

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

T.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Columbia, SC, Employer**

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**Docket No. 14-371
Issued: June 2, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 4, 2013 appellant filed a timely appeal from an August 21, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the case.

ISSUES

The issues are: (1) whether OWCP properly found an overpayment of \$9,443.64 for the period February 11 through June 1, 2013; and (2) whether it properly found appellant at fault in creation of the overpayment, thereby precluding waiver of recovery.

FACTUAL HISTORY

On November 23, 2012 appellant, then a 40-year-old temporary city mail carrier, experienced low back pain when picking up a tray of mail from the back of a postal vehicle. She

¹ 5 U.S.C. § 8101 *et seq.*

stopped work on November 24, 2012. On January 25, 2013 OWCP accepted her claim for traumatic sacroiliitis, right side. Appellant received wage-loss benefits as the employing establishment did not have any work available within her restrictions. OWCP placed appellant on the periodic compensation rolls effective February 26, 2013.

By letter dated March 7, 2013, OWCP advised appellant that compensation would be paid every 28 days. It noted that the first payment would be for the period January 8 to February 9, 2013 and regular payments would be made starting the period February 10 to March 9, 2013. OWCP advised appellant that, when she returned to work, she must return any payment received if she worked for any portion of the payment period.

The record reflects that appellant returned to full-time limited-duty modified work on February 11, 2013 and full-time full duty on March 14, 2013.²

OWCP noted that appellant received her compensation payments by check. For the period February 11 to March 9, 2013, under check dated March 9, 2013, she was paid \$2,297.10 in net wage-loss compensation. From March 10 to April 6, 2013, under check dated April 6, 2013, appellant received \$2,382.18. For the period April 7 to May 4, 2013, under check dated May 4, 2013, she received \$2,382.18. For the period May 5 to June 1, 2013, under check dated June 1, 2013, appellant received \$2,382.18. OWCP found that the total amount of \$9,443.64 constituted an overpayment of compensation as she received wage-loss compensation for total disability after returning to work on February 11, 2013 with no loss of wages.

By notice dated June 10, 2013, OWCP advised appellant of its preliminary determination that she was overpaid \$9,443.64 in compensation from February 11 through June 1, 2013. It found that she was at fault in creating the overpayment as she accepted payments which she knew or should have known to be incorrect as there was no entitlement to receive wage-loss benefits after returning to full-time work. OWCP afforded appellant 30 days to submit financial information and to request either a telephone conference, decision on the written evidence, or a precoupment hearing.

On June 26, 2013 appellant requested a decision on the written evidence. She contended that the overpayment occurred through no fault of her own and requested waiver. In the OWCP-20 questionnaire, appellant provided no monthly income but noted household expenses and other monthly installment debts. She believed her case was accepted in February 2013 and that nothing stated anything about a "periodic payment roll." Appellant noted that the employing establishment had terminated her employment on June 13, 2013 and that she and her minor sons had experienced hardship due to her financial situation. She lost her home due to the delay in receiving workers' compensation payment. A June 14, 2013 letter from the employing establishment verified that appellant was terminated due to improper conduct.

By decision dated August 21, 2013, OWCP finalized the fact and amount of the overpayment. It directed recovery for the full amount of the overpayment within 30 days.

² In a March 27, 2013 letter, OWCP advised appellant that the Department of the Treasury issued a regulation on December 22, 2010 that requires all federal payments to be made electronically and requested that she sign up to receive payments by direct deposit into her bank account by June 1, 2013.

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 or her duty.³ Section 8129(a) of FECA provides in pertinent part, that 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

FECA places limitations on the right to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay or remuneration of any type from the United States, with certain exceptions.⁵ It is well established that an employee is not entitled to compensation for temporary total disability after returning to work at full salary.⁶

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained traumatic sacroiliitis of the right side in the performance of duty. Appellant received compensation for total disability effective February 26, 2013. She returned to work with no wage loss on February 11, 2013. However, appellant received \$9,443.64 in wage-loss compensation for the period February 11 to June 1, 2013, after she had returned to work.⁷ She was not entitled to receive compensation for disability while working. The \$9,443.64 constitutes an overpayment of compensation. The Board finds that OWCP's calculations are accurate. Appellant did not contest the fact or amount of the overpayment. The August 21, 2013 decision properly determined the fact and amount of the overpayment.

LEGAL PRECEDENT -- ISSUE 2

An individual who is found at fault in either accepting or creating an overpayment is not eligible for a waiver of recovery of overpayment.⁸ A benefits recipient will be at fault if the individual: (1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) failed to provide information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8129(a).

⁵ *Id.* at § 8116(a).

⁶ *J.S.*, Docket No. 13-909 (issued August 7, 2013).

⁷ Appellant was terminated June 14, 2013.

⁸ 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.423(a) and 10.434.

known to be incorrect.⁹ No waiver of an overpayment is possible if the claimant is at fault in creating the overpayment.¹⁰

With respect to whether an individual is without fault, section 10.433(b) of OWCP's regulations provide that whether or not OWCP determines that an individual was at fault with respect to creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.¹¹

Section 10.430(a) of OWCP's regulations advise that OWCP includes on each periodic check a clear indication of the period for which payment is being made. A form is sent to the recipient with each supplemental check which states the period for which payment is being made. Section 10.430(b) notes that, by these means, OWCP puts the recipient on notice that a payment was made and the amount of the payment.¹²

ANALYSIS -- ISSUE 2

OWCP applied the third standard in this case, finding that appellant accepted compensation payments for the period February 11 to June 1, 2013 that she knew or should have known was incorrect. Appellant accepted compensation payments by checks dated March 9, April 6, May 4 and June 1, 2013, encompassing the period February 11 to June 1, 2013, after she returned to work on February 11, 2013 with no wage loss.

OWCP advised appellant by March 7, 2013 letter of her obligation to return any compensation payments that covered a period after she returned to work. This establishes that she knew or should have known that she was not entitled to accepted compensation for total disability after she returned to full-time work at her regular salary. Additionally, each check and form sent with the check set forth the period for which the payment was being made. Appellant did not return any of the March 9, April 6, May 4 or June 1, 2013 checks as instructed. OWCP properly found her at fault in creation of the overpayment as the evidence reflects that she accepted payments which she knew or should have known to be incorrect. Therefore, recovery of the \$9,443.64 overpayment of compensation may not be waived.¹³ On appeal, appellant asserted that she could not repay the overpayment due to severe financial hardship; however, she is not entitled to a waiver of recovery. She also contends that she did not commit anything fraudulent when she received the compensation payments; the evidence reflects that she was properly notified that she was not entitled to accepted compensation for total disability after she returned to full-time work at her regular salary.

⁹ 20 C.F.R. § 10.433(a).

¹⁰ *Gregg B. Manston*, 45 ECAB 344 (1994).

¹¹ 20 C.F.R. § 10.433(b).

¹² *R. W.*, Docket No. 13-1285 (issued November 13, 2013); 20 C.F.R. § 10.430.

¹³ As OWCP did not direct recovery of the overpayment from continuing compensation, the Board has no jurisdiction to review the issue of recovery. See *Albert Pineiro*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

CONCLUSION

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$9,443.64 for the period February 11 to June 1, 2013. The Board further finds that it correctly determined that appellant was at fault in the creation of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 2, 2014
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