

² The Board notes that appellant is only appealing OWCP's November 6, 2013 decision. Although the Board has jurisdiction over OWCP's November 7, 2013 merit decision, appellant has not appealed this decision, which found that his actual earnings as a security assistant (dispatcher) fairly and reasonably represent his wage-earning capacity. Therefore, the Board has not addressed it on this appeal. See 20 C.F.R. § 501.3(a), (c).

discretion in denying waiver of recovery of the overpayment; and (3) whether OWCP properly directed recovery of the overpayment from appellant's schedule award compensation.

On appeal, appellant contends that he was not at fault in the creation of the overpayment of compensation as he informed OWCP about his return to work.

FACTUAL HISTORY

OWCP accepted that on October 26, 2011 appellant, a 47-year-old police officer, sustained a ruptured Achilles tendon in the right foot while assisting with a code blue situation. He stopped work on October 27, 2011. Appellant underwent surgery performed on November 3, 2011.

On February 25, 2013 appellant returned to work as a full-time security assistant (dispatcher) at the employing establishment.

OWCP advised appellant, on March 5, 2013, of its preliminary determination that appellant had received an overpayment of compensation in the amount of \$1,026.91 from February 25 through March 9, 2013 because he continued to receive compensation after his return to work. It explained the calculation of the overpayment and found that he was at fault in its creation because he was aware or should have reasonably been aware that he was not entitled to receive wage-loss benefits after returning to full-time work. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents. Additionally, it notified him that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence or a prerecoupment hearing.

On April 4, 2013 appellant requested a telephone prerecoupment hearing before an OWCP hearing representative. He contended that the overpayment occurred through no fault of his own and requested a waiver of repayment. Appellant stated that he was advised by the human resources department that it had informed OWCP about his return to work. He stated that he had no idea about the amount of compensation he was supposed to receive in his March 2013 compensation check. In a Form OWCP-20, appellant stated that he received the payment in question by direct deposit. Thus, he related that OWCP should have known that he had returned to work after being informed of his action by the human resources department. Appellant listed monthly income of \$3,400.00. He also listed monthly expenses of \$750.00 for rent/mortgage, \$700.00 for food, \$500.00 for clothing, \$400.00 for utilities, \$300.00 for other expenses, \$400.00 for a car payment and \$100.00 for a Capital One loan, totaling \$3,150.00. Appellant did not report any assets.

In a June 5, 2013 decision, OWCP granted appellant a schedule award for 13 percent impairment of the right leg or 37.44 weeks of compensation. The award ran from May 16, 2013 to February 2, 2014. Appellant would receive continuing compensation in the amount of \$2,639.00 every four weeks.

At the August 12, 2013 prerecoupment hearing, appellant stated that, when he accepted the modified job offer on February 22, 2013, the employing establishment telephoned the district

office to advise it about his return to work. He had no way of knowing how much compensation he was entitled to on a daily basis. Appellant was concerned about getting back to work. He received a single electronic payment following his return to work. Appellant stated that his spouse did not work and he supported two children. He asserted that repayment of the overpayment would cause him financial hardship. Appellant had a second car loan. He stated that his schedule award income which would expire in February 2014 should not be considered as available for debt repayment. Appellant was afforded 30 days to submit financial documents.

In a November 6, 2013 decision, an OWCP hearing representative finalized the fact and amount of the overpayment. The hearing representative, however, found that appellant was not at fault in creation of the \$1,026.91 overpayment. He had no ability to reject the overpaid compensation as the single payment in question was electronic. The hearing representative noted that appellant received income of \$2,639.00 every 28 days on his schedule award. He further noted that gross income from earnings was not documented, but based on appellant's date-of-injury annual salary, monthly gross income was roughly \$3,749.00. After converting the schedule award to a monthly figure, the hearing representative determined that total monthly income was \$2,859.00 + \$3,749.00 or approximately \$6,608.00. He noted that appellant reported monthly expenses of \$3,150.00, but that subsequently he stated that he had a second car loan. Assuming a similar monthly payment of \$400.00 for this vehicle, the hearing representative determined that he had total monthly expenses of \$3,550.00. He found that appellant's monthly income exceeded his monthly expenses by \$50.00. The hearing representative denied waiver of recovery of the overpayment because appellant did not submit any documents supportive of his income or expenses. Thus, he directed repayment of the overpayment in a single reduction from his schedule award compensation.

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 his duty.³ Section 8129(a) of FECA provides, in pertinent part, "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."⁴

Section 8116 of FECA defines the limitations on the right to receive compensation benefits. This section of FECA provides that, while an employee is receiving compensation, he may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.⁵ 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

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8129(a).

