within 30 days. OWCP also requested that he 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.

In an October 9, 2024 memorandum of claimant response, appellant alleged that the October 9, 2024 preliminary notice of overpayment was inaccurate as he had not returned to full-time work and had not been paid for a period of months.

Thereafter, OWCP received reports dated September 20 and October 18, 2024, wherein Dr. Wilson increased appellant's work schedule from two days a week to four days a week with restrictions.

In an overpayment action request form dated October 18, 2024, appellant disagreed with the overpayment and requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review.

In an overpayment action request form dated October 24, 2024, appellant asserted that he had not been released to full duty and had not been paid compensation for work absences.

OWCP received a completed Form OWCP-20 by appellant on October 24, 2024 wherein he reported total monthly income of \$5,000.00, total monthly expenses of \$4,900.00, and total assets of \$495.00. Appellant asserted that he submitted monthly medical reports to the employing establishment describing his ongoing restrictions but that he was miscoded as full time. He alleged

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<sup>5</sup> The payment records indicate that the termination was effective on August 10, 2024.

that the employing establishment deliberately misrepresented his work status to OWCP as it had informed him prior to the October 16, 2023 surgery that he would no longer receive wage-loss compensation following the procedure.

A prerecoupment hearing was held before a representative of OWCP's Branch of Hearings and Review on December 18, 2024. Appellant testified that he returned to work in May 2024 for only two days a week and later increased his work schedule to only four days a week.

In a February 10, 2025 statement, appellant listed \$5,350.00 in monthly expenses and \$4,609.52 in monthly income. No supporting financial documentation was received.

By decision issued February 28, 2025, OWCP's hearing representative finalized the October 9, 2024 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$15,971.86 for the period May 7 through August 10, 2024, because he continued to receive wage-loss compensation for total disability following his return to full-time work. She found appellant at fault in creation of the overpayment and required recovery by payment in full within 30 days.<sup>6</sup>

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

Section 8102(a) of FECA<sup>7</sup> 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>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>

A claimant is not entitled to receive temporary total disability benefits and actual earnings for the same time period.<sup>10</sup> OWCP's procedures provide that compensation for wage loss due to

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<sup>6</sup> With respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *See S.I.*, Docket No. 25-0397 (issued April 17, 2025); *A.B.*, Docket No. 18-0915 (issued October 24, 2018); *Miguel A. Muniz*, 54 ECAB 217 (2002). As appellant was not in receipt of continuing compensation at the time of OWCP's overpayment determination, the Board does not have jurisdiction over the method of recovery of the overpayment in this case. *See Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

<sup>7</sup> *Supra* note 2 at § 8102(a).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at § 8129(a).

<sup>10</sup> *See M.B.*, Docket No. 24-0908 (issued February 3, 2025); *K.A.*, Docket No. 25-0127 (issued December 11, 2024); *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).

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.<sup>11</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation, because he continued to receive wage-loss compensation for total disability following his return to work.

The case record establishes that appellant returned to modified duty effective May 7, 2024. However, it continued to pay appellant wage-loss compensation through August 10, 2024. As noted, a claimant is not entitled to receive wage-loss compensation benefits and actual earnings for the same time period.<sup>12</sup> Accordingly, the Board finds that OWCP has established fact of overpayment.<sup>13</sup>

The Board further finds, however, that the case is not in posture for decision with regard to the period and amount of the overpayment. Appellant's statements, his testimony during the oral hearing, and Dr. Wilson's medical reports, indicate that appellant began working only two days a week with restrictions effective May 7, 2024. However, the employing establishment, in its August 9, 2024 Form CA-3, asserted that appellant had returned to full-time work effective May 7, 2024.

Therefore, it remains unclear whether appellant was entitled to some wage-loss compensation during the period at issue. Accordingly, the Board finds that the case must be remanded to OWCP for further development with regard to the period and amount of the overpayment.<sup>14</sup> On remand, OWCP shall obtain additional information from the employing establishment regarding whether appellant worked full time or part time, and the dates and hours worked, during the period at issue. It shall then determine the correct period and recalculate the amount of the overpayment of compensation, followed by 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. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>15</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation, because he received FECA wage-loss compensation for total disability following

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<sup>11</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1a (September 2020); *see also M.B., id.; K.A., id.; T.L., id.; S.S., id.; C.H., id.*

<sup>12</sup> *See T.H.*, Docket No. 23-0194 (issued July 17, 2023); *A.C.*, Docket No. 22-0118 (issued December 15, 2022).

<sup>13</sup> *Supra* note 9.

<sup>14</sup> *See T.P.*, Docket No. 22-0608 (issued January 31, 2025).

<sup>15</sup> *Id.*

his return to work. The Board further finds, however, that the case is not in posture for decision with regard to the period and amount of the overpayment.<sup>16</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 28, 2025 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 3, 2025  
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

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