

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

L.D., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
New Milford, CT, Employer)

**Docket No. 14-1627
Issued: December 2, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 21, 2014 appellant filed a timely appeal from the February 26, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied waiver of 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 to review the merits of this case.

ISSUE

The issue is whether OWCP properly denied waiver of recovery of a \$1,607.94 overpayment of compensation.

FACTUAL HISTORY

In May 2013 appellant, a 47-year-old letter carrier, filed an occupational disease claim alleging that repetitively raising her arm to or above shoulder level caused severe pain. OWCP accepted her claim for a partial tear of the right shoulder supraspinatus tendon and bilateral

¹ 5 U.S.C. § 8101 *et seq.*

carpal tunnel syndrome. On August 1, 2013 appellant underwent an open repair of the right supraspinatus rotator cuff tear and subacromial decompression. She received compensation for temporary total disability on the periodic rolls.

On December 5, 2013 appellant returned to work in a modified assignment working four hours a day. OWCP, however, continued to pay compensation for total disability through December 14, 2013.

OWCP made a preliminary determination that appellant received an overpayment of compensation in the amount of \$1,607.94 from December 5 to 14, 2013 because she received compensation for total disability after returning to part-time work. It found that she was not at fault in creating the overpayment. OWCP provided appellant with an OWCP-20 overpayment recovery questionnaire and advised her to complete and return the form so that it could consider the issue of waiver or determine a reasonable method of collection. It notified her: "Under 20 C.F.R. § 10.438, failure to submit the requested information within 30 days will result in the denial of waiver and no further request for waiver shall be considered until the requested information is furnished."

Appellant disagreed with the amount of the overpayment. She contended that she was totally disabled for 13 of the 20 days the payment covered, but OWCP wanted more than half of it back. Appellant offered her own calculation, which came to an overpayment of \$558.08.

In a decision dated February 26, 2014, OWCP finalized its preliminary determination. It found that appellant was not at fault in creating an overpayment of \$1,607.94 in compensation. OWCP denied waiver of recovery of the overpayment on the grounds that she did not submit the financial information requested.

LEGAL PRECEDENT

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

FECA places limitations on the right to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay or remuneration of any type from the United States, with certain exceptions.⁴ It is therefore well established that an employee is not entitled to compensation for temporary total disability after returning to work.⁵ "Temporary

² *Id.* at § 8102(a).

³ 20 C.F.R. § 10.5(f).

⁴ 5 U.S.C. § 8116(a).

⁵ *E.g., Tammi L. Wright*, 51 ECAB 463, 465 (2000).

total disability” is defined as the inability to return to the position held at the time of injury or earn equivalent wages or perform other gainful employment.⁶

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 to OWCP’s obligation to adjust later payments: “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.”⁷

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 of an overpayment would defeat the purpose of FECA or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary. Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.⁸

ANALYSIS

Appellant returned to part-time work four hours a day on December 5, 2013, but OWCP paid compensation for total disability through December 14, 2013. She was entitled to only partial compensation during this 10-day period. The Board therefore finds that appellant received an overpayment of compensation.

Appellant’s case is quite similar to that of *Tammi L. Wright*.⁹ The record established that the employee had returned to work at the employing establishment for four hours a day from August 7, 1996 to January 8, 1997, but received compensation for total disability for that same period. The Board found, as it does in the present case, that the employee received an overpayment of compensation.

As to the amount of the overpayment, OWCP’s preliminary determination referenced an attached calculation for the overpayment. However, the record contains no such attachment. From calculations appearing elsewhere in the record, it determined that appellant received \$1,138.81 in compensation from December 5 to 14, 2013 but should have received only \$656.09 for that same period. Subtracting the latter from the former would establish an overpayment of \$482.72.

⁶ 20 C.F.R. § 10.400(b).

⁷ 5 U.S.C. § 8129(b).

⁸ 20 C.F.R. § 10.438.

⁹ 51 ECAB 463 (2000).

However, OWCP subtracted what appellant received for the 10-day period (\$1,138.81) from what she should have received from November 17 to December 14, 2013 (\$2,705.95). After adjusting this amount for health benefit and basic life insurance credits, it arrived at its figure of \$1,607.94.

The record establishes that appellant received \$3,188.67 in compensation from November 17 to December 14, 2013. If OWCP had subtracted what she should have received for this same period, which OWCP determined was \$2,705.95, it would result in an overpayment of \$482.72.

Because it does not appear that OWCP correctly calculated the amount of the overpayment, the Board will set aside OWCP's February 26, 2014 decision and remand the case for further development. OWCP should redetermine the overpayment appellant received for the 10-day period from December 5 to 14, 2013. It shall again provide her with an overpayment recovery questionnaire and the opportunity to submit her current monthly income, expenses and assets to help decide whether she is entitled to waiver of recovery of the overpayment. Following such further development as it deems necessary, OWCP should issue an appropriate decision.

CONCLUSION

The Board finds that appellant received an overpayment of compensation from December 5 to 14, 2013. The case is not in posture for decision on the amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2014 decision of the Office of Workers' Compensation Programs is affirmed, in part, set aside, in part, and the case remanded for further action.

Issued: December 2, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board