

FACTUAL HISTORY

The Office accepted that on March 13, 2008 appellant, then a 42-year-old city letter carrier, sustained a lumbar sprain due to carrying a mailbag at work on that date. She received compensation for various periods of disability.

In an August 13, 2008 letter to the Office, appellant stated, "I am writing to inform you that I am no longer employed with the United States Postal Service. I resigned my position as City Letter Carrier on Friday, August 8, 2008. Please discontinue workman's compensation payments." The record contains a similar August 13, 2008 letter that was sent to the employing establishment.

In a September 2, 2008 memorandum, an Office claims examiner stated that she spoke with appellant that day by telephone regarding whether or not appellant was entitled to continued compensation after she resigned from her position. Appellant reported that she had started work as a schoolteacher with a private employer on August 11, 2008 and needed further treatment for her back. The claims examiner advised appellant that she would assist her in obtaining authorization for additional medical treatment and would get back to her regarding her entitlement to compensation.

In a November 18, 2008 letter, an Office claims examiner requested that appellant provide information regarding her new employment with a private employer, including an explanation as to why she was withdrawing her request for compensation benefits, a job description of her new position and medical documentation from her treating physician concerning her work status. The claims examiner stated, "I have terminated your compensation from the periodic payment roll effective August 11, 2008, the date you began your employment as a schoolteacher and this will result in an overpayment from August 11 through November 22, 2008 -- the last date your were paid on the periodic payment roll."

In a December 4, 2008 notice, the Office advised appellant of its preliminary determination that she received a \$4,202.12 overpayment of compensation for the period August 11 to November 22, 2008. It found that she started working as a schoolteacher in the private sector on August 11, 2008 but received wage-loss compensation from that date through November 22, 2008 when it stopped payment. The Office provided a calculation purporting to show that appellant received \$4,202.12 in compensation from August 11 to November 22, 2008. It also made a preliminary determination that she was at fault in the creation of the overpayment because she knew she should have known that she could not receive wage-loss compensation after starting full-time work in private employment. The Office advised her that she could submit evidence challenging the fact, amount or finding of fault and request waiver of the overpayment. It requested that appellant complete and return an enclosed financial information questionnaire within 30 days even if she was not requesting waiver of the overpayment.

On December 10, 2008 appellant submitted a financial information questionnaire which showed that she had \$3,000.00 in monthly income, \$2,926.91 in monthly expenses and \$1,000.00 in assets. She indicated that her August 13, 2008 letter was only intended to stop compensation benefits to which she was not entitled. Appellant stated that she had been informed that switching jobs would not automatically end all compensation from the Office.

In a January 12, 2009 decision, the Office determined that appellant received a \$4,202.12 overpayment of compensation. It found that she was not at fault in the creation of the overpayment but that the overpayment was not subject to waiver.¹ The Office directed appellant to repay the full amount of the \$4,202.12 overpayment within 30 days. This decision provided further discussion of the creation of the overpayment by stating:

“In your letter dated August 13, 2008, you notified the [O]ffice that you were no longer employed by the [employing establishment] and requested your benefits be discontinued. On September 2, 2008 I spoke with you by telephone concerning whether or not you were entitled to continued compensation after you resigned from your employing [establishment]. During this telephone conversation you also informed me that you began working as a schoolteacher on August 11, 2008. I informed you that because there was no work release from your treating physician, the [O]ffice could not terminate your benefits right away, your treating physician would have to be contacted and a work release would be requested. Effective August 11, 2008, your compensation benefits were terminated. However, you were paid compensation benefits through November 22, 2008 from our office, thus resulting in an overpayment in your case.”

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of the Federal Employees' Compensation Act² 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.³ Section 8129(a) of the Act provides, in pertinent part, “When an overpayment has been made to an individual under this subchapter 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 an individual is entitled.”⁴ Section 8116(a) of the Act provides that while an employee is receiving compensation or if she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay or remuneration of any type from the United States, except in limited specified instances.⁵

¹ The Office stated, “However, even though you have been found to be with fault, it has been determined that the circumstances of your case do not warrant waiver of recovery of the overpayment.” The mention of a faultfinding appears to be a typographical error as elsewhere in the decision the Office discussed the standards for evaluating waiver of an overpayment when a claimant has been found to be not at fault in the creation of the overpayment. With respect to waiver, the Office stated, “The financial information received has not established the basis for granting waiver of recovery of the overpayment.”

² 5 U.S.C. §§ 8101-8193.

³ *Id.* at § 8102(a).

⁴ *Id.* at § 8129(a).

⁵ *Id.* at § 8116(a).

In reaching a final decision, the Office is required by statute and regulation to make findings of fact.⁶ Office procedure further specifies that a final decision of the Office must include findings of fact and provide clear reasoning which allows the claimant to “understand the precise defect of the claim and the kind of evidence which would tend to overcome it.”⁷ These requirements are supported by Board precedent.⁸

ANALYSIS -- ISSUE 1

The Office found that appellant received a \$4,202.12 overpayment of compensation and determined that the overpayment was not subject to waiver. Appellant started working as a schoolteacher in the private sector on August 11, 2008 but received wage-loss compensation for disability from that date through November 22, 2008. The Office calculated that appellant received \$4,202.12 in compensation for the period August 11 to November 22, 2008 as an overpayment of compensation.

While it appears that appellant might have received some degree of overpayment of compensation beginning in August 2008, the Office did not present adequate facts and findings to identify the precise cause and extent of such an overpayment. The record does not contain any clear determination regarding appellant’s entitlement to Office compensation on and after August 11, 2008.⁹ The Office has not adjudicated the issue of wage-earning capacity in light of appellant’s employment in the private sector or analyzed her eligibility to wage-loss compensation under such a wage-earning capacity determination. Nor did it issue a decision finding that the medical evidence established that she had no disabling residuals of her accepted March 13, 2008 employment injury on or after August 11, 2008 such that she would not be entitled to compensation after that point. The Office did not adequately explain its determination that appellant was not entitled to any compensation for the period August 11 to November 22, 2002 and she could not fully understand the consequences of its determination in this regard. It has not adequately supported its finding of a \$4,202.12 overpayment of compensation.

The case will be remanded to the Office for further development of the evidence. It should first consider appellant’s actual wages in the private sector to determine whether they fairly and reasonably reflect her wage-earning capacity. After such development it deems necessary, the Office should issue an appropriate decision on this matter.

⁶ *Id.* at § 8124(a) provides: “The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation.” 20 C.F.R. § 10.126 provides in pertinent part that the final decision of the Office “shall contain findings of fact and a statement of reasons.”

⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

⁸ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

⁹ The Office merely indicated that, because appellant started private employment, she was not entitled to Office compensation on and after August 11, 2008.

CONCLUSION

The Board finds that the Office did not properly find that appellant received a \$4,202.12 overpayment of compensation.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' January 12, 2009 decision be reversed.

Issued: November 9, 2009
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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