

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

R.M., Appellant)	
)	
and)	Docket Nos. 13-2019 & 14-310
)	
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer)	Issued: June 18, 2014
)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 3, 2013 appellant, through her attorney, filed a timely appeal from July 29 and August 26, 2013 final overpayment decisions of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 13-2019. On November 25, 2013 appellant filed an appeal from a September 10, 2013 decision of an OWCP hearing representative that affirmed termination of her wage-loss compensation effective March 10, 2013. The appeal was docketed as No. 14-310. 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 cases.

ISSUES

The issues are: (1) whether OWCP properly found that an overpayment of compensation in the amount of \$127,142.08 had been created because appellant forfeited compensation for the period June 1, 2006 to September 19, 2009 when she failed to report earnings and/or understated earnings on EN1032 forms; (2) whether OWCP properly found that appellant was at fault in the creation of the overpayment and therefore the overpayment was not subject to waiver; and

¹ 5 U.S.C. §§ 8101-8193.

(3) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation effective March 10, 2013 on the grounds that she had no employment-related disability.

On appeal, appellant's attorney asserts that the July 29, August 26 and September 10, 2013 decisions are contrary to fact and law.

FACTUAL HISTORY

On February 13, 1998 appellant, then a 39-year-old acting supervisor, was reporting for work at 3:50 a.m. when a man grabbed her purse, causing her to fall to the ground. The claim was accepted for left knee contusion, cervical strain and situational stress. Appellant stopped work that day. After a brief return to work in July 1998, she stopped work on July 20, 1998 and did not return. Appellant was placed on the periodic compensation rolls.²

Appellant submitted EN1032 forms through the years. On a form signed by her on August 12, 2006, she advised that she did not work for any employer during the previous 15 months and that she had been self-employed as a broker from August 1996 to the present. Appellant indicated that the rate of pay was "residual" and provided no information regarding actual earnings. She retired from the employing establishment effective June 4, 2007. On an EN1032 form, signed by appellant on September 1, 2007, she again indicated that she did not work for any employer during the previous 15 months and had been self-employed from August 1996 to the present as a broker. Appellant reported that the rate of pay was "residual" and provided no information regarding actual earnings. On an EN1032 form, signed by her on August 30, 2008, she indicated that she was employed from September 2007 to January 2008 answering the telephone at West Houston Subaru and from December 2007 to August 2008 in retail at Coldwater Creek. Appellant also indicated that she worked in real estate and reported a rate of pay of \$8.00 per hour and actual earnings of \$4,650.00. She noted that she had not been involved in self-employment for the past 15 months. On an EN1032 form, signed by her on September 19, 2009, appellant indicated that she was employed beginning May 19, 2009 as a front desk clerk at Lifetime Fitness at an hourly rate of \$7.00 with actual earnings of \$600.00 and that she continued to work at Coldwater Creek at a rate of pay of \$8.00 an hour with actual earnings of \$600.00. She also indicated that she had self-employment in sales and daycare.

² By decision dated August 11, 1999, appellant's compensation benefits were terminated, effective August 14, 1998. On April 24, 2000 an OWCP hearing representative vacated the August 11, 1999 decision and remanded the case to OWCP for further development of the accepted emotional condition and for reinstatement of benefits. Benefits were reinstated. In a February 16, 2001 decision, OWCP found that a \$4,750.78 overpayment of compensation had been created because appellant had received leave pay from the employing establishment and FECA compensation for the period January 29 through April 21, 2000. Repayment was set at \$150.00 per compensation period. In a February 14, 2003 decision, an OWCP hearing representative vacated an April 16, 2002 decision regarding pay rate. The hearing representative remanded the case to OWCP to confirm whether appellant was entitled to premium pay. OWCP subsequently found that appellant was entitled to additional compensation and the change was made on the periodic rolls.

The employer's Office of the Inspector General (OIG) provided a March 24, 2010 investigation report along with supporting documentation.³ Attached was a Social Security Administration (SSA) report indicating that appellant had received \$12,626.00 in income in 2006, \$35,486.93 in 2007, \$16,651.93 in 2008 and \$21,501.36 in 2009.

