

Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether OWCP properly found that appellant received an overpayment of \$1,701.28 for the period July 9, 2006 through May 12, 2007 due to an underdeduction for health insurance premiums; and (2) whether appellant was at fault in the creation of the overpayment and, therefore, ineligible for waiver of recovery of the overpayment.

FACTUAL HISTORY

OWCP accepted appellant's June 29, 2000 traumatic injury claim under File No. xxxxxx600 for cervical disc herniation. On June 12, 2006 it accepted his April 28, 2006 traumatic injury claim for temporary aggravation of a preexisting cervical degenerative disc disease under File No. xxxxxx589. OWCP consolidated File Nos. xxxxxx600 and xxxxxx589, with File No. xxxxxx589 serving as the master file. Appellant was paid wage-loss compensation for total disability under File No. xxxxxx600 until May 13, 2007, when he began receiving benefits under File No. xxxxxx589.

On March 13, 2009 OWCP notified appellant of its preliminary determination that he had received an overpayment of compensation in File No. xxxxxx589 in the amount of \$3,762.82 due to an underdeduction of health insurance premiums from May 13, 2007 to February 14, 2009. On the same date in File No. xxxxxx600, it notified him of its preliminary determination of overpayment in the amount of \$1,701.28 due to an underdeduction of health insurance premiums from July 9, 2006 to May 12, 2007. In both instances, OWCP advised appellant that he could request a telephone conference, a final decision based on the written evidence only or a hearing, within 30 days of the date of the letter, if he disagreed that the overpayment occurred, if he disagreed with the amount of overpayment, if he believed that the overpayment occurred through no fault of his own and if he believed that recovery of the overpayment should be waived.

On March 28, 2009 appellant submitted a request for a precoupment hearing on OWCP's "initial determination dated [March 3, 2009]." He disagreed that the overpayment occurred or that he was at fault in its creation.

¹ 5 U.S.C. § 8101 *et seq.*

² This case was previously before the Board. In an October 6, 2008 decision, the Board affirmed a December 5, 2007 decision denying authorization for a total disc arthroscopy. Docket No. 08-855 (issued October 6, 2005). In a decision dated September 27, 2010, the Board affirmed an October 1, 2009 decision finding that appellant had received an overpayment of compensation in the amount of \$3,762.82 and was at fault in its creation. Docket No. 10-105 (issued September 27, 2010). Appellant's June 29, 2000 traumatic injury claim (File No. xxxxxx600) was accepted for cervical disc herniation. His April 28, 2006 traumatic injury claim was accepted for temporary aggravation of a preexisting cervical degenerative disc disease (File No. xxxxxx589). The claims were combined, with File No. xxxxxx589 serving as the master file. Appellant's May 15, 2006 occupational disease claim was accepted for neck sprain. His December 31, 2005 traumatic injury claim for thumb, mid-back and neck injuries was treated as a short form closure case.

Appellant submitted a letter dated March 30, 2009, which referenced “Claim [File No. xxxxxx589] (note, formerly [File No. xxxxxx600]).” He contested the “finding of fault and alleged overpayment due to incorrect withholding of health insurance premiums. Demand for repayment.” Appellant stated that he had no knowledge that his benefits had changed as of July 9, 2006 and that he had never used the benefits. He noted that OWCP had changed his case number from File Nos. xxxxxx600 to xxxxxx589 and had issued two different notices, one alleging an overpayment in the amount of \$1,701.28, the other alleging overpayment in the amount of \$3,762.82. Appellant contended that “OWCP’s left hand has no clue what its right hand is doing.”

On June 11, 2009 appellant was informed that a telephonic hearing would be held in File No. xxxxxx589 on July 14, 2009. OWCP’s hearing representative addressed the March 13, 2009 preliminary determination of overpayment made in File No. xxxxxx589 in the amount of \$3,762.82 for the period May 13, 2007 to February 14, 2009. There was no testimony given or evidence received regarding the preliminary overpayment decision issued in File No. xxxxxx600. By decision dated October 1, 2009, the hearing representative finalized the preliminary determination of overpayment in the amount of \$3,762.82. In a September 27, 2010 decision, the Board affirmed the October 1, 2009 decision.³

By decision dated March 7, 2011, OWCP finalized the March 13, 2009 preliminary determination in File No. xxxxxx600 that appellant had received an overpayment in the amount of \$1, 701.28 for the period July 9, 2006 to May 12, 2007 and that he was at fault in its creation. The claims examiner stated:

“No response has been received to the preliminary decision. The claimant has not contested the finding and it should be finalized as correct for the reasons set forth in the preliminary decision.”

LEGAL PRECEDENT -- ISSUE 1

OWCP is required to follow certain procedures in overpayment cases. Section 10.431 of FECA’s implementing regulations provides that, before seeking recovery of an overpayment, OWCP will advise a claimant in writing that the overpayment exists and the amount of the overpayment.⁴ The written notification must include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.⁵ Additionally, OWCP is obliged to advise the individual of his right to inspect and copy the government records relating to the overpayment.⁶ Lastly, the preliminary notice must inform the individual of his right to challenge the fact or amount of the overpayment, the right to contest the preliminary finding of fault in the creation of the overpayment, if applicable, and the right to request a waiver of recovery of the

³ Docket No. 10-105 (issued September 27, 2010).

⁴ 20 C.F.R. § 10.431(a).

⁵ *Id.* at. § 10.431(b).

⁶ *Id.* at § 10.431(c).

overpayment.⁷ The recipient of the alleged overpayment may present evidence in response to OWCP's preliminary notice, either in writing or at a precoupment hearing requested within 30 days.⁸

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for a decision as to whether appellant received an overpayment of compensation for the period July 9, 2006 through May 12, 2007.

On March 13, 2009 OWCP issued two separate preliminary determinations of overpayment. Appellant had the right to challenge each preliminary determination by presenting evidence in writing or at a precoupment hearing requested within 30 days.⁹ He did not, however, receive a hearing on both determinations. OWCP interpreted appellant's March 30, 2009 letter requesting a precoupment hearing as a challenge to only the alleged overpayment in File No. xxxxxx589 in the amount of \$3,762.82. The hearing representative did not address the alleged overpayment under File No. xxxxxx600 in the amount of \$1,701.28.

In his March 7, 2011 overpayment decision, the claims examiner found that appellant had not responded to the preliminary determination and had not contested the amount of overpayment. It is clear that appellant's March 30, 2009 letter was intended as a response to both overpayment notices, as evidenced by its reference to both claim numbers and both alleged overpayment amounts. Therefore, the Board finds that he did, in fact, challenge the fact and amount of the overpayment at issue in this case. Further, appellant made a timely request for a precoupment hearing, which he was not afforded. The fact that he received a hearing on the alleged overpayment for the period May 13, 2007 to February 14, 2009 under File No. xxxxxx589 in the amount of \$3,762.82 does not deprive him of the right to a hearing on the alleged overpayment in this case.

The Board finds that this case is not in posture for a decision. The case will be remanded for a proper response to appellant's request for a telephone conference. Following this and such other development as deemed necessary, OWCP shall issue an appropriate decision.¹⁰

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether appellant received an overpayment of compensation for the period July 9, 2006 through May 12, 2007.

⁷ *Id.* at § 10.431(d).

⁸ *Id.* at § 10.432.

⁹ *Id.*

¹⁰ Given the Board's ruling on the first issue, the second issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2011 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further development consistent with this decision.

Issued: January 27, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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