

FACTUAL HISTORY

On September 21, 2007 appellant, then a 44-year-old postal clerk, filed an occupational disease claim alleging osteoarthritis and degenerative disc disease of the spine were caused by her work duties. She stopped work on April 24, 2007. The claim was accepted for lumbar osteoarthritis and degeneration of lumbar or lumbosacral intervertebral disc. Appellant received wage-loss compensation by check. She returned to modified duty for four hours a day on March 20, 2008. OWCP reduced appellant's compensation accordingly. On September 7, 2008 appellant began working modified duty for six hours a day. She stopped work on March 23, 2009 and filed a claim for compensation. By decision dated June 25, 2010, OWCP denied appellant's claim that she sustained a recurrence of disability on March 23, 2009.² Appellant continued to receive wage-loss compensation based on a 30-hour workweek.

By letter dated September 2, 2010, OWCP issued a preliminary determination that appellant received an overpayment in compensation in the amount of \$6,797.44 for the period September 7, 2008 to April 10, 2010 because she continued to receive disability compensation during this period based on a workweek of 20 hours, when she had increased her work hours to 30 a week. It explained the calculation of the overpayment and found her at fault in its creation because she knew or reasonably should have known that this was not correct. Appellant was provided an overpayment action request form and an overpayment questionnaire. Computer print-outs and overpayment worksheets in the record support that she received compensation in the amount of \$26,623.85 for the period September 7, 2008 to April 10, 2010 when she should have received compensation of \$19,826.41, yielding an overpayment of \$6,797.44. Appellant did not respond to the preliminary notice.

By decision dated October 19, 2010, OWCP finalized the preliminary determination that appellant was at fault in creating the \$6,797.44 overpayment because she received wage-loss compensation based on a 20-hour workweek after she began working 30 hours a week. It advised her that she should either forward a check for the amount of the overpayment or contact it to make arrangements for recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA 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.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

² In July 2010, OWCP referred appellant to Dr. Raymond Fletcher, a Board-certified orthopedic surgeon, for a second-opinion evaluation who, diagnosed permanent aggravation of cervical spondylosis with left cervical radiculitis causally related to her employment. Dr. Fletcher advised that appellant could work eight hours daily with permanent physical restrictions. On August 5, 2010 appellant filed an occupational disease claim for osteoarthritis of the cervical spine and cervical degenerative disc disease. The claim was adjudicated under file number xxxxxx554. On November 19, 2010 OWCP accepted that she sustained aggravation of degeneration of a cervical intervertebral disc. On November 23, 2010 the claims were doubled.

³ 5 U.S.C. § 8102(a).

remuneration of any type from the United States, except in limited circumstances.⁴ Section 10.500 of OWCP 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 OWCP procedures provide that an overpayment in compensation is created when a claimant returns to work and continues to receive compensation.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment in compensation in the amount of \$6,797.44. The record establishes that she began a 30-hour workweek on September 7, 2008. As noted, both FECA and OWCP regulations provide that a claimant may not receive wage-loss compensation concurrently with a federal salary.⁷ Computer print-outs and overpayment worksheets in the record support that appellant received compensation in the amount of \$26,623.85 for the period September 7, 2008 to April 10, 2010 when she should have received \$19,826.41 for 10 hours of wage loss a week creating an overpayment of \$6,797.44. The Board finds she, therefore, received an overpayment in 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.”⁸

Section 10.433(a) of OWCP regulations provide:

“OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives from OWCP are proper. The recipient must show good faith and exercise a high degree of care in reporting events which may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault in creating an overpayment: (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or (2) Failed to provide

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

⁵ 20 C.F.R. § 10.500.

⁶ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2(a) (September 1994).

⁷ *Supra* note 4; 20 C.F.R. § 10.500.

⁸ *Id.* at § 8129; *see Linda E. Padilla*, 45 ECAB 768 (1994).

information which he or she knew or should have known to be material; or
(3) Accepted a payment which he or she knew or should have known to be incorrect. (This provision applies only to the overpaid individual).”⁹

To determine if an individual was at fault with respect to the creation of an overpayment, OWCP examines the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual’s capacity to realize that he or she is being overpaid.¹⁰

ANALYSIS -- ISSUE 2

OWCP found that appellant was at fault in creating the overpayment because she knew or should have known that she was not entitled to receive the same amount of wage-loss compensation for the period September 7, 2008 to April 10, 2010 when she started working an additional 10 hours a week. The compensation she had previously received, was based on 20 hours a week.

Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives are proper¹¹ and the recipient must show good faith and exercise a high degree of care in reporting events that may affect entitlement to or the amount of benefits.¹² In the January 2, 2008 letter, in which OWCP notified appellant that her claim was accepted, it clearly advised her that she was to immediately inform OWCP upon her return to work to avoid an overpayment in compensation and that, if she worked during any period covered by a compensation payment, she had to return the payment to OWCP. Likewise, in the August 13, 2008 letter when it reduced appellant’s compensation based on a 20-hour workweek, OWCP informed her that, if she received an increase in pay over \$546.57 a week, she should notify it of the increase immediately, and failure to do so could cause an overpayment in compensation.

Under these circumstances, appellant should have known that she could not receive wage-loss compensation based on a 20-hour workweek when she was working 30 hours a week.¹³ She did not return the compensation she received by check for the period September 7, 2008 to April 10, 2010.

The Board therefore finds that appellant should have known that, at the time she increased her work schedule, she was not entitled to continue to receive compensation at the same rate and had an obligation to return payments she knew or should have known were

⁹ 20 C.F.R. § 10.433; *see Sinclair L. Taylor*, 52 ECAB 227 (2001); *see also* 20 C.F.R. § 10.430.

¹⁰ *Id.* at § 10.433(b); *Neill D. Dewald*, 57 ECAB 451 (2006).

¹¹ *Danny E. Haley*, *supra* note 4.

¹² *Sinclair L. Taylor*, *supra* note 9.

¹³ *Neill D. Dewald*, *supra* note 10.

incorrect.¹⁴ Under section 10.433(a) of OWCP's regulations, appellant is at fault and is not entitled to waiver of the overpayment in compensation.¹⁵ Consequently, overpayment must be recovered.¹⁶

CONCLUSION

The Board finds that appellant was at fault in the creation of an overpayment in compensation in the amount of \$6,797.44 for the period September 7, 2008 to April 10, 2010 because she continued to receive wage-loss compensation based on a 20-hour workweek after she began to work 30 hours a week. As appellant was at fault, she was thus not entitled to waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the October 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ The Board does not have jurisdiction over recovery of the overpayment as OWCP has not issued a final decision directing recovery from continuing compensation benefits. *See* 20 C.F.R. § 501.2(c); *see D.R.*, 59 ECAB 148 (2007).