

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

C.B., Appellant)

and)

DEPARTMENT OF THE ARMY,)
CARL R. DARNALL MEDICAL CENTER,)
Fort Hood, TX, Employer)

**Docket No. 11-219
Issued: August 16, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 1, 2010 appellant timely appealed the October 13, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which found that she received an overpayment of compensation. Pursuant to the Federal Employees' Compensation Act (FECA)¹ 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 appellant received an overpayment of \$1,348.97 for the period July 20 to 31, 2010; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly decided to withhold \$200.00 every 28 days from appellant's continuing compensation.

¹ 5 U.S.C. §§ 8101-8193 (2006).

FACTUAL HISTORY

Appellant, a 63-year-old clinical nurse, sustained a right knee injury in the performance of duty on September 13, 2003. OWCP accepted her claim for right knee strain and internal derangement. Appellant sustained a recurrence of disability beginning March 9, 2005. OWCP paid wage-loss compensation and placed her on the periodic compensation rolls. On October 28, 2005 appellant underwent right knee arthroscopic surgery, which OWCP authorized. She received compensation for temporary total disability following her March 9, 2005 recurrence of disability.

On July 1, 2010 appellant accepted a modified limited-duty job offer as a nurse. On July 22, 2010 the employing establishment advised OWCP that she returned to work full time effective July 20, 2010. On July 31, 2010 OWCP disbursed a periodic rolls disability payment for the 28-day period July 4 to 31, 2010.²

On August 11, 2010 OWCP advised appellant that it was reducing her monetary compensation based on her actual weekly earnings as a modified nurse (\$1,004.85) effective July 20, 2010. Appellant's job paid less than what she previously earned in her date-of-injury position.

On September 2, 2010 OWCP issued a preliminary determination finding that it overpaid appellant \$1,348.97 for the period July 20 to 31, 2010. It explained that the overpayment was the result of receiving wage-loss compensation following her July 20, 2010 return to work. Appellant was not considered at fault with respect to the overpayment. OWCP explained her available options should she wish to challenge the preliminary determination and/or request waiver of recovery of the overpayment. Additionally, it provided an overpayment recovery questionnaire (Form OWCP-20). However, appellant did not respond within the allotted 30-day time frame.

In a decision dated October 13, 2010, OWCP finalized its preliminary determination that appellant received a \$1,348.97 overpayment. It declined to waive recovery of the overpayment, noting that she had not submitted any information that would justify waiver of recovery. Additionally, OWCP imposed a repayment schedule of \$200.00 to be withheld every 28 days from appellant's continuing compensation payments beginning October 24, 2010. Based on its calculation, the overpayment would be fully absorbed on or about April 10, 2011.

LEGAL PRECEDENT -- ISSUE 1

Section 8116 of FECA defines the limitations on the right to receive compensation benefits.³ This section of FECA provides that, if an employee returns to work and has earnings, she is not entitled to receipt of temporary total disability benefits and actual earnings for the same time period.⁴ Where there are actual earnings and the continued receipt of wage-loss

² OWCP's internal report of payment included the notation that appellant had returned to work on July 20, 2010.

³ 5 U.S.C. § 8116.

⁴ See also 20 C.F.R. § 10.403(a), (c) (2010); *Daniel Renard*, 51 ECAB 466, 469 (2000).

compensation for temporary total disability for the same period, an overpayment of benefits exists.

ANALYSIS -- ISSUE 1

In her application for review (Form AB-1) appellant acknowledged that she probably owed OWCP some money, but she thought the \$1,348.97 overpayment seemed “kind of high.” She further indicated that she would like to know how that amount was determined. Appellant also stated that she was not permitted to work on July 21 and 22, 2010 because of a requirement (“CPR”) imposed by her employer, which it later waived. Presumably, she believes that she is entitled to wage-loss compensation for OWCP for the two days her employer prohibited her from working.

