

eventually placed appellant on its periodic rolls, where she received compensation every 28 days through direct deposit.

Appellant returned to full-time limited-duty work on May 14, 2008. On June 7, 2008 the Office electronically paid her \$2,272.54 for the period May 11 to June 7, 2008. On June 9, 2008 appellant called the Office and informed them that she had returned to full-time work on May 14, 2008 but had received a compensation payment.

On July 8, 2008 the Office notified appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$2,039.63 for the period May 14 through June 7, 2008 because she received compensation for total disability after she returned to work on May 14, 2008. It further informed her of its preliminary determination that she was not at fault for accepting the direct deposit of \$2,272.54 as she did not have the requisite knowledge that such payment was incorrect at the time of deposit. The Office calculated that it paid appellant compensation in the amount of \$2,272.54 for the period May 11 through June 7, 2008 and she was entitled to compensation for disability for the period May 11 through 13, 2008, for a total of \$232.91. It found the difference between the compensation paid (\$2,272.54) and the compensation due (\$232.91) was \$2,039.63. The Office requested that appellant submit an enclosed overpayment recovery questionnaire and supporting financial information within 30 days. It noted that waiver would be denied if she failed to furnish the information requested on the enclosed overpayment recovery questionnaire or any other information needed to address a request for waiver within the 30 days. No response was received from appellant within the allotted 30 days.

By decision dated August 12, 2008, the Office finalized its finding that appellant received \$2,039.63 in overpayment of compensation for the period May 14 through June 7, 2008 based on her receipt of compensation for disability after her return to full-time limited-duty work on May 14, 2008. It also finalized its finding that she was without fault in the matter of the overpayment. The Office further noted waiver could not be granted as appellant had not provided any of the information necessary to make such a determination. Thus, it concluded collection of the overpayment was appropriate.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of the Federal Employees' Compensation Act¹ provides that the United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty. A claimant, however, is not entitled to receive temporary total disability and actual earnings for the same period.² Office procedures provide that an overpayment in compensation is created when a claimant returns to work but continues to receive wage-loss compensation.³

¹ 5 U.S.C. §§ 8101-8193, 8102(a).

² 5 U.S.C. § 8116(a).

³ *Danny E. Haley*, 56 ECAB 393,400 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2(a) (September 1994).

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$2,039.63. The record supports that she continued to receive compensation from the date that she returned to work on May 14 through June 7, 2008. When an employee returns to work and ceases to have any loss of wages, he or she is no longer entitled to compensation for wage loss.⁴ The record reflects that appellant received an automatic 28-day compensation payment for the period May 11 through June 7, 2008 in the amount of \$2,272.54, but was only entitled to compensation for the period May 11 through 13, 2008 in the amount of \$232.91. The difference between the compensation paid of \$2,272.54 and the compensation due of \$232.91 is \$2,039.63. As appellant was not entitled to compensation after her return to work on May 14, 2008, the Office properly found an overpayment of compensation occurred in the amount \$2,039.63.

LEGAL PRECEDENT -- ISSUE 2

The waiver or refusal to waive an overpayment of compensation by the Office is a matter that rests within the Office's discretion pursuant to statutory guidelines.⁵ The statutory guidelines are found in section 8129(b) of the Act which states: Adjustment recovery of an overpayment by the United States may not be made when an incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience.⁶

Section 10.436 of the implementing regulations⁷ provide that recovery of an overpayment would defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because: the beneficiary from whom the Office seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current or ordinary and necessary living expenses; and (b) the beneficiary's assets do not exceed a specified amount as determined by the Office from data furnished by the Bureau of Labor Statistics.⁸ An individual is deemed to need substantially all of his or her income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.⁹

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

⁴ See *Kenneth E. Rush*, 51 ECAB 116 (1999).

⁵ See *Robert Atchison*, 41 ECAB 83, 87 (1989).

⁶ See 5 U.S.C. § 8129(b); *Carroll R. Davis*, 46 ECAB 361, 363 (1994).

⁷ 20 C.F.R. § 10.436.

⁸ An individual's assets must exceed a resource based on \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or one dependent plus \$960.00 for each additional dependent. This base includes all of the individual's assets not exempt from recoupment. See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.6(a)(1)(b) (December 23, 2004).

⁹ See *Sherry A. Hunt*, 49 ECAB 467, 473 (1998).

severe financial hardship in 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.¹⁰

Section 10.438 of the regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in the denial of waiver.¹¹

ANALYSIS -- ISSUE 2

The Office found appellant to be without fault and eligible for consideration of waiver with regard to its finding that she received an overpayment in the amount of \$2,039.63. The applicable regulations provide that the individual who receives an overpayment is responsible for providing financial information. Failure to submit the requested financial information within 30 days of the request shall result in the denial of the waiver.¹² Appellant did not provide any financial information to show that recovery of the overpayment would defeat the purpose of the Act.¹³ As appellant failed to submit the requested financial evidence, the Office, pursuant to its regulations, properly denied waiver of recovery of the overpayment amount of \$2,039.63.¹⁴

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$2,039.63 for the period May 14 through June 7, 2008. The Board further finds that the Office properly denied waiver of such overpayment as appellant failed to submit the necessary financial information to establish that she was entitled to waiver of the overpayment.

¹⁰ 20 C.F.R. § 10.437.

¹¹ *Id.* at § 10.438.

¹² *See Clinton E. Clinton, Jr.*, 49 ECAB 476 (1998). *See also Robert Ringo*, 53 ECAB 258 (2001).

¹³ She likewise has not alleged and the evidence does not demonstrate that she relinquished a valuable right or changed her position for the worse due to the payment of the erroneous amount of compensation.

¹⁴ As the Office is not seeking recovery from continuing compensation, the Board does not have jurisdiction to review the manner of recovery of the overpayment. *See Miguel A. Muniz*, 54 ECAB 217 (2002).

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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