⁵ 5 U.S.C. § 8116(a); *R.H.*, Docket No. 09-1981 (issued June 11, 2010).

prevents him or her from earning the wages earned before the work-related injury.⁶ An employee is not entitled to compensation for total disability after returning to full-time work.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has received an overpayment of compensation in the amount of \$1,026.91. The record supports that he continued to receive compensation from the date of his return to work on February 25 to March 9, 2013. For this period appellant received compensation in the amount of \$1,026.91. As he was not entitled to compensation after his return to work, OWCP properly found that an overpayment in compensation in the amount of \$1,026.91 had been created.⁸

LEGAL PRECEDENT -- ISSUE 2

OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.⁹

If OWCP finds that the recipient of an overpayment was not at fault, repayment will still be required unless: (1) adjustment or recovery of the overpayment would defeat the purpose of FECA; or (2) adjustment or recovery of the overpayment would be against equity and good conscience.¹⁰

Recovery will defeat the purpose of FECA if both: (a) the individual from whom recovery is sought needs substantially all of his current income (including periodic benefits under FECA) to meet current ordinary and necessary living expenses; and (b) the individual's assets do not exceed the resource base (including but not limited to cash, the value of stocks, bonds, savings accounts, mutual funds) of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or one dependent, plus \$960.00 for each additional dependent. The first \$4,800.00 or more, depending on the number of claimant's dependents, is also exempted from recoupment as a necessary emergency resource. If an individual has current income or assets in excess of the allowable amount, a reasonable repayment schedule can be established over a reasonable, specified period of time. It is the individual's burden to submit evidence to show that recovery of the overpayment would cause the degree of financial hardship sufficient to justify waiver.¹¹ An individual is deemed to need substantially all of his or her income to meet

⁶ 20 C.F.R. § 10.500.

⁷ *M.J.*, Docket No. 09-469 (issued August 24, 2009).

⁸ 5 U.S.C. § 8116(a); 20 C.F.R. § 10.500.

⁹ 20 C.F.R. § 10.433(a).

¹⁰ *Id.* at § 10.434. See 5 U.S.C. § 8129(b).

¹¹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (June 2009). See *Miguel A. Muniz*, 54 ECAB 217 (2002); 20 C.F.R. §§ 10.436, 10.437.

current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹²

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.¹³ Recovery of an overpayment is also considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his position for the worse.¹⁴

ANALYSIS -- ISSUE 2

As OWCP found appellant without fault in the creation of the overpayment of compensation, waiver must be considered and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁵

Appellant furnished OWCP with an overpayment questionnaire on April 4, 2013. He reported monthly income of \$3,400.00 and monthly expenses of \$3,150.00. Appellant did not report any assets. The hearing representative determined that he received income of \$2,639.00 every 28 days on his schedule award and a gross monthly salary of \$3,749.00, totaling \$6,608.00. During the August 12, 2013 telephone conference, appellant reported that he had a second car loan, which the hearing representative assumed was \$400.00 a month, the same amount reported on his Form OWCP-20 for his first car loan. Thus, the hearing representative determined that appellant had total monthly expenses of \$3,550.00. Appellant did not submit any further supporting financial information. Based on his reported expenses and income, his income exceeds his expenses by \$3,058.00 per month. As appellant's income exceeds expenses by more than \$50.00, the Board finds that OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA.

Appellant does not argue and the record does not establish, that recovery of the debt would be against equity and good conscience. He did not show that he gave up a valuable right or changed his position for the worse in reliance on the overpayment.

Because appellant has failed to establish that, recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that he has failed to show that OWCP abused its discretion by refusing to waive the \$1,026.91 overpayment.

On appeal, appellant contended that he was not at fault in creation of the overpayment as he notified OWCP when he returned to work. As stated above, OWCP found that he was not at

¹² *Sherry A. Hunt*, 49 ECAB 467, 473 (1998).

¹³ 20 C.F.R. § 10.437(a).

¹⁴ *Id.* at § 10.437(b).

¹⁵ *Id.* at §§ 10.436, 10.437.

fault in creating the overpayment. The Board finds, however, that for the reasons stated, OWCP properly denied waiver of recovery of the overpayment based on the evidence of record.

LEGAL PRECEDENT -- ISSUE 3

When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If 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.¹⁶

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required repayment of the overpayment by withholding \$1,026.91 in a single amount from the amount of compensation due appellant on his schedule award.

OWCP's hearing representative found that, although appellant submitted an OWCP-20 form listing his monthly income and expenses, he did not submit any supporting documentation to substantiate the amounts claimed on the form. OWCP's procedure manual provides that, if a claimant is being paid compensation or is due accrued benefits, the debt should be recovered as quickly as possible.¹⁷ The hearing representative noted that appellant was in receipt of compensation benefits of \$2,639.00 every four weeks on his schedule award and directed recovery in a single amount of \$1,026.91 from his continuing benefits. The Board finds that OWCP did not abuse its discretion in this matter. The hearing representative considered the evidence of record, as well as the factors set forth in section 10.441 and found that this method of recovery would minimize any resulting hardship on appellant.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,026.91 for the period February 25 to March 9, 2013. The Board further finds that OWCP did not abuse its discretion in denying waiver of the overpayment. The Board also finds that OWCP properly directed recovery of the overpayment from appellant's schedule award compensation.

¹⁶ *Id.* at § 10.441(a).

¹⁷ See *Frederick Arters*, 53 ECAB 397 (2002), citing Federal (FECA) Procedure Manual, *supra* note 11 at Chapter 6.200.4(c)(2) (September 2009).

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 2014
Washington, DC

Patricia Howard Fitzgerald, Act Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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