



## **FACTUAL HISTORY**

On July 19, 1995 appellant, then a 44-year-old probation clerk, filed an occupational disease claim alleging that she sustained bilateral carpal tunnel syndrome and tendinitis of the right elbow due to factors of her federal employment. OWCP accepted the claim for bilateral carpal tunnel syndrome, lateral epicondylitis of the right elbow and consequential right shoulder impingement.

By decision dated June 27, 2000, OWCP reduced appellant's compensation benefits based on its finding that she had the capacity to work as a social services aid. It paid her compensation of \$581.00 every four weeks beginning June 26, 2000. OWCP did not deduct health or life insurance premiums from appellant's compensation.

On December 7, 2011 appellant elected to receive retirement benefits from OPM, effective July 1, 2011. OWCP continued to pay her compensation for partial disability until December 17, 2011. From July 1 until December 17, 2011, it paid her compensation of \$3,868.33.

On December 21, 2011 OWCP advised appellant of its preliminary determination that she received an overpayment of \$3,868.33 from July 1 to December 17, 2011 based on her retroactive election to receive retirement benefits from OPM. It further advised her of its preliminary determination that she was without fault in the creation of the overpayment. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents. Additionally, it notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence or a prerecoupment hearing. The record does not show that an OWCP-20 was included with the preliminary determination of overpayment.

By decision dated January 23, 2012, OWCP determined that appellant had received an overpayment of \$3,868.33 because she retroactively received compensation from OPM for the period July 1 to December 17, 2011 and compensation for partial disability. It found that she was not entitled to waiver of recovery of the overpayment, noting that she had not responded to its preliminary notice of overpayment. OWCP advised appellant to forward a check for the entire amount as repayment.

On appeal appellant argued that repaying the overpayment would create a financial hardship. She explained that the overpayment arose when her file went to the wrong OPM office. Appellant did not know that the wage-earning capacity payment was related to her retirement. She related that repaying the overpayment would create a hardship as she was currently losing her home and was in debt.

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

Section 8102 of FECA<sup>2</sup> 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>3</sup>

Section 8116 of FECA defines the limitations on the right to receive compensation benefits. It 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 for services actually performed or for certain payments related to service in the “Armed Forces, including benefits administered by the Department of Veterans Affairs unless such benefits are payable for the same injury or the same death being compensated for under [FECA].”<sup>4</sup> The implementing regulations provide that a beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.<sup>5</sup> The beneficiary must elect the benefit that he or she wishes to receive.<sup>6</sup>

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

OWCP paid appellant compensation based on her loss of wage-earning capacity from June 26, 2000 until December 17, 2011. Appellant retroactively elected to receive retirement benefits from OPM effective July 1, 2011. She was not entitled to receive compensation from OWCP under FECA and retirement benefits from OPM concurrently.<sup>7</sup> Consequently, appellant received an overpayment of compensation after her retroactive election of retirement benefits. The amount that OWCP paid appellant from July 1 until December 17, 2011, \$3,868.33, constituted an overpayment of compensation.<sup>8</sup> The Board will affirm the fact and amount of overpayment.

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

OWCP’s regulations provide that, before seeking to recover an overpayment or adjust benefits, it will advise the individual in writing that the overpayment exists and the amount of the overpayment.<sup>9</sup> The written notification must also include a preliminary finding regarding

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at § 8102.

<sup>4</sup> *Id.* at § 8116(a).

<sup>5</sup> 20 C.F.R. § 10.421(a).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; see also *D.P.*, Docket No. 11-1841 (issued July 11, 2012).

<sup>8</sup> OWCP was not deducting health or life insurance premiums so the gross and net compensation during the period July 1 to December 17, 2011 were the same amount.

<sup>9</sup> 20 C.F.R. § 10.431(a).

whether the individual was at fault in the creation of the overpayment.<sup>10</sup> OWCP must inform the individual of his or her 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 overpayment.<sup>11</sup> The Federal (FECA) Procedure Manual further provides that a preliminary finding of overpayment must be provided within 30 days and must clearly identify the reason that the overpayment occurred and the basis for any fault finding.<sup>12</sup>

The Federal (FECA) Procedure Manual further states, “*If the claimant is determined to be without fault, Form CA-2202 must be released (along with an OWCP-20) within 30 days of the date the overpayment is identified.*” (Emphasis in the original.)

### **ANALYSIS -- ISSUE 2**

On December 21, 2011 OWCP notified appellant of its preliminary determination that she received an overpayment of compensation from July 1 to December 17, 2011 and that she was without fault in the creation of the overpayment. It requested that she complete an enclosed overpayment recovery questionnaire, Form OWCP-20. It does not appear from the record, however, that OWCP sent a Form OWCP-20 with the preliminary notification of the overpayment. OWCP’s procedures provide that an OWCP-20 must be provided to appellant along with the preliminary overpayment determination.<sup>13</sup> As it does not appear that OWCP complied with its procedures, the case will be remanded for OWCP to provide her with a Form OWCP-20 prior to determining whether she is entitled to waiver of recovery of the overpayment.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,868.33 for the period July 1 to December 17, 2011 because she retroactively elected to receive retirement benefits from OPM. The Board further finds that the case is not in posture for decision regarding whether the overpayment should be waived.

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<sup>10</sup> *Id.* at § 10.431(b).

<sup>11</sup> *Id.* at § 10.431(d).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(a)(1) (May 2004).

<sup>13</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 23, 2012 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: September 17, 2012  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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