



## **FACTUAL HISTORY**

On December 28, 2010 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 24, 2010 he injured his right knee while walking down an incline in the performance of duty. OWCP accepted the claim for a right knee sprain and torn medial meniscus. Appellant began receiving compensation for total disability.

By letter dated April 19, 2011, OWCP advised appellant that he would be paid compensation for wage loss until further notice. It advised appellant in capital letters that he must "NOTIFY THIS OFFICE IMMEDIATELY WHEN YOU RETURN TO WORK," noting that a compensation payment provides the period for which payment is made. Appellant was notified that if he worked for any portion of the period covered by a compensation payment, he must return the check to OWCP or an overpayment may result. The record indicates that appellant was sent a compensation payment to the address of record dated August 27, 2011 (covering the period July 31 to August 27, 2011) and September 24, 2011 (for the period August 28 to September 24, 2011) in the amount of \$2,840.50.

The employing establishment had offered appellant a part-time, light-duty position on August 12, 2011. According to a time analysis (Form CA-7a), appellant returned to part-time work on August 15, 2011 at approximately four hours per day.

In a letter dated January 13, 2012, OWCP advised appellant that an overpayment had been created due to his return to part-time work. An accompanying worksheet indicated that appellant was paid \$5,681.00 in compensation from the two compensation checks dated August 27 and September 24, 2011. OWCP calculated that appellant should have been paid \$4,043.30, based on his return to work. It made a preliminary determination that appellant had accepted payments he knew or should have known were incorrect and thus appellant was found to be with fault.

Appellant requested a prerecoument hearing with an OWCP hearing representative. He submitted an overpayment recovery questionnaire (OWCP-20), indicating that he had \$1,800.00 in monthly income. Appellant reported no FECA benefits. He reported \$1,482.00 in monthly expenses and an additional \$220.00 for a debt to a savings bank. As to assets, appellant noted \$1,900.00 in bank accounts and \$82,000.00 as value for a farm given to him by a parent. No additional financial documents were provided.

The hearing was scheduled for May 18, 2012. In a memorandum of telephone call dated May 25, 2012, the hearing representative indicated that appellant left a message stating that "something came up" and he did not attend the scheduled hearing. By letter dated May 29, 2012, the hearing representative indicated that a request to postpone the hearing could not be granted, pursuant to 20 C.F.R. § 10.622, and a review of the written record would be performed. The record also contains a memorandum of telephone call dated May 29, 2012, indicating that appellant was advised by the hearing representative to consider submitting financial documentation to support his overpayment recovery questionnaire.

By decision dated August 15, 2012, the hearing representative finalized the determination that an overpayment of \$1,637.70 was created. The hearing representative found appellant was

at fault in creating the overpayment, as he accepted payments he knew or should have known were incorrect. As to recovery, the hearing representative noted that appellant had submitted only the OWCP-20 and did not explain items such as the reported income. The hearing representative found the overpayment would be recovered by deducting \$250.00 from continuing compensation payments.

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

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>2</sup> 20 C.F.R. § 10.500 provides 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.”

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

The record indicates that appellant was sent compensation payments dated August 27 and September 24, 2011. OWCP includes on each periodic check a clear indication of the period for which payment is being made.<sup>3</sup> The period covered by the August 27, 2011 payment was July 31 to August 27, 2011, and the period covered by the September 24, 2011 check was August 28 to September 24, 2011. The record is undisputed that appellant returned to part-time work on August 15, 2011 and continued to work after August 28, 2011. As such, he was not entitled to receive compensation for total disability during these periods.

Appellant received \$5,681.00 in net compensation from the two compensation checks. According to OWCP calculations, he should have received \$4,043.30 in net compensation. No contrary evidence was provided. The difference between the compensation amount appellant received and the amount he should have received was \$1,637.70. The Board finds this represents the amount of overpayment in this case.

