

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

A.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Clearfield, UT, Employer**

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**Docket No. 15-0791
Issued: July 21, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 14, 2015¹ appellant filed a timely appeal from an August 18, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(d)-(f). One hundred and eighty days from August 18, 2014, the date of OWCP's last decision, was February 14, 2015. As this fell on a Saturday, the appeal would have been due the following business day. As Monday, February 16, 2015 was a federal holiday, the appeal would have been due on February 17, 2015. Since using February 24, 2015, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of postmark is considered the date of filing. The date of the U.S. Postal Service postmark is February 14, 2015, rendering the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. §§ 8101-8193.

ISSUES

The issues are: (1) whether appellant received an overpayment in compensation in the amount of \$810.09; and (2) whether OWCP properly found appellant at fault in the creation of the overpayment and therefore was not entitled to waiver.

On appeal appellant asserts that she was not at fault because she had no way of calculating the amount of compensation to which she was entitled and that repayment would create a hardship for her.

FACTUAL HISTORY

On February 7, 2014 appellant, then a 46-year-old rural carrier, filed a traumatic injury claim alleging that on February 5, 2014 she sprained her right knee when she slipped on ice. She began modified duty. On March 27, 2014 OWCP accepted a right knee sprain, and on April 23, 2014 authorized surgery. Appellant stopped work on March 23, 2014 because the employing establishment could not accommodate her restrictions, and she was paid appropriate compensation. On May 6, 2014 she was placed on the periodic compensation rolls with a payment of \$3,007.81 for the period May 4 through 31, 2014 and every four weeks thereafter. A net periodic rolls payment of \$2,973.37 was issued for the period June 1 through 28, 2014.

Dr. B. Thomas Watson, a Board-certified orthopedic surgeon, performed a right knee chondroplasty on May 15, 2014. On May 28, 2014 he advised that appellant could return to modified duty.

Appellant returned to part-time modified duty on June 18, 2014. The record indicates that she worked 2.5 hours June 18, 19, and 20, 2014, 3.5 hours on June 21, and 6 hours on June 23, 24, and 25, 2014, for a total of 29 hours. Appellant took sick leave on June 27, 28 and 30, 2014. June 22, 24, and 29, 2014 were nonscheduled days.

By letter dated July 17, 2014, OWCP issued a preliminary determination that appellant received an \$810.09 overpayment of compensation because she received disability compensation after her return to work.³ It explained the calculation of the overpayment, stating that for the period June 1 through 28, 2014 she received compensation totaling \$2,973.37 when she should have received compensation of \$2,163.28, which yielded an overpayment of \$810.09. OWCP found appellant at fault because she should have been aware or reasonably been aware that she was not entitled to the compensation.

Appellant was provided an overpayment action request form and an overpayment questionnaire and was given 30 days to respond. An overpayment worksheet indicated that she returned to work on June 18, 2014 working intermittent hours and that she worked 35 hours from June 15 to 28, 2014. The worksheet confirmed that appellant received an overpayment of compensation of \$810.09.

³ The cover letter advised that the amount of the overpayment was \$810.99. However, the attached memorandum and OWCP worksheets indicate that the amount of the overpayment was \$810.09.

Appellant did not respond to OWCP's preliminary overpayment determination. On August 18, 2014 OWCP attempted to telephone appellant to discuss the overpayment but she was not available.

By decision dated August 18, 2014, OWCP finalized the preliminary overpayment decision, finding that appellant was at fault in the creation of an overpayment in compensation in the amount of \$810.09, and thus not entitled to waiver. It advised her to repay the full amount within 30 days or to contact it to make appropriate repayment arrangements.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 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 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 Section 10.500 of OWCP 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."⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment in compensation because she received wage-loss compensation for the period June 1 through 28, 2013 when she had returned to part-time work on June 18, 2014. As noted, both FECA and implementing regulations of OWCP provide that a claimant may not receive wage-loss compensation concurrently with a federal salary or other remuneration.⁷ An overpayment of compensation was therefore created.⁸

The Board, however, finds the case is not in posture for decision regarding the amount of the overpayment. An employing establishment official signed a time analysis form on July 14, 2014 confirming that appellant worked a total of 29 hours from June 18 through 26, 2014 and took sick leave on June 27 and 28, 2014. An overpayment worksheet indicated that appellant worked 35 hours for this period. Nothing in the record, including the overpayment worksheet or other record materials, explained the discrepancy between the 29 hours of work confirmed on the time analysis form and the 35 hours listed on the overpayment worksheet. It was on the basis of

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116(a); see *Danny E. Haley*, 56 ECAB 393 (2005).

⁶ 20 C.F.R. § 10.500.

⁷ 5 U.S.C. § 8116(a); 20 C.F.R. § 10.500.

⁸ *Id.*

a 35-hour period of work that the amount of the overpayment was calculated. The record does not include a sufficient explanation as to how the amount of the overpayment was calculated.

Because OWCP did not fully explain the basis it used to determine that appellant worked 35 hours during the period after she returned to work and continued to receive compensation, it did not provide a sufficient explanation as to how it calculated the amount of the overpayment. The Board, therefore, does not have sufficient evidence to permit an informed adjudication of the case. The case will therefore be remanded to OWCP to more fully explain its calculation of the overpayment, to be followed by an appropriate decision.⁹ After this and such further development deemed necessary, OWCP shall render a *de novo* overpayment decision.

As the amount of the overpayment is not yet established, it is premature to address the issue of fault.

CONCLUSION

The Board finds this case is not in posture for decision regarding the amount of the overpayment of compensation.

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this opinion of the Board.

Issued: July 21, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁹ See *L.D.*, Docket No. 12-1408 (issued April 26, 2013).