

FACTUAL HISTORY

On February 21, 2014 appellant, then a 34-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on February 12, 2014 she sprained her right ankle when she slipped on ice.³ OWCP accepted the claim for a right ankle sprain of the deltoid ligament and a late effect fracture of the right lower extremity.

Following her injury, appellant underwent surgery to repair a Lisfranc fracture of the right foot. She returned to limited-duty employment on January 15, 2015.

On October 27, 2015 appellant underwent surgery to remove hardware in the right foot. OWCP placed appellant on the periodic rolls and paid her compensation by electronic funds transfer effective October 26, 2015.

Appellant returned to work without restrictions on December 14, 2015. On January 9, 2016 OWCP paid appellant \$2,902.73 in compensation by electronic funds transfer for the period December 13, 2015 to January 9, 2016.

By letter dated January 12, 2016, OWCP advised appellant of its preliminary determination that she received an overpayment of \$2,799.06 for the period December 14, 2015 to January 9, 2016 because she received wage-loss compensation for total disability after she returned to work. It calculated the overpayment by dividing \$2,902.73, the net amount of compensation she received on the periodic rolls, by 28, the duration of the payment period, to find a daily payment of \$103.67. OWCP multiplied this amount by the 27-day period it paid appellant after she resumed work to find an overpayment of \$2,799.06. It further informed her of its preliminary determination that she was not at fault in the creation of the overpayment. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (OWCP Form 20) and submit supporting financial documents. Additionally, it notified 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 prerecoument hearing.

On February 10, 2016 appellant requested a decision on the written evidence. She advised that she was without fault in creating the overpayment and requested waiver. In an attached overpayment recovery questionnaire, appellant listed monthly income as \$2,600.00 in benefits from the Social Security Administration (SSA) and monthly expenses of \$2,032.30, including \$1,157.30 for rent or mortgage, \$500.00 and up for food, a variable amount for clothing, and \$300.00 and up for other expenses. She also paid a total of \$70.00 per month on two credit cards. Appellant indicated that she had no assets. She enclosed financial documentation showing that she owed \$96.83 on a vehicle insurance policy, \$109.70 for current electric utility charges, \$158.84 for monthly water and sewer, \$1,157.30 for her mortgage, \$156.88 for telephone, \$509.60 for dental expenses, \$20.00 for a credit card, and \$55.00 for another credit card, \$63.50 for homeowner's association dues, and \$36.71 for a physician's care.

³ The employing establishment originally alleged that appellant was not in the performance of duty as she fell in the parking lot. However, it subsequently confirmed that she was on its property at the time of her fall.

By decision dated February 22, 2016, OWCP found that appellant received an overpayment of \$2,799.06 because she received disability compensation from December 14, 2015 to January 9, 2016 after she resumed employment. It determined that she was without fault in creating the overpayment, but denied waiver as her income exceeded her expenses by more than the allowed amount. OWCP found that appellant did not properly disclose her income, as she resumed work at a salary of \$55,699.00 per year, which it divided by 12 to find monthly income of \$4,641.58 per month. It added \$218.05 per month in premium pay and the provided SSA amount of \$2,600.00 to find total earnings of \$7,459.63 per month. OWCP added the listed expenses of \$1,157.30 for a mortgage, \$500.00 for food, variable for clothing, \$300.00 for other expenses, \$20.00 to Credit Union, and \$55.00 to Capital One to find a total of \$2,032.30. It also added other documented expenses of \$96.83 for automobile insurance, \$109.70 for electricity, \$158.84 for water, \$123.93 for telephone, \$58.50 for her homeowner's association, \$509.60 for a dental bill, and \$36.71 for a doctor's bill, to find total expenses of \$3,126.41. OWCP concluded that appellant's listed monthly expenses, even without investigation or sufficient documentation, were significantly less than her monthly income and thus denied waiver. It found that she should forward the total amount of the overpayment as repayment.

