

periodic compensation rolls effective June 8, 2008. By decision dated March 11, 2010, it terminated appellant's compensation and medical benefits effective that day. On March 13, 2010 OWCP disbursed a periodic rolls payment for the 28-day period of February 14 to March 13, 2010. The following month, it mistakenly paid wage-loss compensation for the 28-day period March 14 to April 10, 2010.

On April 14, 2010 OWCP issued a preliminary overpayment determination finding that it overpaid appellant \$2,576.88 for the period March 12 to April 10, 2010. Despite the termination of monetary compensation benefits effective March 11, 2010, payment for total disability continued through April 10, 2010. Appellant was not found at fault in the creation of the overpayment. OWCP explained appellant's available options should she wish to challenge the preliminary determination and/or request waiver of recovery of the overpayment. Additionally, it provided an overpayment recovery questionnaire (Form OWCP-20). Appellant did not respond within the allotted 30-day timeframe.

In a decision dated May 17, 2010, OWCP finalized that appellant received a \$2,576.88 overpayment. It denied waiver of recovery of the overpayment, noting that appellant had not submitted an OWCP-20 with supporting financial documentation as required.

LEGAL PRECEDENT -- ISSUE 1

FECA provides that the United States shall pay compensation as specified for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² An overpayment exists where OWCP continues to pay wage-loss compensation following termination of benefits.³

ANALYSIS -- ISSUE 1

OWCP terminated appellant's compensation and medical benefits effective March 11, 2010.⁴ However, it continued to pay appellant wage-loss compensation for total disability through April 10, 2010. The record reflects that OWCP paid appellant \$2,576.88 for the period March 12 to April 10, 2010. As he was not entitled to receive wage-loss compensation after March 11, 2010, OWCP properly found that appellant had been overpaid in the amount of \$2,576.88. Accordingly, the Board finds that the fact and amount of overpayment are established. OWCP found that appellant was without fault.

² 5 U.S.C. § 8102(a).

³ *D.R.*, 59 ECAB 148 (2007).

⁴ The propriety of OWCP's decision to terminate compensation and medical benefits is not currently before the Board. Appellant filed the instant appeal more than 180 days after OWCP issued its March 11, 2010 decision terminating benefits. *See* 20 C.F.R. § 501.3(e) (2010). He has since requested reconsideration before OWCP, which was denied by decision dated March 25, 2011.

LEGAL PRECEDENT -- ISSUE 2

An individual who is without fault in creating or accepting an overpayment is nonetheless subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.⁵ Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a current or former beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.⁶ Additionally, recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when any individual, in reliance on such payment or on notice that such payments would be made, relinquished a valuable right or changed his position for the worse.⁷

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP.⁸ This information is necessary for determining whether a waiver of recovery of the overpayment is warranted.⁹ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁰

ANALYSIS -- ISSUE 2

OWCP found that appellant was not entitled to consideration of waiver of recovery because he had not submitted an overpayment recovery questionnaire (OWCP-20) with supporting financial documentation. Although appellant received ample opportunity to submit the requisite financial information, he did not comply with OWCP's April 14, 2010 request. As noted, a failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹¹ The Board finds that OWCP properly denied waiver of recovery of the \$2,576.88 overpayment in conformance with the implementing federal regulations.

⁵ 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

⁶ 20 C.F.R. § 10.436(a), (b). For an individual with no eligible dependents the asset base is \$4,800.00. The base increases to \$8,000.00 for an individual with a spouse or one dependent, plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(b) (June 2009).

⁷ 20 C.F.R. § 10.437(a), (b).

⁸ *Id.* at § 10.438(a).

⁹ The information will also be used to determine an appropriate repayment schedule, if necessary. *Id.*

¹⁰ 20 C.F.R. § 10.438(b).

¹¹ *Id.*

CONCLUSION

Appellant received an overpayment of \$2,576.88 for the period March 12 to April 10, 2010. Although he was without fault in creating the overpayment, appellant is not entitled to waiver of recovery.

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2011
Washington, DC

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

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

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