



period June 16 to 29, 2012; and (3) whether OWCP properly found that she was at fault in the creation of the overpayment and therefore not entitled to waiver of recovery.

### **FACTUAL HISTORY**

On January 18, 2012 appellant, then a 62-year-old regular rural carrier, filed an occupational disease claim alleging that she developed an infected right toe due to the repetitive motions of using the gas and brake pedals, stepping up and down from the postal vehicle while delivering packages and mail, and stepping up and down from the platform at the mail center.<sup>3</sup> She first became aware of her condition and realized that it resulted from her employment on December 2, 2011. Appellant did not stop work. The employing establishment noted that she worked limited duty.<sup>4</sup>

OWCP accepted appellant's claim for ulcer of the second toe on the right foot and hammer toe of the second toe on the right foot. In the April 26, 2012 decision accepting her claim, it advised her that she was expected to return to work as soon as she was able and that compensation was payable only while she was unable to perform the duties of her regular job due to her accepted employment-related condition. OWCP instructed appellant that if she received a compensation check which included payment for a period she had worked she was to return it immediately in order to prevent an overpayment in compensation.

On June 7, 2012 appellant underwent foot surgery. She stopped work and submitted a claim for disability compensation for the period June 7 to 14, 2012. OWCP paid disability compensation for total disability by check for the period June 7 to 15, 2012.

In a June 14, 2012 report, Dr. Daniel J. Granville, a podiatrist, described appellant's condition of right second toe ulcer and provided an accurate history. He noted that she returned to work, but was concerned about recurrence. Dr. Granville conducted an examination and released appellant to her regular duties.

Appellant returned to light duty. On June 15, 2012 she submitted another claim for disability compensation for the period June 16 to 29, 2012. The time analysis form indicated that appellant requested four hours of leave without pay (LWOP) on June 27, 2012. The employing establishment verified that she worked 72 hours, received 17.2 hours of overtime pay and used 8 hours of annual leave during that period.

OWCP paid compensation for 10 days of total disability by check for the period June 16 to 29, 2012.

On July 13, 2012 appellant informed OWCP via telephone that she was working and should not have been paid for the entire June 16 to 29, 2012 period because she missed one

---

<sup>3</sup> The record reflects that appellant filed two previous claims (File No. xxxxxx511 & File No. xxxxxx548).

<sup>4</sup> Appellant worked four hours a day as a modified rural carrier with restrictions of no lifting, pushing, or pulling items over 20 pounds and no reaching above her shoulder or repetitive motion over four hours per day.

dayor four hours of work. Shenoted that she was off work from June 7 to 14, 2012 and that she would be off work again due to surgery.

On July 13, 2012 appellant submitted a claim for disability compensation for the period June 30 to July 13, 2012. A time analysis form indicated that on July 5, 2012 she worked 4.17 hours and requested 3.83 hours of LWOP. The employing establishment verified that during that period appellant worked 64.37 hours. It noted that she requested four hours of LWOP for a medical appointment, but there was no medical report to support an appointment on July 5, 2012.

On July 18, 2012 OWCP advised appellant that insufficient medical documentation was received to support her claim for disability compensation on July 5, 2012 and requested additional evidence to establish that she had a medical appointment on July 5, 2012 causally related to her work-related conditions.

In an unsigned July 23, 2012 duty status report, an unknown provider authorized appellant to return to work eight hours a day and five days per week with restrictions.

In a decision dated September 26, 2012, OWCP denied appellant's claim for wage-loss compensation on July 5, 2012 finding insufficient medical evidence to establish that she received medical treatment on that date as a result of her accepted conditions.

On September 20, 2012 appellant underwent foot surgery again. She stopped work and requested disability compensation for the period September 22 to November 17, 2012. OWCP paid disability compensation and placed appellant on the periodic rolls.

An overpayment worksheet dated September 26, 2012 indicated that appellant received compensation for 40 hours of time loss for the period June 16 to 29, 2012, which totaled \$1,357.57. It stated that she should have received \$74.25 of compensation for four hours of wage loss on June 27, 2012, resulting in an overpayment of \$1,283.32.

On October 25, 2012 OWCP issued a preliminary determination that appellant received an overpayment in compensation in the amount of \$1,283.32 for the period June 16 to 29, 2012 because she received compensation for total disability from June 16 to 29, 2012 after she returned to work. It noted that she was only entitled to four hours of wage-loss compensation. OWCP also found that appellant was at fault in the creation of the overpayment because she accepted payments that she knew or reasonably should have known to be incorrect. It informed her of her appellate options and instructed her to complete an enclosed overpayment recovery form and submit supporting documentation.

In a letter dated December 10, 2012, appellant requested a copy of OWCP records regarding the preliminary overpayment finding. She stated that she had problems with mail delivery and did not receive the notice of preliminary overpayment until much later. Appellant also noted that she had been on very strong medication so she was unable to respond within the 30 days from the notice date. She explained that she had two ongoing claims which caused confusion. Appellant noted that she was responding within 30 days from the time that she actually received the mail piece.

