



accepted his claim for left medial meniscus tear. In its March 23, 2010 letter accepting the claim, it advised appellant that he was expected to return to work as soon as he was able and to notify OWCP once he returned to work. OWCP further informed him that he was only entitled to compensation if he was unable to work due to his accepted condition and that he should immediately return any compensation checks received which included payment for a period during which he returned to work. Appellant received wage-loss compensation for disability and was placed on the periodic rolls.

In a May 2, 2011 medical report, David Mansfield, MD, authorized appellant to return to work without restrictions. On May 12, 2011 OWCP was informed that appellant returned to work on May 3, 2011 without restrictions.

Computer printouts and compensation reports indicate that appellant was paid disability compensation of \$2,925.38 for the period April 10 to May 7, 2011 or \$104.477 a day. Since he returned to work on May 3, 2011, OWCP determined that he was not entitled to five days of compensation from May 3 to 7, 2011, which resulted in an overpayment of \$522.39.

On May 23, 2011 OWCP issued a preliminary decision that appellant received an overpayment of compensation in the amount of \$522.39 because he returned to work on May 3, 2011 but received compensation until May 7, 2011. Appellant was found at fault in creating the overpayment, as he knew or should have known that he was not entitled to receive compensation for a period after his return to work. OWCP further informed him that he had 30 days to request a telephone conference, a final decision based on the written evidence, or a precoupment hearing on the issues of fault and a possible waiver. The overpayment worksheet stated that appellant was paid \$2,925.38 for the period April 10 to May 7, 2011 or \$104.477 a day. It multiplied the daily rate of \$104.477 by five, which was the number of days he worked during that period, to total an overpayment of \$522.39.

In a decision dated June 23, 2011, OWCP finalized its preliminary determination regarding the overpayment of \$522.39. It found that appellant was at fault in the creation of the overpayment because he accepted a payment which he knew or reasonably should have known was incorrect. OWCP stated that he should have been aware he was not entitled to receive compensation checks after he returned to work on May 3, 2011.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>2</sup>

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 may not receive salary, pay, or remuneration of any type from the United States, except in limited circumstances.<sup>3</sup> OWCP's regulations provide that compensation for wage loss due to

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<sup>2</sup> 5 U.S.C. § 8102.

<sup>3</sup> *Id.* at § 8116(a).

disability is available only for any periods during which an employee's work-related medical condition prevents him from earning the wages earned before the work-related injury.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment in the amount of \$522.39. The record reflects that he returned to work without restrictions on May 3, 2011. As noted above, FECA and OWCP regulations provide that a claimant may not receive wage-loss compensation concurrently with a federal salary.<sup>5</sup> Computer print-outs and overpayment worksheets in the record support that appellant received compensation in the amount of \$2,925.38 for the period April 10 to May 7, 2011 even though he returned to work on May 3, 2011 resulting in an overpayment of \$522.39. When the \$2,925.38 payment he received every 28 days was divided by 28, the daily rate of \$104.47786 was properly determined, this daily rate was then multiplied by five, to determine the \$522.39 amount of overpayment. The Board finds, therefore, that appellant received an overpayment in compensation in that amount.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129(a) of FECA provides that an overpayment must be recovered 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 be against equity and good conscience.<sup>6</sup> No waiver of payment is possible if appellant is not without fault in helping to create the overpayment.<sup>7</sup>

In determining whether an individual is not without fault or alternatively, with fault, section 10.433(a) of OWCP's regulations provide in relevant part:

An individual is with fault in the creation of an overpayment who:

- (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 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.<sup>8</sup>

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<sup>4</sup> 20 C.F.R. § 10.500(a).

<sup>5</sup> 5 U.S.C. § 8116(a).

<sup>6</sup> *Id.* at § 8129(b).

<sup>7</sup> *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

<sup>8</sup> 20 C.F.R. § 10.433(a).

## **ANALYSIS -- ISSUE 2**

OWCP determined that appellant was at fault in the creation of the overpayment because he accepted a payment that he knew or reasonably should have known was incorrect.

Appellant was informed on March 23, 2010 that he was to immediately notify OWCP if he returned to work and to return any compensation received after he returned to work in order to prevent an overpayment of compensation. The record reflects that he returned to work on May 3, 2011, but received compensation until May 7, 2011. On appeal, appellant alleges that he was forced to return to work and that the check he received on May 7, 2011 did not have any instructions other than “to cash it to eat and pay rent.” As noted, however, he was previously informed that he was not entitled to wage-loss compensation for the same period that he earned wages. OWCP regulations also provide that each compensation check includes a clear indication of the period for which payment is made.<sup>9</sup> Thus, appellant should have known that he was not entitled to compensation after he returned to work on May 3, 2011.

The Board finds that OWCP properly found that appellant was at fault in the creation of the overpayment covering the period May 3 to 7, 2011. Thus, the overpayment cannot be waived.

## **CONCLUSION**

The Board finds that appellant was at fault in the creation of an overpayment in compensation in the amount of \$522.39 for the period May 3 to 7, 2011 because he continued to receive wage-loss compensation after he returned to work on May 3, 2011. As appellant was at fault, he was thus not entitled to waiver of recovery of the overpayment.

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<sup>9</sup> *Id.* at § 10.430(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 23, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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