On an EN1032 form, signed by appellant on May 20, 2010, she reported earnings as a receptionist at two locations from May to November 2010 and self-employment with AmeriPlan and Premier Realty. On a form signed by her on August 21, 2010, she reported earnings as a cleaner, receptionist and front desk clerk from April 2010 to present and self-employment with Ameriplan and Premier Realty. On November 8, 2010 appellant provided supplemental information regarding employment from May 2009 to the present.

In reports dated March 31, June 20 and September 19, 2011, Dr. Harvey A. Rosenstock, an attending Board-certified psychiatrist, advised that appellant continued to suffer from anxiety, depression, panic and post-traumatic stress disorder due to the employment injury. He indicated that she could not return to the date-of-injury job and was only capable of very low stress part-time employment.

In October 2011, SSA provided information regarding reported earnings in self-employment from 1998 through 2008, with the employing establishment from 1998 to 2003 and with private employers from 2007 through 2010.⁴

In February 2012, OWCP referred appellant to Dr. Donald M. Mauldin, a Board-certified orthopedic surgeon, and Dr. Jorge Raichman, a Board-certified psychiatrist, for second-opinion evaluations.

In a March 8, 2012 report, Dr. Mauldin described the employment injury and appellant's complaint of minimal left knee pain. He noted his review of the statement of accepted facts and medical record and reported physical examination findings that included no complaints referable to the cervical spine and full range of motion of the left knee with negative Lachman, anterior drawer and McMurray tests and no evidence of patellofemoral disorder or instability. Dr. Mauldin diagnosed status post left knee contusion/strain with no evidence of significant internal derangement; status post cervical strain, resolved; and reported situational disorder with post-traumatic stress disorder. He advised that, relative to the cervical spine and left knee, there was nothing to limit appellant. Dr. Mauldin indicated that she could perform full duty from a physical perspective and recommended that she be evaluated by a psychiatrist.

³ The documentation included memoranda of interviews with appellant dated November 30, December 14 and 21, 2009, signed statements from her dated December 21, 2009 and April 5, 2010 in which she listed employment, a March 2, 2010 interview with Nick Osborne, a computer print-out listing of earnings from 2000 to 2010, applications for employment, W2 forms, pay stubs from The Westview School, OWCP 1032 forms completed by her and a list of real estate commissions dated January 16 to August 4, 2009.

⁴ The SSA report indicated that appellant was self-employed from 1998-2008, was employed with Coldwater Creek from 2007 to 2009, with West Houston Subaru from 2007 to 2008, with Resource Staffing from 2008 to 2009, Westview School from 2008 to 2009, Lifetime Fitness in 2008, Arbor Sienna Services in 2009 and 2010 and ExpressJet Airlines in 2010.

By report dated March 21, 2012, Dr. Raichman described the work injury. He also indicated that appellant reported that in about 1990 she was robbed while entering the employing establishment. Dr. Raichman noted his review of the medical record and her complaint of extensive paranoia since the 1998 work incident, that she had become socially isolated, became angry easily, had insomnia and nightmares and had decreased her activities to the degree that she was a recluse. He stated that on mental status examination that appellant was hesitant and stuttered, appeared depressed and was suspicious and paranoid. Dr. Raichman diagnosed psychosis, not otherwise specified; post-traumatic stress disorder, by history; and mixed personality disorder. In answer to specific OWCP questions, he indicated that appellant had significant anxiety that translated into paranoia and that, seemingly, no improvement had occurred in the 14 years since the 1998 incident, which was difficult to understand. Dr. Raichman's prognosis was poor and he advised that she would not be able to return to work as a supervisor in the customer service area and recommended part-time work.

On May 30, 2012 Dr. Raichman provided a sworn statement in which he noted that he had been interviewed by an employing establishment OIG special agent. He indicated that the agent reported that appellant had been employed in multiple, different capacities with different employers continuously and successfully for many years, although she denied this when Dr. Raichman had interviewed her on March 21, 2012. Dr. Raichman advised that, based on this information, she was capable of working at her previous capacity with the employing establishment and that her symptom presentation represented malingering for monetary gain. He provided a work-capacity evaluation indicating that appellant could work eight hours a day at any job, beginning that day.

