

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

E.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Old Bridge, NJ, Employer**

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**Docket No. 12-1235
Issued: December 7, 2012**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 15, 2012 appellant, through his attorney, filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) overpayment decision dated April 23, 2012. Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 OWCP properly determined that appellant received an overpayment in the amount of \$333.26 for the period January 30 to February 11, 2012; and (2) whether it abused its discretion in denying waiver of the overpayment.

FACTUAL HISTORY

On August 23, 1999 appellant, then a 40-year-old custodian, filed a claim for traumatic injury, alleging that he sustained a knee injury when he was mopping a bathroom. OWCP

¹ 5 U.S.C. § 8101 *et seq.*

accepted his claim for medial meniscus tears of the right knee. Appellant returned to full-duty work on November 1, 2000.

OWCP authorized a September 15, 2011 arthroscopic procedure for appellant's right knee condition. Appellant began receiving compensation benefits on the periodic rolls beginning October 13, 2011.

On January 30, 2012 appellant returned to part-time limited-duty work for three hours a day.

Appellant received gross compensation benefits for the period January 15 through February 11, 2012 in the amount of \$2,696.38. The amount of \$2,496.38 was directly deposited into appellant's account on February 11, 2012.

On March 23, 2012 OWCP issued a preliminary overpayment decision. It determined that appellant was overpaid \$333.26 for the period January 30 through February 11, 2012. Appellant was found to be without fault in the creation of the overpayment, and OWCP requested that he complete the enclosed overpayment questionnaire (OWCP-20). He was specifically informed that failure to submit the requested information would result in denial of waiver of the overpayment. Appellant did not respond to this letter.

By decision dated April 23, 2012, OWCP finalized the preliminary determination regarding the overpayment of \$333.26. It also determined that appellant was not at fault in the creation of the overpayment, but that he was not entitled to waiver of the overpayment as appellant had not completed the OWCP-20 overpayment questionnaire and submitted financial documents to support waiver of the overpayment.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.²

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 or she may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.³ OWCP's 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 prevents him or her from earning the wages earned before the work-related injury.⁴

² *Id.* at § 8102.

³ *Id.* at § 8116(a).

⁴ 20 C.F.R. § 10.500(a).

ANALYSIS -- ISSUE 1

The record indicates that appellant returned to work at the employing establishment on January 30, 2012 on limited duty for three hours per day. Appellant received full wage-loss compensation for total disability through February 11, 2012. As noted above, he is not entitled to receive compensation for total disability after he had returned to work. Thus, an overpayment occurred.

The record shows that appellant received compensation benefits for the period January 30 through February 11, 2012 in the amount of \$1,159.03; however, for the period January 30 through February 11, 2012 he should have only been paid compensation for five hours per day, which totals \$825.77. Subtracting \$825.77 from \$1,159.03, appellant thus received an overpayment of \$333.26. OWCP explained how the overpayment occurred and provided this information to appellant with the preliminary notice of overpayment. The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$333.26 for the period January 30 to February 11, 2012.

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.⁵ An individual should always be found without fault where the overpayment resulted from OWCP's error in the under deduction of health benefits or life insurance premiums.⁶

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.⁷

Section 10.438 of OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in the denial of waiver and no further request for waiver shall be considered until the requested information is furnished.⁸

⁵ 20 C.F.R. § 10.433(a).

⁶ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.5(b) (June 2009).

⁷ 20 C.F.R. § 10.434. *See* 5 U.S.C. § 8129(b).

⁸ *Id.* at § 10.438; *Linda Hilton*, 52 ECAB 476 (2001).

ANALYSIS -- ISSUE 2

OWCP determined that appellant was without fault in the creation of the overpayment. The fact that he was without fault does not preclude OWCP from recovering all or part of the overpayment.⁹ Appellant did not submit a response to OWCP's March 23, 2012 preliminary determination and did not submit a completed Form OWCP-20. Therefore, OWCP acted properly in refusing appellant's request for waiver. It was precluded from evaluating waiver of the overpayment.¹⁰

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$333.26 for the period January 30 through February 11, 2012. The Board further finds that OWCP properly denied waiver of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2012
Washington, DC

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

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

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

⁹ See *George A. Rodriguez*, 57 ECAB 224 (2005).

¹⁰ 20 C.F.R. § 10.438(b) states that failure to submit the requested information within 30 days of the request shall result in denial of the waiver and no further request for waiver shall be considered until the requested information is furnished.