



result of her federal employment duties. OWCP accepted the claim for bilateral carpal tunnel syndrome. On July 11, 2012 appellant stopped work and received wage-loss compensation for total disability. She was placed on the periodic rolls.<sup>2</sup>

On September 11, 2013 appellant returned to light-duty full-time work as a modified mail processor.

By letter dated September 25, 2013, OWCP informed appellant that her periodic compensation payments were terminated effective September 11, 2013. It noted that a final 28-day compensation payment that partially covered a period following her return to work had been issued, resulting in an excess payment of compensation. Appellant would be advised of any determination related to this payment by separate correspondence.

By letter dated October 4, 2013, OWCP made a preliminary determination that appellant received an overpayment of compensation in the amount of \$1,112.74 from September 11 through 21, 2013 because she received disability compensation after her return to full-time work at her regular salary. It found that she was without fault in the creation of the overpayment. OWCP noted that appellant was on periodic rolls and received net compensation every 28 calendar days in the amount of \$2,832.42, which she received for the period August 25 to September 21, 2013. Appellant improperly received wage-loss compensation through September 21, 2013 after she returned to full-duty work on September 11, 2013, a period of 11 calendar days. OWCP noted that appellant should have received \$1,719.68 in wage-loss compensation for the period August 25 to September 10, 2013. Appellant's \$2,832.42 net compensation was divided by the 28-calendar day payment period totaling \$101.15 a day. The daily rate was multiplied by the 11 calendar days for which she was overpaid resulting in an overpayment of \$1,112.74. OWCP found that appellant received an overpayment of \$1,112.74 from wage-loss compensation for total disability while working with no loss of wages.

As OWCP determined that appellant was without fault in the creation of the overpayment, it requested she submit financial information pursuant to the enclosed overpayment recovery questionnaire (OWCP-20) within 30 days if she sought waiver of the overpayment. It noted that waiver would be denied if she failed to furnish the information requested on the enclosed OWCP-20 form with supporting documentation within 30 days. OWCP further informed appellant that she could submit additional evidence in writing or at a precoupment hearing, but that a precoupment hearing must be requested within 30 days of the date of the written notice of overpayment. Appellant did not contest the preliminary

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<sup>2</sup> The Board notes that on April 2, 2013 OWCP made a separate preliminary determination that appellant received an overpayment of compensation in the amount of \$1,291.64 for the period July 11, 2012 through March 9, 2013 because basic life insurance and optional life insurance was not deducted from her compensation benefits. OWCP found that appellant was without fault in the creation of the overpayment. On April 30, 2012 appellant requested a precoupment hearing, disagreed with the overpayment finding and requested a waiver of repayment due to financial hardship. She submitted an OWCP recovery questionnaire (OWCP-20) in support of her appeal. A hearing was held on September 23, 2013. By decision dated November 27, 2013, the Branch of Hearings and Review finalized the overpayment in the amount of \$1,291.64 for the period July 11, 2012 through March 9, 2013. The hearing representative found that appellant was without fault in the creation of the overpayment and waived recovery of the overpayment, finding that she substantially needed all of her income for expenses.

overpayment determination. She did not submit any financial information in response to the preliminary overpayment notice.

By decision dated November 4, 2013, OWCP finalized the preliminary determination finding that appellant was overpaid in the amount of \$1,112.74 for the period September 11 through 21, 2013 because she received wage-loss compensation after her return to full-time work at her regular salary. It found that she was without fault in the creation of the overpayment because she was not aware that she was not entitled to the payment received. OWCP determined that the overpayment was not subject to waiver because appellant did not contest the overpayment finding or provided evidence in response to the preliminary determination. It found that the entire amount was due as recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup>

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.<sup>4</sup> OWCP's regulations state in pertinent part: 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>5</sup> A claimant is not entitled to receive temporary total disability and actual earnings for the same period. OWCP's procedures provide that an overpayment in compensation is created when a claimant returns to work but continues to receive wage-loss compensation.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant received an overpayment of compensation in the amount of \$1,112.74 from September 11 through 21, 2013. On July 11, 2012 appellant was placed on periodic rolls and received wage-loss compensation for total disability. The record establishes that she returned to work full time, eight hours a day on September 11, 2013 at her regular salary. Appellant continued to receive wage-loss compensation for total disability through September 21, 2013. As noted above, she is not entitled to receive compensation for total

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<sup>3</sup>5 U.S.C. § 8102.

<sup>4</sup> *Id.* at § 8116(a).

<sup>5</sup> 20 C.F.R. § 10.500.

<sup>6</sup> *B.H.*, Docket No. 09-292 (issued September 1, 2009); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2(a) (May 2004).

disability after she has returned to work at her usual wages.<sup>7</sup> Accordingly, the Board finds that appellant received an overpayment of compensation.<sup>8</sup>

The record shows that appellant received net compensation every 28 calendar days in the amount of \$2,643.58, which she received for the period August 25 to September 21, 2013. From September 11 to 21, 2013, appellant received \$1,112.74 in total net disability compensation but was not entitled to any compensation during this period. OWCP properly determined that appellant's 28-day net disability compensation amounted to \$2,832.42, the equivalent of receiving \$101.15 daily. As appellant improperly received wage-loss compensation from September 11 to 21, 2013, a period of 11 days, OWCP multiplied the daily compensation rate of \$101.15 by 11 calendar days to establish an overpayment of compensation in the amount of \$1,112.74.