In a July 31, 2012 report, Dr. Rosenstock reiterated his findings and conclusions.

OWCP found that a medical conflict had been created between Dr. Rosenstock and Dr. Raichman regarding whether appellant's work-related emotional condition had resolved and referred her to Dr. Andrew Brylowski, a Board-certified psychiatrist, for an impartial evaluation. In a December 6, 2012 report, Dr. Brylowski noted that she reported a history that she was robbed at gunpoint and fell, injuring her knee and neck and that she subsequently developed an emotional condition. Appellant also reported that several years prior she was almost raped and that currently she felt that she was being monitored. She described her psychiatric care and medication and some work history. Dr. Brylowski reviewed the statement of accepted facts and medical record. He stated that on mental status examination appellant was somewhat fidgety and anxious and she was tearful throughout the examination. Dr. Brylowski described comprehensive neuropsychiatric test results and diagnosed post-traumatic stress disorder, by history; major depressive disorder, by history; and personality disorder, not otherwise specified. He advised that the significant symptoms of anxiety and stress reported were inconsistent with objective neuropsychiatric measures, noting that there was no evidence on urine drug screening that appellant was taking antidepressant medication. Dr. Brylowski recommended that she continue her medications, group and individual therapy and advised that she could return to full duty with no restrictions, stating that the type of treatment she was receiving was best done concurrent with employment.

On December 21, 2012 OWCP proposed to terminate appellant's medical benefits and wage-loss compensation on the grounds that the medical evidence of record demonstrated that she no longer had residuals of the work-related conditions.

Appellant, through her attorney, disagreed with the proposed termination and submitted a January 10, 2013 report in which Dr. Rosenstock reported a history that in 1994 she was victimized by a would-be rapist at work and on February 13, 1998 she was robbed at gunpoint at work. Dr. Rosenstock advised that she was under psychiatric treatment for unresolved post-traumatic stress disorder, major depressive disorder, panic disorder and generalized disorder since that time and had been under his care since 2000. He advised that appellant could not return to full-time work and that her attempts to return to work had all failed.

In a January 11, 2013 decision, OWCP found that appellant forfeited her right to compensation for the period May 15, 2005 to September 19, 2009 because she knowingly failed to report self-employment on EN1032 forms signed on August 15, 2006, September 1, 2007, August 30, 2008 and September 19, 2009.

On January 11, 2013 OWCP also made a preliminary finding that appellant received a \$164,866.21 overpayment of compensation because she knowingly failed to report work activity for the period May 15, 2005 to September 19, 2009, a period in which she received \$164,866.21 in compensation. Appellant was at fault in creating the overpayment because she did not provide information that she knew or should have known to be material. OWCP provided an overpayment action request form and overpayment recovery questionnaire. Computer print-outs and an overpayment worksheet show that appellant received wage-loss compensation totaling \$164,866.21 for the period May 15, 2005 to September 19, 2009.

Appellant's attorney requested a precoupment hearing, contesting that an overpayment occurred and regarding the amount and the fault determination.

In a February 14, 2013 decision, OWCP terminated appellant's monetary compensation, effective March 10, 2013 on the grounds that any employment-related disability had ceased. Medical benefits were not terminated.

Appellant's attorney requested a hearing that was scheduled for May 14, 2013. In an undated statement, Nick Osborne indicated that when interviewed by OIG in March 2010 he was not referring to appellant as an employee, but a nurse who had the same first name. He indicated that she had never worked for him. Appellant's attorney converted the precoupment hearing request to a review of the written record and submitted a May 22, 2013 statement in which appellant described earnings beginning in 2007. Appellant also provided a sales director contract with AmeriPlan Corporation dated March 14, 1997.