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

Section 8129(b) of FECA<sup>4</sup> provides: “Adjustment or recovery by the United States may not be made when 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.”<sup>5</sup> Waiver of an overpayment is not permitted unless the claimant is “without fault” in creating the overpayment.<sup>6</sup>

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<sup>2</sup> *Id.* at § 8116(a).

<sup>3</sup> 20 C.F.R. § 10.430.

<sup>4</sup> *Supra* note 1.

<sup>5</sup> *Id.* at 8129(b).

<sup>6</sup> *Norman F. Bligh*, 41 ECAB 230 (1989).

On the issue of fault, 20 C.F.R. § 10.433 provides that an individual will be found at fault if he or she has done any of the following: “(1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (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 was incorrect.”

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

In the present case, OWCP found that appellant accepted the August 27 and September 24, 2011 compensation payments when he should have known they were incorrect. The Board concurs with this finding. The April 19, 2011 letter OWCP sent to appellant was clear and unequivocal in its instructions. A claimant must notify OWCP of any return to work, and must return any check if the claimant worked during any portion of the period covered by the payment. As noted above, the record establishes that appellant returned to part-time work on August 15, 2011 and continued to work after August 28, 2011. The August 27, 2011 compensation payment indicated that the period covered was July 31 to August 27, 2011, and the September 24, 2011 payment indicated that the period covered was August 28 to September 24, 2011. Since appellant received the compensation in the amount for total disability he had been receiving prior to August 27, 2011, he should have known these payments were incorrect.

On appeal, appellant asserts that he was not at fault because he notified the employing establishment and the nurse assigned to his case of a return to work. The instructions provided by OWCP clearly indicated that he was to notify “this office” of his return to work. Appellant also alleges that he did not receive a letter with such instructions, but the record indicates that the April 19, 2011 letter was addressed to appellant’s address of record. The Board has held that, in the absence of evidence to the contrary, it is presumed that a notice mailed to an addressee in the ordinary course of business was received by the addressee.<sup>7</sup> There is no contrary evidence of record. The Board finds, for the reasons noted above, that appellant accepted payments he should have known were incorrect. Pursuant to 20 C.F.R. § 10.433, appellant is at fault with respect to the overpayment in this case and is not entitled to waiver.

### **LEGAL PRECEDENT -- ISSUE 3**

OWCP’s regulations provide:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize hardship.”<sup>8</sup>

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<sup>7</sup> See *Larry L. Hill*, 42 ECAB 596, 600 (1991).

<sup>8</sup> 20 C.F.R. § 10.441.

The regulations also provide that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information will be used to determine the repayment schedule, if necessary.<sup>9</sup>

### **ANALYSIS -- ISSUE 3**

With respect to the recovery of the overpayment, appellant submitted an OWCP-20 questionnaire. He stated that he had \$1,800.00 in monthly income, although he did not provide any additional explanation. On the form appellant indicated that he did not have income from FECA, but the record indicates that he continued to receive compensation for partial wage loss. He was provided an opportunity to submit additional financial documentation, but did not provide any documentation. On the OWCP-20 questionnaire appellant indicated that he had declared bankruptcy, but he provided no additional information or relevant financial documentation. A May 29, 2012 memorandum of telephone call indicated that the hearing representative specifically discussed the need to provide additional financial documentation with appellant.

Based on the available evidence, the Board finds that the hearing representative properly found the overpayment could be recovered by deducting \$250.00 from continuing compensation payments. It is appellant's responsibility to submit relevant financial information, as noted above. Appellant provided little probative evidence and the hearing representative considered the financial circumstances based on the relevant evidence of record.

### **CONCLUSION**

The Board finds that an overpayment of \$1,637.70 was created, that OWCP properly denied waiver as appellant was not without fault in creating the overpayment and OWCP properly determined the overpayment could be recovered by deducting \$250.00 from continuing compensation.

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<sup>9</sup> *Id.* at § 10.438.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 15, 2012 is affirmed.

Issued: February 26, 2013  
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