

FACTUAL HISTORY

On May 16, 2011 appellant, then a 53-year-old part-time flexible mail handler, filed a traumatic injury claim, alleging that on May 6, 2011 she injured her right shoulder and arm when she fell at work. She stopped work on May 12, 2011. The claim was accepted for right shoulder sprain, right impingement syndrome and partial right rotator cuff tear. Appellant received continuation of pay and compensation and was placed on the periodic compensation rolls. On January 4, 2012 she had arthroscopic repair of the right shoulder.

Appellant returned to modified duty for approximately 40 hours a week effective June 18, 2012. The record indicates that appellant continued to receive wage-loss compensation for the period June 18 through 30, 2012.

By letter dated October 15, 2012, OWCP issued a preliminary determination that appellant received an overpayment in compensation in the amount of \$836.82 because she continued to receive disability compensation after her return to work. It explained the calculation of the overpayment and found her at fault in its creation. Appellant was provided an overpayment action request form and an overpayment questionnaire. An overpayment worksheet indicated that she received net compensation of \$1,043.83 for this period when she should have received \$56.93. Appellant received credits for health benefits and basic and optional life insurance, which yielded an overpayment of compensation of \$836.82.

Appellant did not agree that she was at fault and requested a decision based on the written record. She also submitted an overpayment questionnaire listing income of \$4,000.00 and expenses totaling \$3,282.00.

On November 28, 2012 OWCP finalized the overpayment decision. It found that appellant was not at fault in the creation of the overpayment but that she did not meet the criteria necessary to waive the overpayment as her residual income was \$718.00. OWCP ordered repayment at the rate of \$75.00 per month.

LEGAL PRECEDENT -- ISSUE 1

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

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 or she may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.³ Section 10.500 of OWCP's regulations provide that "compensation for wage loss due to disability is available only for any periods during which an employee's work-

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116(a); *see Danny E. Haley*, 56 ECAB 393 (2005).

related medical condition prevents him or her from earning the wages earned before the work-related injury.”⁴

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment in compensation in the amount of \$836.82. The record supports that she returned to the employing establishment effective June 18, 2012, but received wage-loss compensation payment for the period June 18 to 30, 2012. As noted, both FECA and implementing regulations of OWCP provide that a claimant may not receive wage-loss compensation concurrently with a federal salary or other remuneration.⁵ An overpayment worksheet properly indicated that, as a result, appellant received an overpayment of compensation of \$836.82 the period in question.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP 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 would be against equity and good conscience.”⁶ Section 10.438 of OWCP regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery on an overpayment would defeat the purpose of FECA or be against equity and good conscience.⁷ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.⁸

OWCP procedures provide that an individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.⁹

⁴ 20 C.F.R. § 10.500.

⁵ 5 U.S.C. § 8116(a); 20 C.F.R. § 10.500.

⁶ 5 U.S.C. § 8129.

⁷ Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current or ordinary and necessary living expenses; and (b) the beneficiary’s assets do not exceed a specified amount as determined by OWCP from data furnished by the Bureau of Labor Statistics. 20 C.F.R. § 10.436. Recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse. *Id.* at § 10.437.

⁸ 20 C.F.R. § 10.438.

⁹ Federal (FECA) Procedure Manual, Part 6 -- *Debt Management*, Chapter 6.200.6(b) (June 2009).

ANALYSIS -- ISSUE 2

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁰

Appellant furnished OWCP an overpayment questionnaire that listed income of \$4,000.00 and expenses of \$3,282.00. OWCP procedures provide that an individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹¹ In this case, including the income of both appellant and her husband, the difference between current income and household living expenses is \$718.00. The Board thus finds that, as appellant's monthly income exceeds her documented reasonable monthly expenses by \$718.00, she is not entitled to waiver as she does not need substantially all of her income to meet current ordinary and necessary expenses.¹²

The Board therefore finds that OWCP properly concluded that recovery of the overpayment would not cause financial hardship to appellant and thus defeat the purpose of FECA. Moreover, as appellant made no argument that she gave up a valuable right or changed her position for the worse in reliance on the overpaid compensation, OWCP properly determined that recovery would not be against equity and good conscience. OWCP properly denied waiver of the overpayment.

With respect to recovery of the overpayment in compensation, the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA.¹³ As appellant is no longer receiving wage-loss compensation, the Board does not have jurisdiction with respect to the recovery of the overpayment under the Debt Collection Act.¹⁴

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$836.82 and that OWCP properly denied waiver of the overpayment.

¹⁰ 20 C.F.R. §§ 10.436, 10.437.

¹¹ *Supra* note 9.

¹² *See R.M.*, Docket No. 07-1066 (issued February 6, 2009).

¹³ *Cheryl Thomas*, 55 ECAB 610 (2004).

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 28, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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