



## **FACTUAL HISTORY**

On October 24, 2011 appellant, then a 50-year-old city carrier, filed a traumatic injury claim alleging that on September 13, 2011 she twisted her left ankle when going down stairs. OWCP accepted the claim for left ankle sprain and paid her compensation for total disability beginning October 29, 2011.

On September 24, 2013 the office of Claims and Compensation with the Department of Labor's (DOL) Office of the Solicitor, noted that on November 23, 2012 OWCP electronically transferred \$13,319.36 owed to another claimant into appellant's bank account. OWCP tried to reclaim the money, but it was no longer in the account. The office of Claims and Compensation recommended contacting appellant and asking for the money and, if that was not successful, initiating an overpayment action.

By letter dated September 25, 2013, OWCP notified appellant that it had electronically deposited \$13,319.36 into her account on November 23, 2012. It informed her that the Department of the Treasury confirmed the electronic fund transfer into her account. OWCP advised appellant that the funds were not meant for her and requested repayment of the funds.

On October 29, 2013 OWCP notified appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$13,319.36 because it electronically transferred funds into her bank account in error. It further informed her of its initial finding 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 advised 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.

On November 26, 2013 appellant requested a prerecoupment hearing. She argued that she was not at fault in creating the overpayment. Appellant maintained that her husband told her that the payment was for work he had performed. She related that she received a text message on her telephone indicating that she had received the deposit but the message did not identify the depositor. In an overpayment recovery questionnaire, appellant provided monthly income of \$2,944.76 and monthly expenses of \$2,818.31.

In a statement received by OWCP on December 9, 2013 appellant again argued that she was not at fault in creating the overpayment. She related that she had no reason to disbelieve her husband when he stated that it was his money.

On April 17, 2014 OWCP requested that appellant more fully complete the overpayment recovery questionnaire and submit supporting financial documentation of income and expenses.

At the prerecoupment hearing, held on April 17, 2014, appellant related that she understood how the overpayment occurred, but maintained that at the time she received the deposit she did not believe that it was from OWCP. She explained that her husband informed her that he was waiting for a payment in that amount for work that he had performed. Appellant only learned of the incorrect payment when she received the September 2013 overpayment letter.

She asked her husband about it and he again stated that it was “payment for work he had done.” Appellant indicated that she got a text message on her telephone indicating that she had received a direct deposit, and that if she had made further inquiries she could have found out who it was from, but did not do so as she believed her husband. She advised the hearing representative that she and her husband were no longer living together.

On May 29, 2014 appellant submitted supporting financial information and a completed overpayment recovery questionnaire. She related that her income was \$2,944.76 and her expenses were \$2,975.00. Appellant indicated that her OWCP benefits might be reduced soon to the rate for a claimant without dependents.

In response to OWCP’s request for information about her dependency status, appellant related that her husband was self-employed and installed electrical equipment. She submitted detailed information regarding her income and expenses.<sup>2</sup>

On June 4, 2014 OWCP adjusted appellant’s compensation to the applicable rate for a claimant without dependents.

By decision dated June 19, 2014, an OWCP hearing representative found that appellant received an overpayment of compensation in the amount of \$13,319.36 on November 23, 2012 because OWCP electronically deposited money in her account in error. She found that appellant was at fault in the creation of the overpayment because she accepted a payment that she knew or should have known was incorrect. The hearing representative noted that appellant maintained that her husband told her that the money was for work that he had performed over the past few months but did not submit any statement from her husband in support of her contention. She considered appellant’s assets, income, and expenses and found that the overpayment should be recovered by deducting \$200.00 from appellant’s continuing compensation.

On appeal, appellant contends that she was not aware of the overpayment, that she did not know that the funds came from OWCP, and that she did not check her bank statement. She also raises arguments regarding the hearing representative’s analysis of her financial information.

**LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) 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 duty.<sup>3</sup> When an overpayment has been made to an individual 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 the individual is entitled.<sup>4</sup>

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<sup>2</sup> In a hardship affidavit form, appellant requested mortgage modification because of short-term hardship. She indicated that her husband’s social security benefits had “been temporarily suspended” and that she had home repairs including replacing a furnace and the main sewer lines.

<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8129(a).

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

OWCP paid appellant compensation for total disability beginning October 29, 2011. In a statement dated September 24, 2013, an attorney with DOL's Office of the Solicitor indicated that on November 23, 2012 she received an electronic transfer in the amount of \$13,319.36 that was meant for another claimant. As appellant was not entitled to this payment, she received an overpayment of compensation. OWCP explained how the overpayment occurred and provided this information to her with the preliminary notice of overpayment. Appellant did not dispute fact or amount of overpayment. The Board therefore finds that OWCP properly determined that she received an overpayment of \$13,319.36 on November 23, 2012.