On appeal appellant contends that OWCP improperly calculated her monthly income. She advises that she did not receive benefits from SSA and that her monthly income was \$3,200.00. Appellant attached earnings and leave statements.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA 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.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, she may not receive salary, pay, or remuneration of any type from the United States, except in limited circumstances.⁵ OWCP's regulations state in pertinent part: "compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents her from earning the wages earned before the work-related injury."⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of \$2,799.06. OWCP paid her wage-loss compensation beginning October 26, 2015 after she underwent right foot surgery. Appellant returned to work on December 14, 2015, but continued to receive compensation until January 9, 2016. As appellant returned to regular work, she was not entitled to receive

⁴ 5 U.S.C. § 8102.

⁵ *Id.* at § 8116(a).

⁶ 20 C.F.R. § 10.500.

compensation after December 14, 2015.⁷ Accordingly, the Board finds that appellant received an overpayment of compensation.

OWCP calculated the overpayment by determining the amount that it paid appellant for the period. Appellant has not challenged either the fact or amount of overpayment.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA⁵ provides that an overpayment must be recovered unless “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.” (Emphasis added.) Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.⁶

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of her income (including compensation benefits) to meet current ordinary and necessary living expenses, and also, if the beneficiary’s assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.⁸ An individual’s liquid assets include, but are not limited to case, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits.⁹ Nonliquid assets include, but are not limited to, the fair market value of an owner’s equity in property such as a camper, boat, second home, and furnishings and supplies.¹⁰

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 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 her position for the worse.¹¹ To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.¹²

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

⁸ 20 C.F.R. § 10.436. OWCP procedures provide that assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (October 2004).

⁹ *Id.*

¹⁰ *Id.*

¹¹ 20 C.F.R. § 10.436.

¹² *Id.* at § 10.437(b)(1).

ANALYSIS -- ISSUE 2

OWCP found that appellant was without fault in creating the overpayment of compensation and thus considered whether she was entitled to waiver of the overpayment. Waiver is only possible if recovery would defeat the purpose of FECA or would be against equity and good conscience. In order to establish that repayment of the overpayment would defeat the purpose of FECA, appellant must show that she requires substantially all of her income to meet current ordinary and necessary living expenses and that her assets do not exceed the established limit as determined by OWCP's procedures.¹³

On the overpayment recovery questionnaire, appellant indicated that she received monthly income of \$2,600.00 from SSA. She listed expenses totaling \$3,126.41 and provided some documentation. OWCP determined that appellant did not disclose her employment earnings, which it found to be \$55,699.00 per year or \$4,641.58 per month in gross compensation. It added this amount to the listed SSA benefits to find income of \$7,459.63 per month, which exceeded all the disclosed expenses of \$3,126.41 by more than the allowed amount of \$50.00.¹⁴

On appeal appellant argues that she mistakenly put down earnings from SSA. She, however, did not report her monthly income from employment as required on the overpayment recovery questionnaire. Appellant has the burden to submit evidence regarding her income, expenses, and assets to OWCP in order to determine whether waiver would defeat the purpose of FECA or defeat equity and good conscience.¹⁵

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

The Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.¹⁶ As appellant was not in receipt of continuing compensation benefits at the time the final decision was entered in this matter, the Board lacks jurisdiction to review recovery of the overpayment.

¹³ *Id.* at § 10.436.

¹⁴ An individual is deemed to need substantially all of her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. *Supra* note 8 at Chapter 6.200.6(a)(1) (October 2004); *see also N.M.*, Docket No. 15-1460 (issued October 27, 2015).

¹⁵ 20 C.F.R. § 10.438.

¹⁶ *See id.* at § 10.441(a); *Ronald E. Ogden*, 56 ECAB 278 (2005).

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$2,799.06 from December 14, 2015 to January 9, 2016 because she returned to work, but continued to receive compensation for total disability. The Board further finds that OWCP properly denied waiver of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 20, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board