

FACTUAL HISTORY

On December 13, 1977 appellant, then a 54-year-old medical aid, filed a traumatic injury claim alleging that on December 12, 1977 he pulled a muscle in his lower back while removing the carriage out of a sterilizer. OWCP accepted his claim for displacement of a lumbar disc without myelopathy on February 10, 1978. Appellant underwent a lumbar laminectomy on March 29, 1978. OWCP entered him on the periodic rolls. Appellant underwent additional back surgery on March 9, 1983. OWCP terminated his compensation benefits effective May 17, 1984. On July 8, 1986 it reinstated appellant's compensation benefits retroactive to May 17, 1984. By decision dated December 11, 1987, OWCP reduced his compensation benefits based on his actual earnings as a security guard beginning January 1, 2005. Appellant married on February 23, 1988. He underwent additional back surgeries on May 2, 1997.

Appellant completed a Form CA-1032 which included reporting any improvement in his medical condition, any employment, any change in the status of claimed dependents, any third party settlement, and any income or change in income from federally-assisted disability or benefits programs on May 9, 2010 and listed his only dependent as his wife. OWCP informed him that if the form was not completed and returned within 30 days then his benefits would be suspended in accordance with 20 C.F.R. § 10.528. Appellant provided OWCP with a change of address on December 2, 2010. He completed a Form CA-1032 on April 30, 2011 and listed his wife as his only dependent. On March 7, 2012 OWCP requested that appellant complete a Form CA-1032. Appellant completed this form on March 11, 2012 and indicated that he had no dependents. He stated that his wife died on July 3, 2011. On March 6, 2013 OWCP requested that appellant complete a Form CA-1032. Appellant completed this form on March 29, 2013 and indicated that he had no dependents.

In a letter dated March 11, 2014, OWCP requested that appellant complete a Form CA-1032. This form was to be completed within 30 days or appellant's benefits would be suspended in accordance with 20 C.F.R. § 10.528.

By decision dated May 9, 2014, OWCP suspended appellant's compensation benefits on the grounds that he had not completed the March 11, 2014 Form CA-1032. It noted that section 10.528 of its regulations required that he report earnings from any employment, whether full or part time. If a timely response was not made, then the right to compensation for wage-loss would be suspended until the report was received, at which time compensation would be restored retroactively. OWCP suspended appellant's compensation effective June 1, 2014. It stated, "If you complete and return the enclosed copy of Form CA-1032, your compensation benefits will be restored retroactively to the date they were suspended."

Appellant submitted a Form CA-1032 dated May 7, 2014 on May 14, 2014. This form indicated that he had no dependents. OWCP indicated that it received this form and the record contains continuing compensation benefits.

In a preliminary determination of overpayment dated July 14, 2014, OWCP determined that appellant had received an overpayment of compensation in the amount of \$11,374.96 because his dependent spouse died on July 3, 2011. It stated that he continued to receive compensation at the 3/4 rate through June 28, 2014. OWCP stated that appellant received

compensation in the amount of \$94,409.63 based on the 3/4 augmented compensation rate for a dependent, but was entitled to receive only \$83,034.67 at the 2/3 compensation rate this resulted in an overpayment of \$11,374.96. It found that he was at fault in the creation of the overpayment and directed him to complete an overpayment recovery questionnaire.

Appellant requested that OWCP make a decision on the written evidence and requested waiver of recovery of the overpayment on July 23, 2014. He stated that he had notified OWCP of his wife's death and submitted her death certificate. Appellant stated that he had consistently completed Form CA-1032's and notified OWCP that he had no dependents after his wife's death which he reported on March 11, 2012.

Appellant submitted the overpayment recovery questionnaire on July 30, 2014 and listed his monthly income as \$100.00 for social security benefits, other benefits of \$259.00, and FECA benefits of \$2,494.00 for total monthly income of \$2,853.00. He indicated that his housing expenses were \$2,140.00 per month, his food \$85.00 per month, his utilities \$80.00 per month, and miscellaneous expenses of \$115.00. Appellant listed credit card debt of \$3,000.00 with a monthly payment of \$150.00. He indicated that his total monthly expenses were \$2,570.00. Appellant listed his assets as a checking account balance of \$4,414.00, savings account balance of \$53,062.00 and cash of \$25.00 for a total of \$57,501.00.

By decision dated August 25, 2014, OWCP finalized the overpayment in the amount of \$11,374.96 and found that appellant was not at fault in the creation of the overpayment. It found that he was not entitled to waiver of recovery as his income exceeded his expenses by \$254.00 per month and as he had \$57,501.00 available in his savings and checking accounts. OWCP found that appellant could make a monthly payment without undue hardship and that he had not shown that recovery would defeat the purpose of FECA or be against equity and good conscience. It determined to recover the overpayment by deducting \$100.00 from his monthly compensation beginning August 24, 2014.

LEGAL PRECEDENT -- ISSUE 1

FECA authorizes the Secretary of Labor to require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.²

Under section 10.528 of OWCP's implementing federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work which the employee has performed for the past 15 months.³ If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until OWCP receives the requested report.⁴

² 5 U.S.C. § 8106(b).

³ 20 C.F.R. § 10.528.

⁴ G.W., Docket No. 13-1019 (issued August 22, 2013); *Lucille A. Pettaway*, 55 ECAB 228 (2004); *Demetrius Beverly*, 53 ECAB 305 (2002).

At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.

