

FACTUAL HISTORY

On November 16, 2009 appellant, then a 37-year-old mail processor, sustained injury to his left foot when a chair suddenly moved backwards as he was attempting to sit in it. OWCP accepted that he sustained a left foot contusion and paid compensation for periods of total disability. Appellant returned to full-time work for the employing establishment on July 14, 2010.

In an August 25, 2010 notice, OWCP advised appellant of its preliminary determination that he received a \$1,838.99 overpayment of compensation for the period because he returned to work for eight hours a day on July 14, 2010 but received total temporary disability compensation through July 31, 2010.³ It also made a preliminary determination that he was not at fault in the creation of the overpayment because he was not aware or could not have reasonably been expected to know that OWCP had paid compensation incorrectly. Appellant was advised that he could submit evidence challenging the fact or amount, or request waiver of the overpayment. It informed appellant that he could submit additional evidence in writing or at a precoupment hearing, but that a precoupment hearing must be requested within 30 days of the date of the written notice of overpayment. OWCP requested that appellant complete and return an enclosed financial information questionnaire (Form OWCP-20) within 30 days even if he was not requesting waiver of the overpayment.

On September 14, 2010 OWCP received a financial information questionnaire that appellant completed on September 1, 2010. Appellant indicated that he had no monthly income, \$3,142.00 in monthly expenses and \$70.00 in assets.⁴ He requested waiver of the claimed overpayment based on his financial hardship.

In a September 28, 2010 decision, OWCP determined that appellant received a \$1,838.99 overpayment of compensation. The Board found that appellant was not at fault in the creation of the overpayment but determined that the overpayment was not subject to waiver. In denying waiver, OWCP stated:

“The claimant responded to the preliminary decision by completing the [Form] OWCP-20. The information provided was insufficient to justify waiving recovery of the overpayment. The claimant did not send any supporting documentation to support the [Form] OWCP-20 such as bills, bank statements, receipts, or any other type of financial information.”

³ OWCP indicated that appellant did not return the improper payment. Evidence of record shows that, on July 31, 2010, he received a \$2,860.65 check (*via* electronic bank transfer) covering the 28-day period from July 4 to 31, 2010. OWCP calculated that the proportionate amount of this total for the 18 days appellant received improper monies was \$1,838.99.

⁴ Appellant indicated that he was supporting his son who was a minor.

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.⁵ 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.”⁶

Section 8116(a) of FECA provides that while an employee is receiving compensation or if he has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay or remuneration of any type from the United States, except in limited specified instances.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant received a \$1,838.99 overpayment of compensation. On July 14, 2010 he returned to work for the employing establishment on a full-time basis, but he continued to receive compensation for total temporary disability through July 31, 2010. He was not entitled to receive total disability compensation while working on a full-time basis. The record contains evidence establishing that appellant received \$1,838.99 in wage-loss compensation for the period July 14 to 31, 2010 despite the fact that he was not entitled to compensation for this period. The Board finds that OWCP properly determined that appellant received a \$1,838.99 overpayment and will affirm the fact and amount thereof.

LEGAL PRECEDENT -- ISSUE 2

The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP’s discretion pursuant to statutory guidelines.⁸ These statutory guidelines are found in section 8129(b) of FECA which states: “Adjustment or recovery [of an overpayment] by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.”⁹ If OWCP finds a claimant to be without fault in the matter of an overpayment, then, in accordance with section 8129(b),

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8129(a).

⁷ *Id.* at § 8116(a).

⁸ *See Robert Atchison*, 41 ECAB 83, 87 (1989).

⁹ 5 U.S.C. § 8129(b).

OWCP may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of FECA nor be against equity and good conscience.

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his income (including compensation benefits) to meet current ordinary and necessary living expenses, and also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹⁰ According to 20 C.F.R. § 10.437, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt and when an 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.¹¹ To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.¹²

According to OWCP procedure, the Form OWCP-20 supplied to a claimant by OWCP is designed to obtain financial information about monthly income, monthly expenses and assets. If adequate documentation is not supplied with a submitted Form OWCP-20, the OWCP claims examiner should conference the case and request that additional documentation be submitted.¹³

ANALYSIS -- ISSUE 2

In denying waiver of appellant's overpayment of compensation, OWCP noted that he submitted a completed Form OWCP-20 within the allotted time period, but did not provide adequate documentation regarding the financial information listed therein (including monthly income, monthly expenses and assets). However, OWCP procedures provide that in such a situation the claims examiner should conference the case and request that additional documentation be submitted.

The Board will set aside the September 28, 2010 decision with respect to the issue of waiver of the \$1,838.99 overpayment. The case is remanded to OWCP for further development of this matter under the above-noted standards. After such development it deems necessary, OWCP shall issue an appropriate decision regarding appellant's request for waiver of the overpayment.

¹⁰ 20 C.F.R. § 10.436. An individual is deemed to need substantially all of his monthly income to meet current and ordinary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. *Desiderio Martinez*, 55 ECAB 245 (2004). OWCP procedure provides that assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1) (October 2004).

¹¹ 20 C.F.R. § 10.437(a), (b).

¹² *Id.* at § 10.437(b)(1).

¹³ See Federal (OWCP) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(4) (October 2004).

CONCLUSION

The Board finds that appellant received a \$1,838.99 overpayment of compensation. The case is remanded to OWCP for further development of the issue of waiver.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2010 decision of the Office of Workers' Compensation Programs is affirmed with respect to the fact and amount of the overpayment and set aside with respect to the issue of waiver of recovery of the overpayment. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: July 26, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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