On December 14, 2012 appellant returned to light-duty working four hours a day. She continued to receive compensation for intermittent periods of wage loss.

On December 31, 2012 appellant requested that OWCP make a decision based on the written evidence and requested a waiver alleging that overpayment occurred through no fault of her own. She explained that the mistake was made by her employer and that management made several errors in putting in her pay calculations and time. Appellant also reported that her payments were delayed for many weeks and that she had no idea she was overpaid because everything seemed to add up to what she was owed. She stated that she was confused with her wages because she had two injuries at the same time. Appellant noted that she spoke with OWCP on several occasions and was informed that it would be taken care of.<sup>5</sup>

By decision dated February 7, 2013, OWCP finalized the overpayment in the amount of \$1,283.32 and found that appellant was at fault in the creation of the overpayment because she accepted payments that she knew or reasonably should have known to be incorrect. As appellant was no longer receiving compensation, it asked her to forward a check in the amount of \$215.00 every month until August 7, 2013.

### **LEGAL PRECEDENT-- ISSUE NO.1**

An employee seeking benefits under FECA bears the burden of proof to establish the essential elements of his or her claim by the weight of the evidence. For each period of disability claimed, the employee must establish that he or she was disabled for work as a result of the accepted employment injury. Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of reliable, probative and substantial medical opinion evidence. The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>6</sup>

With respect to claimed disability for medical treatment, section 8103 of FECA provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.<sup>7</sup> Appellant would be entitled to compensation for anytime missed from work due to medical treatment for an employment-related condition. OWCP's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related

---

<sup>5</sup>In the overpayment questionnaire, appellant reported no monthly income and one dependent son. She stated that her monthly expenses included a mortgage of \$1,175.00, food of \$700.00 and clothing of \$150.00. Appellant's other expenses included \$30.00 for water, \$120.00 for sewer, \$200.00 for utilities, \$105.00 for cable and internet, \$60.00 for medicine and \$104.00 for automobile and home insurance. Her other monthly obligations included credit card payments of \$85.00 for Nordstrom, \$30.00 for Sears, \$228.00 for Visa and \$110.00 for Visa. Appellant noted that she had \$150.00 in her checking account.

<sup>6</sup>*Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

<sup>7</sup>5 U.S.C. § 8103(a).

condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.<sup>8</sup>

OWCP's procedure manual provides that wages lost for compensable medical examination or treatment may be reimbursed.<sup>9</sup> It notes that a claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.<sup>10</sup> As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments. Longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.<sup>11</sup>

### **ANALYSIS-- ISSUE NO.1**

OWCP accepted appellant's claim for ulcer of the second toe on the right foot and hammer toe of the second toe on the right foot. Appellant stopped work on June 7, 2012 and received disability compensation for total disability. She returned to light duty. On July 13, 2012 appellant submitted a claim for disability compensation for the period June 30 to July 13, 2012. A time analysis form indicated that on the only time she was off work during that period was July 5, 2012 for 3.83 hours of LWOP. The employing establishment noted that appellant requested four hours of LWOP for a medical appointment. Appellant has the burden of proof to establish that she was undergoing medical treatment or examination on July 5, 2012 as a result of her employment-related conditions.

The most relevant medical reports regarding appellant's medical treatment in July 2012 are a June 14, 2012 report by Dr. Granville and an unsigned July 23, 2012 duty status report. The Board notes that there are no medical reports pertaining to the date of July 5, 2012 and there is no rationalized medical evidence explaining the relationship between appellant's employment-related conditions and an inability to work on this date. As appellant has not provided sufficient medical evidence to establish that she missed time from work due to medical treatment for her accepted conditions, the Board finds that she is not entitled to four hours of compensation for a medical appointment on July 5, 2012.

Appellant has failed to submit rationalized medical evidence establishing that she was seen for treatment of her accepted conditions on July 5, 2012 or was otherwise disabled as a result of her conditions on the above-mentioned date.

---

<sup>8</sup>*Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.19 (February 2013).

<sup>10</sup>*Daniel Hollars*, 51 ECAB 355 (2000); *Jeffrey R. Davis*, 35 ECAB 950 (1984).

<sup>11</sup>Federal (FECA) Procedure Manual, *supra* note 8.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE NO.2**

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.<sup>12</sup> Section 8116 of FECA defines the limitations on the right to receive compensation benefits. This section provides that, while an employee is receiving such compensation, he or she may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.<sup>13</sup> 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.<sup>14</sup> An employee is not entitled to compensation for temporary total disability after he or she returns to work.<sup>15</sup> If he or she returns to work and receives actual earnings and disability compensation during the same period, an overpayment occurs.<sup>16</sup>

### **ANALYSIS -- ISSUE NO.2**

The Board finds that OWCP properly found that appellant received an overpayment in compensation in the amount of \$1,283.32 because she received compensation for total disability from the period June 16 to 29, 2012 even though she returned to work. The record reflects that she returned to light duty and was off work for only four hours during that period. Appellant received wage-loss compensation benefits for the same period. Compensation for wage loss due to disability is only available for periods during which an employee's work-related medical conditions prevents her from earning wages.<sup>17</sup> Because appellant received compensation in the amount of \$1,357.57 for total disability from June 16 to 29, 2012, but was only entitled to \$74.25 for four hours of timeloss, the Board finds that she received an overpayment in the amount of \$1,283.32.

