

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

M.S., Appellant)

and)

DEPARTMENT OF THE NAVY, NORFOLK)
NAVAL SHIPYARD, Portsmouth, VA, Employer)

**Docket No. 16-0289
Issued: April 21, 2016**

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 December 2, 2015 appellant filed a timely appeal from a November 23, 2015 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)(1) 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 \$7,872.76 for the period May 4 through July 25, 2015; and (2) whether appellant was at fault in the creation of the overpayment and therefore not entitled to waiver.

On appeal appellant agreed that he had received an overpayment, but disagreed with the amount.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 21, 2014 appellant, then a 29-year-old physical science technician, filed a traumatic injury claim (Form CA-1) alleging that on October 31, 2014 he was struck by a motor vehicle in the performance of duty. He asserted that he sustained contusion of the lung and spinous process fractures. OWCP accepted appellant's claim on January 8, 2015 for closed dislocation of the left wrist and closed fracture of the left wrist. Appellant underwent surgeries on his left wrist on October 31, November 4 and 6, 2014, and March 6, 2015.

Appellant filed a claim for compensation (Form CA-7) for leave without pay beginning December 16, 2014. He requested direct deposit of his compensation benefits. Appellant continued to submit Form CA-7s requesting compensation through March 27, 2015. OWCP noted receiving appellant's direct deposit election form on May 13, 2015 and indicated that the system had been updated with appellant's account information.

Appellant returned to part-time modified work on May 4, 2015. He worked six hours a day, beginning May 4, 2015 and then four hours a day beginning May 28, 2015.

On July 28, 2015 OWCP determined that appellant had received compensation in the amount of \$2,561.02 for the period May 4 through 30, 2015 on May 30, 2015; compensation in the amount of \$2,655.87 for the period May 31 through June 27, 2015 on June 27, 2015; and compensation in the amount of \$2,655.87 for the period June 28 through July 25, 2015 on July 25, 2015. It determined that appellant had received a total overpayment in the amount of \$7,872.76.

OWCP issued a preliminary determination of overpayment on August 31, 2015 finding that appellant had received an overpayment in the amount of \$7,872.76 because he accepted total disability compensation payments after returning to work beginning May 4, 2015. It asserted that he had received compensation *via* Form CA-7's through April 4, 2015 and was entered on the periodic rolls effective April 5, 2015. OWCP noted that appellant continued to receive periodic roll payments until compensation was terminated on July 28, 2015. It found that appellant was at fault in creating the overpayment as he knew or should have known that there was no entitlement to receive wage-loss benefits for total disability after returning to part-time work. OWCP informed appellant of his appeal rights and requested that he complete an overpayment recovery questionnaire (Form OWCP-20) if he disagreed with the preliminary findings and conclusions.

By decision dated November 23, 2015, OWCP issued a final decision, finding that appellant had received an overpayment of compensation in the amount of \$7,872.76 for the period May 4 through July 25, 2015. It found that appellant was at fault in the creation of the overpayment as he continued to receive compensation payments for total disability after returning to part-time work. OWCP further noted that appellant did not contest the fault finding and did not submit a completed Form OWCP-20.

LEGAL PRECEDENT -- ISSUE 1

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 duty.² 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.³

A claimant is not entitled to receive temporary total disability and actual earnings for the same period.⁴ OWCP procedures provide that an overpayment in compensation is created when a claimant returns to work but continues to receive wage-loss compensation.⁵

ANALYSIS -- ISSUE 1

OWCP found that appellant received an overpayment of compensation in the amount of \$7,872.76 for the period May 4 through July 25, 2015 as he returned to part-time work on May 4, 2015, but continued to receive payments for total disability through July 25, 2015. Appellant, on appeal, has agreed that he received an overpayment of compensation after he returned to part-time work. However, he argued that OWCP failed to properly calculate the amount of the overpayment. The Board finds that appellant received an overpayment, but that OWCP has not established the amount of the overpayment.

OWCP determined that appellant had been paid \$7,872.76 in net compensation for the period May 4 through July 25, 2015 for total disability. It determined that this entire amount was an overpayment. OWCP did not provide any calculations regarding the amount of compensation to which appellant was entitled for his period of partial disability beginning May 4, 2015. As it has not provided appropriate calculations, the Board cannot affirm the amount of the overpayment.⁶

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation benefits following his return to work on May 4, 2015. The Board, however, is unable to render a decision on the amount of the overpayment given appellant's return to part-time rather than full-duty work. The case must be remanded for further development on this issue.

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8129(a).

⁴ *See D.B.*, Docket No. 15-0258 (issued February 1, 2016).

⁵ *See Danny E. Haley*, 56 ECAB 393 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2a (May 2004).

⁶ Due to the Board's disposition in Issue 1, the remaining issue is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT November 23, 2015 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further action consistent with this decision of the Board.

Issued: April 21, 2016
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