ANALYSIS -- ISSUE 1

The record establishes that on March 11, 2014 OWCP sent appellant a properly addressed request to complete and return a Form CA-1032, providing information about his employment and income for the prior 15 months. It explained that federal regulations required him to complete, sign and return the form. OWCP notified appellant that, if he did not completely answer all questions and return the signed statement within 30 days, it would suspend his benefits.

Notwithstanding such notice, appellant did not return the completed form within 30 days as requested. As he did not complete and sign the Form CA-1032 affidavit reporting all employment and self-employment, as required by federal regulations, the Board finds that OWCP properly suspended his right to compensation for wage loss under section 10.528.⁵ The record indicates that appellant did submit a properly completed Form CA-1032 on May 14, 2014 and that OWCP properly reinstated his compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

Section 8102 of FECA⁶ 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.⁷ 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.⁸

The basic rate of compensation paid under FECA is 66 2/3 percent of the injured employee's monthly pay.⁹ Under section 8110 of FECA, an employee is entitled to compensation at the augmented rate of 3/4 of his or her weekly pay if he or she has one or more dependents. A dependent means a wife if: (a) she is a member of the same household as the employee; (b) she is receiving regular contributions from the employee for his support; or (c) the employee has been ordered by a court to contribute to her support.¹⁰

⁵ *Id.*

⁶ 5 U.S.C. § 8102.

⁷ *Id.* at § 8102(a); *R.L.*, Docket No. 14-1006 (issued January 26, 2015).

⁸ *Id.* at § 8129(a).

⁹ *Id.* at § 8105(a)(2).

¹⁰ *Id.* at § 8110(a)(2).

ANALYSIS -- ISSUE 2

Appellant claimed his wife as a dependent and OWCP accordingly paid him wage-loss compensation at the augmented rate of 75 percent. He informed OWCP of the death of his wife on March 11, 2012 in a Form CA-1032 and indicated that he had no dependents. Appellant stated that his wife died on July 3, 2011. In Forms CA-1032 dated March 29, 2013 and May 7, 2014, he advised that he was not married and had no dependents. The Board finds that, pursuant to FECA, appellant had no dependents as of July 3, 2011.

The record confirms that appellant continued to receive compensation at the augmented rate for dependents for the period July 3, 2011 through June 28, 2014. An overpayment of compensation is therefore established. The amount of compensation actually paid during this period, \$94,409.63, less the compensation appellant should have received at the correct pay rate and correct rate of compensation at 66 2/3 percent, \$83,034.67, establishes an overpayment of compensation in the amount of \$11,374.96. Compensation payment worksheets in the record confirm these figures. The Board will therefore affirm OWCP's August 25, 2014 decision on the issues of fact and amount of overpayment.

LEGAL PRECEDENT -- ISSUE 3

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.¹¹ 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 regulations¹² 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

¹¹ *Id.* at § 8129(a).

¹² 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.¹³

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.¹⁴ 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.¹⁵

ANALYSIS -- ISSUE 3

OWCP determined that appellant was without fault in creating the overpayment. Because he is without fault in the matter of the overpayment, OWCP must adjust later payments only if adjustment would not defeat the purpose of FECA or be against equity and good conscience. Appellant provided an overpayment recovery questionnaire which indicated that his monthly income of \$2,853.00 exceeded his monthly expenses of \$2,570.00 by more than \$283.00. The Board thus finds that, as appellant's monthly income exceeds his documented reasonable monthly expenses by \$283.00, he is not entitled to waiver of recovery as she does not need substantially all of his income to meet current ordinary and necessary expenses.¹⁶ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁷ Appellant also indicated that he had savings and checking account balances of \$57,501.00. OWCP's procedures provide that assets must not exceed a resource base of \$4,800.00 for an individual.¹⁸ Appellant's assets of \$57,501.00 exceed the qualifying amount for waiver of \$8,000.00 for an individual.¹⁹

Additionally, the evidence does not demonstrate that repayment of the overpayment would be against equity and good conscience. Appellant submitted no argument that he relied upon the incorrect payments to his detriment or that he would experience severe financial hardship attempting to repay the debt. Consequently, OWCP properly denied waiver of recovery of the overpayment.

¹³ *Id.* at § 10.437.

¹⁴ *Id.* at § 10.438(a).

¹⁵ *Id.* at § 10.438(b).

¹⁶ *P.G.*, Docket No. 14-227 (issued January 9, 2015).

¹⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(a) (June 2009).

¹⁸ *See* 5 U.S.C. § 8116(a); 20 C.F.R. § 10.500.

¹⁹ *C.P.*, Docket No. 14-975 (issued September 11, 2014).

LEGAL PRECEDENT -- ISSUE 4

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA. Section 10.441(a) of the regulations provide:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize any hardship.”²⁰

ANALYSIS -- ISSUE 4

OWCP found that appellant's monthly income exceeded his monthly compensation by more than \$200.00 per month. It stated that given his income and savings that he could repay the overpayment through a withholding of \$100.00 from his continuing monthly compensation benefits. The Board finds that OWCP properly considered the probable extent of future payments, the rate of compensation, the financial circumstances of appellant and any other relevant factors, so as to minimize any hardship in determining the rate of recovery.

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits due to his failure to timely complete the requested Form CA-1032. The Board further finds that appellant received an overpayment of compensation in the amount of \$11,374.96 for which he was not at fault, but was not entitled to waiver. The Board also finds that OWCP properly determined to recover the overpayment at the rate of \$100.00 per month from appellant's continuing compensation benefits.

²⁰ 20 C.F.R. § 10.441.

ORDER

IT IS HEREBY ORDERED THAT the August 25 and May 19, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 3, 2015
Washington, DC

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

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

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