

FACTUAL HISTORY

On May 11, 2010 appellant, then a 62-year-old medical records technician, filed an occupational disease claim alleging pain, numbness and tingling from her hands to her shoulders bilaterally. OWCP accepted the claim for right carpal tunnel syndrome.² On August 13, 2012 appellant underwent a right carpal tunnel release. OWCP paid her compensation for temporary total disability beginning that date.

On November 14, 2012 the employing establishment offered appellant a light-duty position. It noted that the job would begin the following day, November 15, 2012.

In a letter dated November 19, 2012, appellant related that her physician advised that she should not return to work until January 4, 2013. On November 14, 2012 her supervisor telephoned and instructed her to report for work the following morning. Appellant requested sick leave for November 15 and 16, 2012 but the request was denied. She was found absent without leave (AWOL).

On November 19, 2012 the employing establishment advised OWCP that appellant had returned to work effective November 15, 2012.

On November 26, 2012 OWCP notified appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$281.73 because she returned to work on November 15, 2012 but received compensation for total disability until November 17, 2012. It further advised her of its preliminary determination that she was at fault in the creation of the overpayment. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, it notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence or a prerecoupment hearing.

By decision dated January 2, 2013, OWCP found that appellant received a \$281.73 overpayment of compensation because she returned to work on November 15, 2012 but received compensation for total disability from November 15 to 17, 2012. It further determined that she was at fault in the creation of the overpayment as she accepted a payment she knew or should have known to be incorrect. OWCP found that appellant should forward a check for \$281.73 as repayment.

On appeal appellant related that her physician kept her off work and that she did not believe that she had to report for work on November 15, 2012 given the finding of her physician.

² In decisions dated June 30, 2010 and January 13, 2011, OWCP denied appellant's claim after finding that the medical evidence was insufficient to establish causal relationship. On June 8, 2011 it vacated its June 30, 2010 decision and accepted the claim for right carpal tunnel syndrome.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA³ 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.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 or she may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.⁵ OWCP's regulations state in pertinent part: "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."⁶

ANALYSIS

The Board finds that the case is not in posture for decision on the issue of whether appellant received an overpayment of compensation.

OWCP determined that an overpayment of \$281.73 existed as she received compensation for temporary total disability from November 15 to 17, 2012 even though she returned to work on November 15, 2012. The employing establishment informed OWCP that appellant returned to work on November 15, 2012; however, she asserted that she did not return to work on November 15, 2012 as her physician found that she needed additional time off due to her injury. Moreover, appellant requested leave for November 15 and 16, 2012 but the employing establishment denied the request and placed her in an AWOL status. The record on appeal does not establish when she returned to work and whether an overpayment exists for the period November 15 to 17, 2012. The case will therefore be remanded to OWCP for further development on fact of overpayment.⁷

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant received an overpayment of compensation.

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Id.* at § 8102.

⁵ *Id.* at § 8116(a).

⁶ 20 C.F.R. § 10.500.

⁷ In view of the Board's disposition of fact of overpayment, the issue of whether OWCP properly found that appellant was at fault in creating the overpayment is moot.

ORDER

IT IS HEREBY ORDERED THAT the January 2, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: May 10, 2013
Washington, DC

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

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

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