A telephonic hearing was held on June 18, 2013 regarding the February 14, 2013 termination decision. Appellant testified that she could return to work at the employing establishment due to the accepted orthopedic conditions but that she could not return to work based on the accepted emotional condition. She described her current condition and treatment. Appellant's attorney asserted that Dr. Brylowski's report was insufficient to carry the weight of the medical evidence and that the February 14, 2013 decision was inadequate because it did not fully address the medical evidence, including Dr. Rosenstock's January 10, 2013 report. On June 21, 2013 appellant submitted an overpayment questionnaire.

Dr. Rosenstock provided unsigned treatment notes dated January 8 to July 8, 2013, in which he reiterated his findings and conclusions.

In July 11, 2013 correspondence, Robert G. Sutkoff, manager of health and resource management with the employer who was present at the hearing, maintained that the termination was proper. He attached a July 11, 2013 memorandum of activity, prepared by an OIG special agent, which summarized the OIG investigation.

By decision dated July 29, 2013, an OWCP hearing representative affirmed the January 11, 2013 preliminary determination that an overpayment of compensation had been created because appellant failed to provide information which she knew or should have known to be material. The hearing representative found her at fault and modified the period of the overpayment to June 1, 2006 to September 19, 2009, which reduced the amount of the overpayment to \$127,142.08.⁵ She noted that appellant was no longer in receipt of wage-loss compensation and since she had not provided complete financial information, the overpayment was considered due and payable in full.

On August 8, 2013 appellant submitted an undated response to employing establishment correspondence. She attached form medical reports from Dr. David Shin, a family practitioner, dated April 9, 2008 and February 16, 2009 that noted a left knee injury and advised that she had 10 percent permanent impairment.

In an August 26, 2013 decision, OWCP indicated that the January 11, 2013 preliminary overpayment decision had been modified by the July 29, 2013 decision to show the corrected overpayment period of June 1, 2006 to September 19, 2009, with an overpayment amount of \$127,142.08. An overpayment worksheet was attached.⁶

On September 10, 2013 an OWCP hearing representative affirmed the February 14, 2013 decision, finding that OWCP properly terminated appellant's wage-loss compensation.

LEGAL PRECEDENT -- ISSUE 1

Section 10.529 of OWCP's implementing regulations provide as follows:

“(a) If an employee knowingly omits or understates any earnings or work activity in making a report, he or she shall forfeit the right to compensation with respect to any period for which the report was required. A false or evasive statement, omission, concealment or misrepresentation with respect to employment activity or earnings in a report may also subject an employee to criminal prosecution.

“(b) Where the right to compensation is forfeited, OWCP shall recover any compensation already paid for the period of forfeiture pursuant to 5 U.S.C. § 8129 and other relevant statutes.”⁷

⁵ The hearing representative found that OWCP had not shown that appellant knowingly failed to report earnings during the period May 15, 2005 to May 31, 2006.

⁶ The Board notes that the worksheet contains a typographical error, stating that appellant's periodic rolls payment for November 23 to December 20, 2008 was \$3,131.00, rather than the correct payment of \$3,031.00. The total compensation found, \$127,142.08 is correct.

⁷ 20 C.F.R. § 10.529.

ANALYSIS -- ISSUE 1

The record supports that in its January 11, 2013 decision OWCP properly found that appellant forfeited compensation because she failed to report or understated earnings on EN1032 forms.⁸ The March 24, 2010 OIG report and accompanying documentation clearly showed that she either did not report or understated her earnings on EN1032 forms she signed in 2007, 2008 and 2009. The EN1032 forms signed by appellant advised her that she must report both all employment and all earnings from employment. The forms clearly stated that false or evasive answers or the omission of an answer were grounds for forfeiture of compensation. The evidence, including appellant's acknowledgement that she failed to submit the necessary information and her signing of strongly worded certification clauses on the EN1032 forms provides persuasive evidence that she "knowingly" understated her earnings and employment.⁹ Thus, OWCP properly found that she forfeited her compensation.¹⁰

As noted above, OWCP regulations provide that OWCP may declare an overpayment of compensation for the period of a given forfeiture of compensation. If a claimant has any earnings during a period covered by an EN1032 form which he or she fails to report, the claimant is not entitled to any compensation for any portion of the period covered by the report, even though he or she may not have had earnings during a portion of that period.¹¹ OWCP paid appellant compensation in the amount of \$127,142.08 for the period June 1, 2006 to September 19, 2009. As it properly found that she forfeited her entitlement to compensation during this period because she failed to report or understated earnings from employment on EN1032 forms, there exists an overpayment of compensation in the amount of \$127,142.08.

