

On April 30, 2000 appellant, then a 60-year-old store cashier, filed an occupational disease claim alleging that she sustained bilateral arm tendinitis due to the repetitive duties of her job. She stopped work on December 2, 1999 and returned to limited-duty work as a modified

store cashier for the employing establishment on February 19, 2000 for six hours per day. The Office accepted that appellant sustained bilateral epicondylitis and paid appropriate compensation for periods of disability.¹ By decision dated June 21, 2001, it adjusted appellant's compensation effective May 20, 2001 based on her actual earnings as a modified store cashier at the employing establishment. In a Form EN1032 signed on June 17, 2002, appellant indicated that she was receiving SSA benefits based on federal and private employment.²

By notice dated May 17, 2005, the Office advised appellant of its preliminary determination that she received a \$7,561.93 overpayment of compensation. Regarding the creation of the overpayment, the Office stated: "The overpayment occurred because compensation payments from June 1, 2001 to May 13, 2005 were not adjusted for the Federal Employees' Retirement System [FERS] component of [SSA] benefits. A total of \$7,561.93 should have been offset from compensation payments." The Office also advised appellant of its preliminary determination that she was not at fault in the creation of the overpayment. It noted that, if appellant wished to request waiver of the overpayment, one of her options was to request (within 30 days) a prerecoupment hearing before a representative of the Office's Branch of Hearings and Review. The Office advised appellant that no matter what course of action she chose, she should complete an enclosed financial information questionnaire and return it to the Office within 30 days.

The record contains several documents pertaining to the calculations the Office made to determine that appellant received a \$7,561.93 overpayment of compensation.³ In a form completed on March 3, 2005, an SSA official indicated that appellant became entitled to SSA retirement benefits on June 2001. The official noted that effective June 2001 appellant had an "SSA rate with FERS" of \$377.70 and an "SSA rate without FERS" of \$182.80; that effective December 2001 the respective figures for these two categories were \$387.50 and \$187.50; that effective December 2002 they were \$410.60 and \$190.10; that effective December 2003 they were \$427.50 and \$194.10; and that effective December 2004 they were \$444.60 and \$199.30.

These documents include various Office worksheets which contain calculations for the differences between the "SSA rate with FERS" and "SSA rate without FERS" figures for the effective dates June 1 and December 1, 2001, December 1, 2002, December 1, 2003 and December 1, 2004. For each of these dates, these figures were converted from monthly to 28-day figures and labeled as "FERS Offsets." These calculation sheets list varying figures for overpayments of compensation. One of the calculation sheets lists no overpayment next to the effective date June 1, 2001, a \$1,175.83 overpayment next to December 1, 2001, a \$2,406.59 overpayment next to December 1, 2002, a \$2,653.27 overpayment next to December 1, 2003 and a \$1,326.24 overpayment next to December 1, 2004.

¹ By decision dated June 21, 2001, the Office adjusted appellant's compensation effective May 20, 2001 based on her actual earnings. In a (Form EN1032) signed on June 17, 2002, appellant indicated that she was receiving Social Security Administration (SSA) benefits based on federal and private employment.

² Appellant would have turned 62 years old on May 23, 2001.

³ The Board notes that it is unclear whether these documents were attached to the May 17, 2005 notice.

Appellant completed the financial information questionnaire on June 6, 2005 and requested waiver of the overpayment and a prerecoupment hearing before a representative of the Office's Branch of Hearings and Review.⁴

At the April 11, 2006 prerecoupment hearing, appellant discussed her financial situation and argued that she should not have to repay the overpayment because she was not at fault in its creation.

In a decision dated and finalized June 19, 2006, the Office hearing representative finalized the preliminary determination that appellant received a \$7,561.93 overpayment of compensation because compensation payments from June 1, 2001 to May 13, 2005 were not adjusted for FERS component of SSA benefits. The hearing representative also finalized the preliminary determination that appellant was not at fault in the creation of the overpayment, but determined that waiver of the overpayment was denied because recovery would not defeat the purpose of the Federal Employees' Compensation Act or be against equity and good conscience.⁵

LEGAL PRECEDENT

In determining matters concerning an employee's receipt of compensation, the Office is required by statute and regulation to make findings of fact.⁶ Office procedure further specifies that a final decision of the Office must include findings of fact and provide clear reasoning which allows the claimant to "understand the precise defect of the claim and the kind of evidence which would tend to overcome it."⁷ These requirements are supported by Board precedent.⁸

ANALYSIS

The Board finds that the Office has not adequately explained the basis for its determination that appellant received an overpayment of compensation and for its determination that the overpayment totaled \$7,561.53. The Office indicated that appellant received a \$7,561.93 overpayment of compensation because compensation payments from June 1, 2001 to May 13, 2005 were not adjusted for the FERS component of SSA benefits. However, it did not explain the basis for this determination. It did not explain how Office benefits are affected by the adjustment for the FERS component of SSA benefits. The record only contains one brief document from the SSA. In a form completed on March 3, 2005, an SSA official indicated that

⁴ Appellant listed \$5,499.00 in monthly income, \$4,564.00 in monthly expenses and \$87,149.00 in assets.

⁵ The hearing representative indicated that appellant would not experience severe financial hardship repaying the overpayment because her monthly income exceeded her monthly expenses by more than \$500.00 and stated that she had not given up a valuable right or changed her position for the worse in reliance on her payments.

⁶ 5 U.S.C. § 8124(a) provides: "The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of the Office "shall contain findings of fact and a statement of reasons."

⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

⁸ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

appellant became entitled to SSA retirement benefits on June 2001 and listed figures for an “SSA rate with FERS” and an “SSA rate without FERS” at various dates.

The Office then apparently used the figures from this form to calculate the amount of overpayment, but the rationale for the Office’s calculations is not evident from an examination of its worksheets. For example, in one worksheet, it listed no overpayment next to the effective date June 1, 2001, a \$1,175.83 overpayment next to December 1, 2001, a \$2,406.59 overpayment next to December 1, 2002, a \$2,653.27 overpayment next to December 1, 2003 and a \$1,326.24 overpayment next to December 1, 2004. Although these individual overpayment figures add up to \$7,561.53, it is not clear how each of the overpayment figures was determined. Nor is it clear what precise periods are covered by these overpayment figures or why other worksheets in the record contain different overpayment figures associated with the same dates.

Under these circumstances, the Office’s decision does not include findings of fact and provide clear reasoning such that appellant might understand the precise defect of the claim and the kind of evidence which would tend to overcome it.⁹ Therefore, the case will be remanded to the Office for a more detailed explanation regarding the basis for its determinations regarding the fact and amount of the alleged overpayment. Given that the case is not in posture for decision regarding the fact and amount of the overpayment, it is premature for the Board to consider the second issue of the present case, *i.e.*, whether the Office properly denied appellant’s request for waiver of the overpayment. After the Office has made a reasoned determination regarding the fact and amount of the overpayment, it should then make a determination on appellant’s waiver request under the relevant standards of the Act. After such development it deems necessary, the Office should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant received a \$7,561.93 overpayment of compensation for the period June 1, 2001 to May 13, 2005 and that the case shall be remanded to the Office for further development regarding this matter. Given this disposition regarding the fact and amount of the overpayment, the Board finds that it is premature to consider whether the Office abused its discretion by refusing to waive recovery of the overpayment.

⁹ See *supra* note 7 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' June 19, 2006 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: January 9, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board