With respect to appellant’s first argument, OWCP calculated the \$1,348.97 overpayment by taking the 28-day net payment (\$4,957.80) for the period July 4 to 31, 2010 and subtracting the 16 days of disability compensation (\$2,833.03) she was actually entitled to. Thus, appellant received \$2,124.77 in total disability compensation that she was not entitled to for the 12-day period July 20 to 31, 2010. However, because her actual earnings as of July 20, 2010 were less than her preinjury earnings, OWCP calculated her loss of wage-earning capacity as explained in its August 11, 2010 correspondence. Based on the loss of wage-earning capacity, OWCP determined that appellant was entitled to \$775.80 for the period July 20 to 31, 2010. Accordingly, it reduced the \$2,124.77 in overpaid disability compensation by the \$775.80 appellant was entitled to because of her loss in wage-earning capacity. OWCP properly declared the balance of \$1,348.97 an overpayment of benefits for the period July 20 to 31, 2010.

As to appellant’s second argument, while she claimed not to have worked on July 21 and 22, 2010, there is nothing in the record as of October 13, 2010 that would substantiate her claim nor is there anything to suggest that her inability to work was due to her September 13, 2003 employment injury. Accordingly, the Board concurs with OWCP’s findings regarding the fact and amount of overpayment. The Board also concurs with OWCP’s finding that appellant was without fault.

LEGAL PRECEDENT -- ISSUE 2

An individual who is without fault in creating or accepting an overpayment is nonetheless subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.⁵ Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a current or former beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of her current income, including compensation benefits, to meet current ordinary and necessary living expenses and the beneficiary’s assets do not exceed a specified amount as determined by

⁵ 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

OWCP.⁶ Additionally, recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when any individual, in reliance on such payment or on notice that such payments would be made, relinquished a valuable right or changed her position for the worse.⁷

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP.⁸ This information is necessary for determining whether a waiver of recovery of the overpayment is warranted.⁹ The information will also be used to determine an appropriate repayment schedule, if necessary.¹⁰ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹¹

ANALYSIS -- ISSUE 2

OWCP found that appellant was not entitled to waiver of recovery essentially because she had not submitted an overpayment recovery questionnaire (OWCP-20) with supporting financial documentation. Although appellant received ample opportunity to submit the requisite financial information, she did not comply with OWCP's September 2, 2010 request. As noted, a failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹² Consequently, OWCP properly denied waiver of recovery of the \$1,348.97 overpayment.

LEGAL PRECEDENT -- ISSUE 3

When an overpayment has been made to an individual who is entitled to further payments and no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors so as to minimize any hardship.¹³

⁶ 20 C.F.R. § 10.436(a), (b). For an individual with no eligible dependents the asset base is \$4,800.00. The base increases to \$8,000.00 for an individual with a spouse or one dependent, plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(b) (June 2009).

⁷ 20 C.F.R. § 10.437(a), (b).

⁸ *Id.* at § 10.438(a).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at § 10.438(b).

¹² *Id.*

¹³ *Id.* at § 10.441(a).

ANALYSIS -- ISSUE 3

With respect to OWCP's decision to deduct \$200.00 every 28 days from appellant's continuing compensation, the Board finds that such a repayment schedule is appropriate. In her AB-1 form, appellant claimed that a \$200.00 a month deduction was hard to deal with. She also claimed to have incurred a lot more expenses since returning to work. However, appellant did not submit the requested financial information that might have otherwise justified a waiver of recovery or perhaps a lesser repayment schedule. Under the circumstances, the Board finds that OWCP reasonably imposed a repayment schedule of \$200.00 every 28 days.

CONCLUSION

Appellant received an overpayment of \$1,348.97 for the period July 20 to 31, 2010. Although she was without fault in creating the overpayment, she is not entitled to waiver of recovery. The Board further finds that OWCP reasonably imposed a repayment schedule of \$200.00 every 28 days to be withheld from appellant's continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the October 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 16, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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