

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

M.G., Appellant	)	
	)	
and	)	<b>Docket No. 14-1444</b>
	)	<b>Issued: October 28, 2014</b>
	)	
<b>DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION, Milan, MI, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 9, 2014 appellant filed a timely appeal of a January 15, 2014 Office of Workers' Compensation Programs' (OWCP) merit decision finding that he had received an overpayment of compensation. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation of \$2,275.53 for the period November 19 to December 14, 2013 for which he was not at fault; and (2) whether the overpayment is subject to waiver of recovery.

**FACTUAL HISTORY**

On April 3, 2012 appellant, then a 40-year-old correctional officer, filed a traumatic injury claim alleging that on April 3, 2012 a chair he attempted to sit in flipped forward causing

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

his right knee to hit the floor, leaving him pinned between the chair and the floor. OWCP accepted his claim for tear of the medial meniscus of the right knee on May 17, 2012. Appellant underwent right knee arthroscopy with partial medial meniscectomy on July 31, 2012.

Appellant completed a direct deposit sign-up form on July 26, 2012. His attending physician released him to return to full-time limited-duty work on September 17, 2012, but the employing establishment was unable to accommodate his restrictions and he was sent home. Appellant submitted claims for compensation for the period August 26 through December 1, 2012. His vascular surgeon diagnosed deep vein thrombosis as a result of his surgery and prescribed Coumadin. Due to this medication, appellant was instructed to avoid all prisoner contact. OWCP entered him on the periodic rolls on December 12, 2012. Appellant returned to work in his date-of-injury position as a corrections officer effective November 19, 2013. He continued to be paid wage-loss compensation for total disability through December 14, 2013.

On December 12, 2013 OWCP made a preliminary determination that appellant had received an overpayment of compensation in the amount of \$2,275.53 because he received compensation for total disability after returning to full-time work from November 19 through December 14, 2013. It found that he was not at fault in the creation of the overpayment as he received one direct deposit after returning to work. OWCP provided appellant with his appeal options and an overpayment recovery questionnaire. Appellant did not complete a recovery questionnaire or provide any financial information to show that he is entitled to waiver.

By decision dated January 15, 2014, OWCP finalized the overpayment and denied waiver of recovery.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102 of FECA<sup>2</sup> 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.<sup>3</sup> 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, excepted in limited circumstances.<sup>4</sup> The implementing 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.<sup>5</sup> A claimant is not entitled to receive temporary total disability and actual earnings for the same period. OWCP's procedures provide that an overpayment in compensation is created when a claimant returns to work but continues to receive wage-loss compensation.<sup>6</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193, 8102.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at § 8116(a)

<sup>5</sup> 20 C.F.R. § 10.500.

<sup>6</sup> R.A., Docket No. 14-539 (issued June 24, 2014); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2(a) (May 2004).

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant received an overpayment of compensation in the amount of \$2,275.53 for the period November 19 to December 14, 2013. Appellant was placed on the periodic rolls on December 12, 2012 and received wage-loss compensation for total disability. The record establishes that appellant returned to work in his date-of-injury position as a corrections officer effective November 19, 2013. Appellant continued to receive wage-loss compensation for total disability through December 14, 2013. As noted, he is not entitled to receive compensation for total disability after he has returned to work and earned his regular salary. Accordingly, the Board finds that appellant received an overpayment of compensation.

OWCP determined that from November 19 through December 14, 2013 appellant received \$2,275.53 in total net compensation but was not entitled to any compensation during this period. Appellant did not dispute the fact or amount of the overpayment. OWCP properly explained how the overpayment occurred and provided this information to appellant with the preliminary determination of overpayment. There is no evidence that the overpayment did not occur as found by OWCP. The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,275.53 from November 19 through December 14, 2013.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129(a) of FECA provides that when an overpayment of compensation occurs “because of an error of fact or law,” adjustment or recovery shall be made by decreasing later payment to which the individual is entitled.<sup>7</sup> The only exception to this requirement that an overpayment must be recovered is set forth in section 8129(b):

“Adjustment or recovery 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 FECA or would be against equity and good conscience.”

Thus, a finding that appellant was without fault is not sufficient, in and of itself, for OWCP to waive the overpayment. OWCP must exercise its discretion to determine whether recovery of the overpayment would “defeat the purpose of FECA or would be against equity and good conscience,” pursuant to the guidelines provided in the implementing federal regulations.

Section 10.436 of the implementing regulations<sup>8</sup> provide that recovery of an overpayment will defeat the purpose of FECA if recovery would cause hardship by depriving a presently or formerly entitled beneficiary of income and resources needed for ordinary and necessary living expenses and outlines the specific financial circumstances under which recovery may be considered to defeat the purpose of FECA.

Section 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience

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<sup>7</sup> 5 U.S.C. § 8129(a).

<sup>8</sup> 20 C.F.R. § 10.436.

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 or her position for the worse.<sup>9</sup>

Section 10.438(a) provides that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP, as 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.<sup>10</sup> This information would also be used to determine the repayment schedule, if necessary. Section 10.438(b) provides that failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly determined that appellant did not establish entitlement to waiver of recovery of the \$2,275.53 overpayment under the above-described standards. Appellant did not provide a completed overpayment recovery questionnaire or any financial information to show that he was entitled to waiver of the overpayment within 30 days of the preliminary overpayment determination. Despite being advised by OWCP's December 12, 2013 letter regarding the importance of providing financial information on an overpayment recovery questionnaire form, he failed to provide such information or a completed questionnaire prior to OWCP's January 15, 2014 decision. For these reasons, OWCP properly determined that appellant did not show that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. Therefore, it properly denied waiver of recovery of the overpayment.<sup>12</sup>

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$2,275.53 for the period November 19 to December 14, 2013 for which he was not at fault and that OWCP properly denied waiver of recovery of the overpayment.

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<sup>9</sup> *Id.* at § 10.437.

<sup>10</sup> *Id.* at § 10.438(a).

<sup>11</sup> *Id.* at § 10.438(b).

<sup>12</sup> *S.H.*, Docket No. 14-421 (issued August 27, 2014).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 15, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2014  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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