

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

K.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 11-1025
Issued: December 1, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 22, 2011 appellant filed a timely appeal from a February 24, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) that found that he received an overpayment of compensation. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$1,234.10 because he received wages from the employing establishment based on administrative leave while receiving wage-loss benefits for the period November 8 to 20, 2010; (2) whether OWCP properly denied waiver of the overpayment; and (3) whether OWCP properly required repayment of the overpayment by deducting \$398.71 each period from appellant's continuing compensation payments.

¹ 5 U.S.C. §§ 8101-8193.

On appeal appellant asserts that he did not receive a payment from OWCP for the covered period.

FACTUAL HISTORY

On April 13, 2003 appellant, then a 26-year-old mail handler, sustained lumbosacral and left knee strains while pushing a heavy skid of mail. He returned to limited duty on May 12, 2003 and eventually assumed full work duties. Appellant sustained a second low back injury on May 8, 2008 accepted for lumbar sprain, after which he resumed full work duties. On January 15, 2010 he sustained a third low back injury, accepted for lumbar sprain and herniated lumbar discs at L3-4 and L4-5. Appellant has not worked since that date.² He filed CA-7 claims for compensation. On April 13, 2010 appellant submitted a direct deposit form. He received wage-loss compensation beginning March 4, 2010, and was placed on the periodic compensation rolls effective September 26, 2010. On October 21, 2010 appellant's payment by direct deposit was keyed for the period October 24 through November 20, 2010.

On November 12, 2010 appellant filed a notice of recurrence, stating that his disability occurred on November 11, 2010 because the employing establishment had no work available under the National Reassessment Process (NRP). The claim form indicated that his pay stopped on December 8, 2010. OWCP accepted that appellant sustained a recurrence of disability on November 8, 2010. On December 2, 2010 appellant called OWCP to state that he would begin filing CA-7 claims for compensation effective December 9, 2010 and was told he had been placed on the periodic compensation rolls. The telephone memorandum noted that appellant received payment for the dates October 24 to November 20, 2010 and the employing establishment paid him administrative leave and would pay him from November 21 to December 8, 2010. An OWCP claims examiner called the employing establishment and verified that appellant was in receipt of wages and was told that he was being paid administrative leave for the period November 8 to December 7, 2010 because he had veteran status and no work was available under the NRP.

By letter dated January 19, 2011, OWCP issued a preliminary determination that appellant received an overpayment in compensation in the amount of \$1,234.10 for the period November 8 to December 7, 2010 because he received wage-loss compensation during a period in which he also received administrative leave wages from his employer. It found him not at fault in the creation of the overpayment. Appellant was provided an overpayment action request form and an overpayment questionnaire. Computer printouts and an overpayment worksheet indicated that he was paid wage-loss compensation of \$2,658.06 for the period October 24 through November 20, 2010, when he should have received compensation of \$1,423.96 for the period October 24 through November 7, 2010 only, yielding an overpayment of compensation of \$1,234.10. Appellant did not respond to the preliminary overpayment letter.

By decision dated February 24, 2011, OWCP finalized the preliminary overpayment decision, finding that appellant received an overpayment in compensation in the amount of \$1,234.10. While appellant was not at fault, he was not entitled to waiver of the overpayment because he failed to provide the requested information. He was informed that repayments of

² The 2003 claim was adjudicated under OWCP file number xxxxxx501, the 2008 injury under file number xxxxxx165, and the 2010 injury under file number xxxxxx634. The claims were doubled on June 28, 2010.

\$398.71 would be deducted from his continuing compensation for three compensation periods, and \$39.06 for a fourth.

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.³

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.⁴ Section 10.500 of OWCP's 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."⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$1,234.10 for the period November 8 to 20, 2010. The record supports that he received wages based on administrative leave for the period November 8 to December 7, 2010. Appellant received wage-loss compensation based on a periodic rolls payment up to November 20, 2010. As noted, both FECA and implementing regulations of OWCP provide that a claimant may not receive wage-loss compensation concurrently with federal wages.⁶ Computer printouts indicate that appellant received FECA monetary compensation of \$1,234.10 for the period November 8 to 20, 2010, thus creating an overpayment of compensation in that amount.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP 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."⁷ Section 10.438 of OWCP regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery on an overpayment would defeat the purpose of FECA or be against equity and good

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116(a); *see Danny E. Haley*, 56 ECAB 393 (2005).

⁵ 20 C.F.R. § 10.500 (2010).

⁶ 5 U.S.C. § 8116(s); *Id.* at § 10.500 (2010).

⁷ *Id.* at § 8129.

conscience.⁸ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.⁹

ANALYSIS -- ISSUE 2

OWCP found appellant without fault in the creation of the overpayment; waiver must be considered and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁰ Appellant, however, had the responsibility to provide financial information to OWCP but failed to do so.¹¹

In its preliminary determination dated January 19, 2011, OWCP clearly notified appellant of the importance of providing the requested financial information and that it would deny waiver if he failed to furnish the requested financial information within 30 days. Appellant did not submit a completed overpayment questionnaire or otherwise submit financial information supporting his income and expenses at any time. As a result, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience. Consequently, as appellant did not submit the financial information required under section 10.438 of OWCP regulations, which was necessary to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment in compensation in the amount of \$1,234.10.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP regulations provide that, when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize hardship.¹²

⁸ Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the beneficiary from whom OWCP 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 OWCP from data furnished by the Bureau of Labor Statistics. 20 C.F.R. § 10.436. 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 his or her position for the worse. *Id.* at § 10.437.

⁹ 20 C.F.R. § 10.438.

¹⁰ *Id.*

¹¹ *Id.* at § 10.438.

¹² *Id.* at § 10.441; see *Steven R. Cofrancesco*, 57 ECAB 662 (2006).

ANALYSIS -- ISSUE 3

Although OWCP provided an overpayment recovery questionnaire with the January 19, 2011 preliminary finding, appellant did not submit a completed questionnaire or other financial information that OWCP requested prior to the final February 24, 2011 overpayment decision. The overpaid individual is responsible for providing information about income, expenses and assets as specified by OWCP.¹³ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.¹⁴ As appellant did not submit any financial information to OWCP as requested, the Board finds that there is no evidence in the record to show that OWCP erred in directing recovery at a rate of \$398.71 from his continuing compensation for three compensation periods, and \$39.06 for a fourth.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,234.10 that OWCP properly denied waiver of the overpayment, and that OWCP properly required repayment from appellant's continuing compensation payments.

¹³ 20 C.F.R. § 10.438.

¹⁴ *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- *Debt Management*, Chapter 6.200.4(c)(2) (September 1994).

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 1, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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