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."¹²

Section 10.433(a) of OWCP's regulations provide that OWCP:

"[M]ay 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

⁸ Appellant did not file an appeal with the Board from the January 11, 2013 forfeiture decision.

⁹ See *Harold F. Franklin*, 57 ECAB 387 (2006).

¹⁰ *Cheryl Thomas*, 55 ECAB 610 (2004).

¹¹ *Louis P. McKenna, Jr.*, 46 ECAB 428 (1994).

¹² 5 U.S.C. § 8129; see *Linda E. Padilla*, 45 ECAB 768 (1994).

affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault in 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; or
- (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. (This provision applies only to the overpaid individual).¹³

To determine if an individual was at fault with respect to the creation of an overpayment, OWCP examines the circumstances surrounding the overpayment. 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.¹⁴

ANALYSIS -- ISSUE 2

OWCP properly determined that appellant was at fault in the creating the overpayment because she failed to provide information she knew or should have known to be material on EN1032 forms covering the period June 1, 2006 to September 19, 2009. As described above, the record establishes that she had unreported earnings from employment during this period and knowingly failed to furnish this material information to OWCP. Appellant signed a certification clause on the EN1032 forms which advised her in explicit language that she might be subject to civil, administrative or criminal penalties if she knowingly made a false statement or misrepresentation or concealed a fact to obtain compensation. By signing the form, she is deemed to have acknowledged her duty to fill out the form properly, including the duty to report any employment of self-employment activities and income. Appellant failed to furnish information which she knew or should have known to be material to OWCP. As she is not without fault in creating the overpayment, it is not subject to waiver.¹⁵

LEGAL PRECEDENT -- ISSUE 3

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.¹⁶ OWCP's burden of proof in terminating compensation includes the necessity of

¹³ 20 C.F.R. § 10.433; *see Sinclair L. Taylor*, 52 ECAB 227 (2001); *see also* 20 C.F.R. § 10.430.

¹⁴ *Id.* at § 10.433(b); *Duane C. Rawlings*, 55 ECAB 366 (2004).

¹⁵ *Harold F. Franklin*, *supra* note 9. The Board notes that its jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA. Where, as here, a claimant is no longer receiving wage-loss compensation benefits, the Board does not have jurisdiction with respect to OWCP's recovery of the overpayment under the Debt Collection Act. *Albert Pineiro*, 51 ECAB 310 (2000).

¹⁶ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁷

Section 8123(a) of FECA provides that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹⁸ When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP met its burden of proof to terminate appellant's monetary compensation effective March 10, 2013. The accepted conditions in this case are left knee contusion, cervical strain and situational stress.

In a March 8, 2012 report, Dr. Mauldin, an OWCP referral orthopedic surgeon, described the employment injury and appellant's complaint of minimal left knee pain. He stated that he found nothing on physical examination referable to the cervical spine and found full range of motion of the left knee with negative Lachman, anterior drawer and McMurray tests and no evidence of patellofemoral disorder or instability. Dr. Mauldin diagnosed status post left knee contusion/strain with no evidence of significant internal derangement; status post cervical strain, resolved; and reported situational disorder with post-traumatic stress disorder. He advised that, relative to the cervical spine and left knee, there was nothing to limit appellant and indicated that she could perform full duty from a physical. Moreover, appellant testified at the June 18, 2013 hearing that she could return to work from an orthopedic standpoint.

