

**United States Department of Labor
Employees' Compensation Appeals Board**

S.C., Appellant)	
)	
and)	Docket No. 13-385
)	Issued: April 8, 2013
U.S. POSTAL SERVICE, POST OFFICE,)	
Fort Worth, TX, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 6, 2011 appellant filed a timely appeal from the November 19, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which found an overpayment. Pursuant to the Federal 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.

ISSUES

The issues are: (1) whether appellant received a \$1,030.77 overpayment from May 24 through September 22, 2012; and (2) whether she was at fault in creating the overpayment.

FACTUAL HISTORY

On September 22, 2008 appellant, a 46-year-old sales services/distribution associate, sustained a traumatic injury in the performance of duty when she reached to secure a safety latch on an all-purpose container. She felt a severe pain in her low back. OWCP accepted appellant's

¹ 5 U.S.C. § 8101 *et seq.*

claim for lumbar sprain and unspecified mononeuritis of the right upper extremity. Appellant received compensation for temporary total disability on the periodic rolls.

Appellant returned to work six hours a day on January 31, 2012. She returned to full duty on May 24, 2012.

On May 25, 2012 OWCP notified appellant that she would continue to receive regular compensation payments of \$762.00. Appellant received these payments through September 22, 2012.

OWCP made a preliminary determination that appellant received an overpayment in the amount of \$3,316.77 from May 24 to September 22, 2012 because she received compensation for total disability after returning to work. It also determined that she was at fault in creating the overpayment because she knowingly accepted compensation to which she was not entitled.

Appellant informed the employing establishment's Office of Inspector General (OIG) that she continued to receive compensation checks after she returned to full-time work. She explained that she cashed the June 2012 check because she thought it might have been a residual amount she was owed for the time she was not working. Appellant kept the July and August 2012 checks, however, because she was unsure what they were for or whether she was entitled to them.

Appellant surrendered the two checks and made out a money order, payable to the Department of Labor, to cover the one check she cashed. The OIG informed her that she would be receiving a fourth check, dated September 22, 2012, which was also an erroneous payment. Appellant agreed to report her receipt of it so that it could also be returned.

OWCP cancelled the September 22, 2012 check on October 12, 2012.

OWCP acknowledged receipt of three payments (checks) dated July 28, August 25 and September 22, 2012. Deducting these amounts from the overpayment originally calculated left a balance of \$1,030.77.

On October 18, 2012 OWCP issued a corrected preliminary determination that appellant was overpaid \$1,030.77 because she returned to work on May 24, 2012 but continued to receive compensation for total disability through September 22, 2012. It found that she was at fault in creating the overpayment because she accepted a payment that she knew or reasonably should have known was incorrect.

In a decision dated November 19, 2012, OWCP finalized the overpayment. As appellant was no longer receiving compensation, it asked her to forward a check in the amount of \$1,030.77.

Appellant argues that OWCP did not account for her money order.

LEGAL PRECEDENT -- ISSUE 1

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² “Disability” means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.³

Compensation for wage loss due to disability is available only for periods during which an employee’s work-related medical condition prevents her from earning the wages earned before the work-related injury.⁴

ANALYSIS -- ISSUE 1

Appellant returned to full duty without wage loss on May 24, 2012. OWCP continued to send compensation checks for partial disability through September 22, 2012. It erroneously found that appellant received compensation for total disability during this period. Appellant surrendered the July, August and September 2012 checks, which covered the period July 1 to September 22, 2012. She delivered to the OIG a money order, made payable to the Department of Labor, to cover the check she cashed for the period June 3 to 30, 2012. Appellant correctly observes that OWCP did not account for this money order in its November 19, 2012 final decision.

As the record reflects that appellant returned all the compensation she received from June 3 to September 22, 2012 prior to OWCP’s October 18, 2012 preliminary determination, the Board finds that OWCP erroneously declared an overpayment for that period.

The Board finds, however, that appellant did receive an overpayment from May 24 to June 2, 2012. Appellant returned to work with no wage loss on May 24, 2012 but received compensation for partial disability through June 2, 2012. The amount of the overpayment is not substantiated and therefore is not in posture for decision and warrants further development of the evidence. The Board will remand the case to determine how much compensation appellant received during this period.

² 5 U.S.C. § 8102(a).

³ 20 C.F.R. § 10.5(f).

⁴ *Id.* at § 10.500(a); *see, e.g., Tammi L. Wright*, 51 ECAB 463 (2000) (where the record established that the employee returned to work at the employing establishment for four hours per day from August 7, 1996 to January 8, 1997 but received compensation for total disability for that same period, the Board found that the employee received an overpayment of compensation).

LEGAL PRECEDENT -- ISSUE 2

When an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled. Section 8129(b) describes the only exception:

“Adjustment or recovery by the United States may not be made when incorrect payment had 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.”⁵

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 they receive 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 with respect to creating an overpayment: (1) made an incorrect statement as to a material fact which she knew or should have known to be incorrect; or (2) failed to provide information which she knew or should have known to be material; or (3) accepted a payment which she knew or should have known to be incorrect.⁶

Whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on 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 she is being overpaid.⁷

ANALYSIS -- ISSUE 2

The Board finds that the issue of fault with respect to the overpayment appellant received from May 24 to June 2, 2012 is not in posture for decision. On remand, OWCP shall consider the circumstances under which it paid compensation for this period, including whether the compensation was part of a larger payment. It shall also consider appellant’s capacity to realize that she was being overpaid.

CONCLUSION

The Board finds that appellant received an overpayment of compensation from May 24 to June 2, 2012. The Board finds that this case is not in posture for decision on the issues of amount of overpayment and fault. The Board will set aside OWCP’s November 19, 2012 decision and remand the case for further development.

⁵ 5 U.S.C. § 8129(b).

⁶ 20 C.F.R. § 10.433(a).

⁷ *Id.* at § 10.433(b).

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2012 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further development consistent with this opinion of the Board.

Issued: April 8, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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