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

Under OWCP regulations, waiver of the recovery of an overpayment may be considered only if the individual to whom it was made was not at fault in accepting or creating the overpayment.<sup>5</sup> The fact that the overpayment was the result of error by OWCP or another government agency does not by itself relieve the individual who received the overpayment of liability for repayment if the individual also was at fault for receiving the overpayment.<sup>6</sup> Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she received from OWCP are proper. The recipient must show good faith and exercise a high degree of care in reporting events that may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment: (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 known to be incorrect (this provision applies only to the overpaid individual).<sup>7</sup>

The Board has held that an employee who receives payments from OWCP in the form of a direct deposit may not be at fault the first time incorrect funds are deposited into his or her account, as the acceptance of the resulting overpayment lacks the requisite knowledge.<sup>8</sup>

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

OWCP determined that appellant was at fault in the creation of the overpayment because she accepted a payment that she knew or reasonably should have known was incorrect. In cases where a claimant receives compensation through direct deposit, however, OWCP must establish that at the time the claimant received the direct deposit in question she knew or should have known that a payment was incorrect.<sup>9</sup> The Board has held that an employee who receives

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<sup>5</sup> 20 C.F.R. § 10.433(a).

<sup>6</sup> *Id.* at § 10.435(a).

<sup>7</sup> *Supra* note 5; *see Kenneth E. Rush*, 51 ECAB 116 (1999).

<sup>8</sup> *W.P.*, 59 ECAB 514 (2008).

<sup>9</sup> *J.H.*, Docket No. 11-114 (issued July 18, 2011); *R.C.*, Docket No. 10-2113 (issued July 6, 2011).

payments from OWCP in the form of a direct deposit may not be at fault the first time an incorrect payment is deposited into his or her account since the acceptance of the overpayment, at the time of receipt of the direct deposit, lacks the requisite knowledge.<sup>10</sup> According to OWCP's regulations (effective August 29, 2011), good faith and exercise of a high degree of care in regard to receipt of benefits requires review of electronic bank statements. This regulation is in accordance with the Board's previous decisions that a claimant gains control of the funds from the U.S. Treasury at the moment compensation is deposited into his or her bank account and, thereby, creates an overpayment.<sup>11</sup> As explained in *Craven*, because fault is defined by what the claimant knew or should have known at the time of acceptance, one of the consequences of electronic fund transfers is that a claimant may not be at fault for accepting the first incorrect payment because the requisite knowledge is lacking at the time of deposit.

Appellant received one electronic deposit on November 23, 2012 in the amount of \$13,319.36. Although she accepted the overpayment at the time it was deposited into her account, OWCP has not shown that she knew or should have known at the time of the deposit on November 23, 2012 that the payment was incorrect. It has not presented evidence to establish that appellant accepted a payment at the time of deposit which she knew or should have known to be incorrect.<sup>12</sup> Appellant had no reason to suspect at the time of the November 23, 2012 deposit that OWCP had issued an incorrect payment since this was the first and only incorrect payment made. Thus, the Board finds that she was not at fault in creating the overpayment received November 23, 2012. A finding of no fault, however, does not mean that the claimant may keep the money, only that OWCP must consider eligibility for waiver for this period.<sup>13</sup> The Board will remand the case for OWCP to obtain current financial information regarding income and expenses and consider waiver of recovery of the overpayment based on appellant's updated financial information.<sup>14</sup>

### CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$13,319.36 because OWCP paid her compensation in error on November 23, 2012. The Board further finds that OWCP improperly found that she was at fault in creating the overpayment and will remand the case for consideration of waiver of the recovery of the overpayment.<sup>15</sup>

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<sup>10</sup> *Tammy Craven*, 57 ECAB 689 (2006); *see also George A. Hirsch*, 47 ECAB 520 (1996).

<sup>11</sup> *See Tammy Craven, id.*

<sup>12</sup> V.A., Docket No. 12-637 (issued August 27, 2012).

<sup>13</sup> *D.B.*, Docket No. 14-397 (issued June 3, 2014); *M.F.*, Docket No. 12-456 (issued November 13, 2012).

<sup>14</sup> Appellant submitted additional evidence on appeal. The Board has no jurisdiction to review new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

<sup>15</sup> In view of the Board's finding regarding fault, it is premature to consider the issue of recovery of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 19, 2014 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 13, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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