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report.²⁰ The form reports submitted by Dr. Shin are dated 2008 and 2009 and are thus not relevant to appellant's left knee condition in 2012. The Board finds that, with regard to the accepted orthopedic conditions, OWCP properly determined that the weight of the medical opinion evidence rested with the opinion of Dr. Mauldin who provided a comprehensive report in which he outlined examination findings and provided a rationalized explanation for his opinion that appellant's accepted left knee and cervical conditions had resolved.

As to the accepted emotional condition, OWCP determined that a conflict in medical evidence had been created between the opinions of Dr. Rosenstock, an attending psychiatrist, and

¹⁷ *Id.*

¹⁸ 5 U.S.C. § 8123(a); see *Geraldine Foster*, 54 ECAB 435 (2003).

¹⁹ *Manuel Gill*, 52 ECAB 282 (2001).

²⁰ *Michael S. Mina*, 57 ECAB 379 (2006).

Dr. Raichman, an OWCP referral psychiatrist, regarding whether appellant's emotional condition had resolved. It then properly referred her to Dr. Brylowski, Board-certified in psychiatry, for an impartial evaluation.

In a December 6, 2012 report, Dr. Brylowski described the employment incident of February 1998. He reviewed the statement of accepted facts and medical record and indicated that on mental status examination appellant was somewhat fidgety and anxious and was tearful throughout the examination. Dr. Brylowski described comprehensive neuropsychiatric test results and diagnosed post-traumatic stress disorder, by history; major depressive disorder, by history; and personality disorder, not otherwise specified. He advised that the significant symptoms of anxiety and stress reported were inconsistent with objective neuropsychiatric measures. Dr. Brylowski recommended continuing medications, group and individual therapy and advised that appellant could return to full duty with no restrictions, stating that the type of treatment she was receiving was best done concurrent with employment.

The Board finds that Dr. Brylowski provided a comprehensive, well-rationalized opinion in which he clearly advised that appellant could return to her preinjury employment. Dr. Brylowski's opinion is therefore entitled to the special weight accorded an impartial examiner and constitutes the weight of the medical evidence.²¹

The medical evidence appellant submitted is insufficient to overcome the weight accorded Dr. Brylowski as an impartial medical specialist regarding whether she continued to be disabled due to the accepted situational stress. In his January 10, 2013 report, Dr. Rosenstock merely advised that she had been under psychiatric treatment for an unresolved psychiatric condition since the 1998 work injury and could not return to full-time employment, noting that all attempts to return to work had failed. The Board has long held that reports from a physician who was on one side of a medical conflict that an impartial specialist resolved, are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict.²² Dr. Rosenstock had been on one side of the conflict resolved by Dr. Brylowski. Furthermore, appellant's extensive work history belies that all attempts to return to work failed.

The Board therefore concludes that Dr. Brylowski's opinion that appellant had no work-related disability due to the accepted emotional condition is entitled to the special weight accorded an impartial medical examiner²³ and the additional medical evidence submitted is insufficient to overcome the weight accorded him as an impartial medical specialist regarding whether appellant was disabled. OWCP therefore properly terminated appellant's wage-loss benefits effective March 10, 2013.²⁴

²¹ See *Sharyn D. Bannick*, 54 ECAB 537 (2003).

²² *I.J.*, 59 ECAB 408 (2008).

²³ See *Sharyn D. Bannick*, *supra* note 21.

²⁴ *Manuel Gill*, *supra* note 19.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$127,142.08 because she forfeited her entitlement to compensation for the period June 1, 2006 to September 19, 2009 and that she was at fault in the creation of the overpayment. The Board further finds that OWCP met its burden of proof to terminate appellant's monetary compensation effective March 10, 2013 on the grounds that she had no employment-related disability.²⁵

ORDER

IT IS HEREBY ORDERED THAT the September 10, August 26 and July 29, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 18, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

²⁵ Subsequent to the September 10, 2013 decision, appellant requested a prerecouperment hearing on the overpayment and submitted financial information. In a September 25, 2013 decision, OWCP denied her request for a hearing on the grounds that the Branch of Hearings and Review had previously conducted a review of the written record on this issue. Appellant did not appeal the September 25, 2013 decision.