The Board finds that there is no contrary evidence and appellant does not contest the amount and period of the overpayment. Thus, the Board finds that she received an overpayment in the amount of \$1,283.32 for the period June 16 to 29, 2012.

---

<sup>12</sup>5 U.S.C. § 8102(a).

<sup>13</sup>*Id.* at § 8116; *R.H.*, Docket No. 09-1981 (issued June 11, 2010).

<sup>14</sup>20 C.F.R. § 10.500.

<sup>15</sup>*W.B.*, Docket No. 09-1440 (issued April 12, 2010).

<sup>16</sup>*D.C.*, Docket No. 09-1460 (issued April 19, 2010).

<sup>17</sup> 20 C.F.R. § 10.500(a); *see also 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 NO.3**

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. According to section 8129(b) of FECA, the only exception to this general rule is that 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.<sup>18</sup>

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 he or she receives 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 at fault with respect to creating an overpayment: (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 to be incorrect.<sup>19</sup>

Whether or not an individual was at fault with respect to the creation of an over payment depends on the circumstances. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.<sup>20</sup>

### **ANALYSIS -- ISSUE NO.3**

OWCP found that appellant was at fault in the creation of the overpayment based on the third criterion, that she accepted payments which she knew or reasonably should have known to be incorrect. With respect to whether an individual is with fault, OWCP regulations provide that the determination of fault with respect to receipt of an overpayment depends on the circumstances. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.<sup>21</sup>

In this case, appellant received wage-loss compensation for total disability by check for the period June 16 to 29, 2012. The period of compensation was listed on each check that she received. In the April 26, 2012 decision accepting her claim, OWCP properly advised appellant that compensation was payable only while she was unable to perform the duties of her regular job due to her accepted employment-related condition and instructed her that if she received a compensation check which included payment for a period she had worked she was to return it

---

<sup>18</sup>5 U.S.C. § 8129(b).

<sup>19</sup>20 C.F.R. § 10.433(a).

<sup>20</sup>*Id.* at § 10.433(b).

<sup>21</sup>*Id.*

immediately in order to prevent an overpayment in compensation. Under these circumstances, appellant knew or should have known that she could not receive wage-loss compensation during any period that she worked or continued to receive wages from the employing establishment. The record reflects that she worked a total of 72 hours from June 15 to 29, 2012 and that she only requested compensation for 4 hours of LWOP. Appellant received a compensation check for 10 days of total disability from June 15 to 29, 2012. She did not return the compensation check. The Board finds that under these circumstances appellant knew or should have known that she was not entitled to receive wage-loss compensation for total disability for the same period that she concurrently received wages from employment.<sup>22</sup> Accordingly, the Board finds that she is at fault in the creation of the overpayment and is not entitled to waiver of recovery of the overpayment in the amount of \$1,283.32.

On appeal, appellant contends that the overpayment was not her fault as it was not intentional and requests a waiver of the overpayment as she got behind on her bills while she was off work. The Board has held, however, that even if OWCP was at fault for issuing compensation checks after she returned to work, this fact does not by itself relieve the individual who received the overpayment from liability for repayment if the individual also was at fault in accepting the overpayment.<sup>23</sup> As noted above, appellant knew or should have known that the check she received represented wage-loss compensation for the same period that she returned to work. Since she is at fault on the issue of overpayment, recovery cannot be waived.

The Board finds that appellant was at fault in creating the overpayment as she knew or should have known that the payment she accepted for the period June 16 to 29, 2012 for total disability was incorrect. As appellant was with fault in this matter, she is not entitled to consideration of waiver. The Board will affirm OWCP's February 7, 2013 decision on the issue of fault.

### **CONCLUSION**

The Board finds that appellant was not entitled to wage-loss compensation on July 5, 2012 for a medical appointment. The Board also finds that she received an overpayment of compensation in the amount of \$1,283.32 for the period June 16 to 29, 2012. The Board further finds that OWCP properly found that appellant was at fault in the creation of the overpayment and is not entitled to waiver of recovery of the overpayment.

---

<sup>22</sup>See *R.F.*, Docket No. 12-1646 (issued March 26, 2013).

<sup>23</sup> 20 C.F.R. § 10.435(a); see also *J.A.*, Docket No. 13-478 (issued June 4, 2013).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 7, 2013 and September 26, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 13, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board