OWCP properly determined how the overpayment occurred and provided this to appellant with the preliminary notice of overpayment. There is no evidence that the overpayment did not occur as found by OWCP. Appellant did not respond to the notice to contest the fact or amount of the overpayment. The Board finds that OWCP properly determined that she received an overpayment of compensation in the amount of \$1,112.74 from September 11 through 21, 2013 for working with no loss of wages.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129(a) of FECA<sup>9</sup> provides that, where an overpayment of compensation has been made because of an error of fact or law, adjustments shall be made by decreasing later payments to which an individual is entitled.<sup>10</sup> The only exception to this requirement is found in section 8129(b) of FECA, which provides that adjustments or recovery may not be made when incorrect payments have been made to an individual who is without fault and when such adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>11</sup>

A finding that appellant was without fault is not sufficient, in and of itself, for OWCP to waive the overpayment.<sup>12</sup> OWCP must exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience, pursuant to the guidelines provided in sections 10.434 to 10.437 of the implementing federal regulations.<sup>13</sup>

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<sup>7</sup> *Supra* note 4 and 5. See also *M.A.*, Docket No. 13-2137 (issued March 11, 2014).

<sup>8</sup> *R.W.*, Docket No. 13-1108 (issued September 10, 2013).

<sup>9</sup> 5 U.S.C. § 8129(a).

<sup>10</sup> *Id.*

<sup>11</sup> 5 U.S.C. § 8129(b).

<sup>12</sup> *James Lloyd Otte*, 48 ECAB 334, 338 (1997); see *William J. Murphy*, 40 ECAB 569, 571 (1989).

<sup>13</sup> 20 C.F.R. §§ 10.434-10.437.

Section 10.438 of FECA's implementing 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 of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in the denial of waiver and no further request for waiver shall be considered until the requested information is furnished.<sup>14</sup>

As the only limitation on OWCP's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known facts.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

In this case, appellant was found to be without fault in creation of the overpayment. Accompanying the October 4, 2013 preliminary notice of overpayment, OWCP provided her an overpayment recovery questionnaire to obtain information about her monthly income, assets and expenses. Appellant did not respond to the notice or return the questionnaire or otherwise provide any financial information. Under the implementing regulations, OWCP could not determine whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>16</sup> As appellant failed to submit the requested information, as required by section 10.438 of its regulations, she is not entitled to waiver.<sup>17</sup> The Board finds that OWCP properly denied waiver of recovery of the \$1,112.74 overpayment of compensation.<sup>18</sup>

On appeal, appellant argues that she did not submit the required financial documentation because at the time of OWCP's preliminary determination, she was employed full time and intended on repaying the debt. She argued that her financial situation had since changed as she was no longer employed full time because of a life-altering motor vehicle accident on November 17, 2013. Appellant argued that she did not have the financial capability to repay the debt and recovery would be against equity and good conscience because it would cause her severe financial hardship.

While appellant has alleged that her financial circumstances have changed for the worse, OWCP's overpayment determination with respect to waiver was based on information and documentation it received regarding her financial circumstances at the time of its November 4, 2013 decision. The Board's consideration of this matter is limited to the sufficiency of OWCP's actions at the time it issued its November 4, 2013 decision. As appellant did not provide any

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<sup>14</sup> *Id.* at § 10.438; *Linda Hilton*, 52 ECAB 476 (2001).

<sup>15</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>16</sup> *C.B.*, Docket No. 12-1849 (issued January 13, 2014).

<sup>17</sup> 20 C.F.R. § 10.438(a) (in requesting waiver, the overpaid individual has the responsibility for providing financial information). *See also Linda Hilton*, *supra* note 14.

<sup>18</sup> *M.S.*, Docket No. 11-96 (issued August 17, 2011).

financial information as requested, OWCP properly denied waiver of recovery of the overpayment.<sup>19</sup> The waiver issue is determined in accord with FECA, Board precedent and regulatory authority and the Board finds the evidence submitted prior to OWCP's decision supported the denial of waiver.<sup>20</sup>

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$1,112.74 for the period September 11 through 21, 2013 because she received disability compensation after she returned to full-time work at regular salary. The Board further finds that she was without fault for the creation of the overpayment and that OWCP properly denied waiver of recovery of the overpayment based on the evidence of record.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 4, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

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

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

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<sup>19</sup> With respect to the recovery of the overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *D.R.*, 59 ECAB 148 (2007); *Miguel A. Muniz*, 54 ECAB 217 (2002). Therefore, the Board does not have jurisdiction over the method of recovery issue in this case. *Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

<sup>20</sup> *M.O.*, Docket No. 12-1486 (issued January 2, 2013).