

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

L.W., Appellant)
)
and) **Docket No. 14-1292**
) **Issued: December 22, 2014**
U.S. POSTAL SERVICE, POST OFFICE,)
Joliet, IL, Employer)
_____)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 15, 2014 appellant timely appealed the April 3, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the claim.²

ISSUE

The issue is whether appellant received an overpayment of \$2,121.88 for the period November 17 through December 14, 2013.

¹ 5 U.S.C. §§ 8101-8193.
² The record on appeal contains evidence received after OWCP issued its April 3, 2014 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP issued its final decision. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

Appellant, a 60-year-old sales, services/distribution associate, injured her neck in the performance of duty on February 16, 2012.³ OWCP accepted her claim for neck sprain. Appellant received wage-loss compensation beginning April 5, 2012, and OWCP subsequently placed her on the periodic compensation rolls.

On November 1, 2013 the employing establishment offered appellant a limited-duty assignment as a modified sales, services/distribution associate effective November 16, 2013. According to the offer, appellant was expected to report for duty on Monday, November 18, 2013.

In an e-mail dated November 19, 2013, the employing establishment advised OWCP that appellant had not reported for duty on November 18, 2013, as originally scheduled. Additionally, it encouraged OWCP to terminate her wage-loss compensation and issue a suitable work determination.

A December 6, 2013 telephone log (Form CA-110) indicated that appellant called OWCP to advise that she had returned to work on November 16, 2013 in a full-time, limited-duty capacity.

On December 6, 2013 OWCP issued a preliminary determination that appellant was overpaid in the amount of \$2,121.88 for the period November 17 through December 14, 2013. It explained that she continued to receive compensation following her November 16, 2013 return to work. OWCP also found that appellant was at fault in the creation of the overpayment because she knowingly accepted compensation to which she was not entitled.

Responsibility for payment of appellant's federal employee health benefits (FEHB) was transferred back on December 11, 2013 to the employing establishment effective December 2, 2013.

On December 14, 2013 OWCP disbursed a periodic rolls payment of \$2,121.88 covering the period November 17 through December 14, 2013.

On April 3, 2014 OWCP issued a final overpayment decision consistent with its December 6, 2013 preliminary findings. Appellant was found at fault for the \$2,121.88 overpayment that covered the period November 17 through December 14, 2013.

³ Appellant turned her head to speak to a customer and felt pain in the left side of her neck.

LEGAL PRECEDENT

A claimant is not entitled to receive temporary total disability benefits and actual earnings for the same time period.⁴ An overpayment of compensation is created when a claimant returns to work but continues to receive wage-loss compensation.⁵

ANALYSIS

The Board finds that the case is not in posture for decision. OWCP found that appellant resumed work on November 16, 2013, and therefore, it declared an overpayment with respect to all compensation paid for the period November 17 through December 14, 2013. Appellant claimed not to have returned to work until December 2, 2013. As such, she argued that OWCP's finding of a \$2,121.88 overpayment was incorrect.

Although Saturday, November 16, 2013 was the effective date of the limited-duty assignment, appellant was not expected to report for duty until Monday, November 18, 2013, but according to the employing establishment, she did not report for work on November 18, 2013. The November 1, 2013 written job offer, as well as the employing establishment's November 19, 2013 e-mail contradicts OWCP's finding that appellant returned to work on November 16, 2013. Also, the December 11, 2013 FEHB enrollment transfer request lends credence to appellant's assertion that she did not resume work until December 2, 2013.

Because the record before the Board does not clearly establish when appellant returned to work, OWCP's April 3, 2014 overpayment decision shall be set aside, and the case remanded for further development. On remand, OWCP shall obtain confirmation from the employing establishment as to when appellant returned to work.⁶ After it has developed the record to the extent it deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The case is not in posture for decision.

⁴ L.S., 59 ECAB 350, 352-53 (2008).

⁵ *Id.*; Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2a (May 2004).

⁶ Appellant has already repaid the \$2,121.88 debt in full. If the evidence establishes December 2, 2013 as the correct date, OWCP should then recalculate the amount of the overpayment and refund the difference to her.

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2014 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: December 22, 2014
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