

FACTUAL HISTORY

On July 27, 2005 appellant, then a 42-year-old teacher, filed a traumatic injury claim alleging that on July 13, 2005 he injured both wrists in the performance of duty. OWCP accepted the claim for bilateral carpal tunnel syndrome and bilateral tenosynovitis.

On October 14, 2010 appellant underwent a right carpal tunnel release. OWCP paid him compensation for disability beginning October 17, 2010. By letter dated July 10, 2011, appellant advised OWCP that he had returned to modified employment on April 15, 2011.² He related that he had telephoned OWCP twice about his return to work and concern that he might be overpaid. Appellant enclosed a check for \$4,618.74, the last payment he had received. He asked OWCP to return the check if he was entitled to the payment.

By letter dated September 1, 2011, OWCP notified appellant of its preliminary determination that he received an overpayment of compensation in the amount of \$13,031.44 because he returned to work on April 15, 2011 but continued to receive compensation until July 30, 2011. It calculated the overpayment by taking the compensation received from April 15 to July 30, 2011, \$17,650.18 and subtracting \$4,618.74, the amount he returned to it, to find a total overpayment of \$13,031.44. OWCP further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment. It requested that he complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, OWCP notified appellant that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence or a preresoupment hearing.

On September 22, 2011 appellant requested a decision based on the written evidence. He asserted that he was without fault in creating the overpayment and requested waiver. Appellant related that he would experience hardship repaying the overpayment. He completed an overpayment recovery questionnaire with supporting financial documentation. Appellant supported three dependents and listed assets totaling \$13,283.36.

In an April 12, 2012 memorandum of conference, appellant advised that his income had not changed and that he supported three children. OWCP requested that he submit a current overpayment recovery questionnaire. Appellant, however, did not respond to the request.

By decision dated April 24, 2013, OWCP determined that appellant received an overpayment of compensation in the amount of \$13,031.44 because he returned to work on April 15, 2011 but continued to receive monetary compensation for total disability until July 30, 2011. It determined that he was without fault in the creation of the overpayment but denied waiver of recovery of the overpayment as his assets exceeded the allowed amount.³

² On June 1, 2012 appellant related that he returned to work on April 15, 2011 without restrictions.

³ OWCP further found that appellant did not require all his income to meet current and ordinary expenses. In determining his monthly income, it included the amount that he erroneously received from OWCP in addition to his earnings from employment; however, this does not affect the outcome of the case as his assets exceed the qualifying amount.

OWCP found that appellant should submit \$200,000 per month as repayment of the overpayment.

On appeal appellant relates that he advised OWCP on June 23, 2011 that he had returned to work but it did not advise him of the overpayment until September 2011. He indicates that he notified OWCP that he had three additional dependents before his appeal. Appellant also asserts that he no longer owned one of his assets as it was destroyed. He asks that he be allowed to submit evidence on appeal. Appellant indicated that he was challenging a July 25, 2013 decision.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA⁴ 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.⁵

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 may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.⁶ 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."⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$13,031.44. OWCP accepted that he sustained employment-related bilateral carpal tunnel syndrome and bilateral tenosynovitis and paid him compensation for total disability beginning October 17, 2010. Appellant returned to work on April 15, 2011 but continued to receive compensation until July 30, 2011. As he returned to work with no loss of wage-earning capacity on April 15, 2011, he was not entitled to receive compensation after that date.⁸ Accordingly, the Board finds that appellant received an overpayment of compensation.

OWCP calculated the overpayment by determining the amount that it paid appellant for the period April 15 to July 30, 2011, \$17,650.18, and subtracting from this the amount that he refunded to OWCP, \$4,618.74, to find an overpayment of \$13,031.44. The Board will affirm the fact and amount of overpayment.

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *Id.* at § 8102.

⁶ *Id.* at § 8116(a).

⁷ 20 C.F.R. § 10.500.

⁸ *See* 5 U.S.C. § 8116(a); 20 C.F.R. § 10.500.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA⁵ provides that an overpayment must be recovered 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.” (Emphasis added.) Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.⁶

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his income (including compensation benefits) to meet current ordinary and necessary living expenses, and also, if the beneficiary’s assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.⁹ An individual’s liquid assets include but are not limited to cash, the value of stocks, bonds, savings accounts, mutual funds and certificates of deposits.¹⁰ Nonliquid assets include but are not limited to the fair market value of an owner’s equity in property such as a camper, boat, second home and furnishings and supplies.¹¹

Section 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹² To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.¹³

ANALYSIS -- ISSUE 2

OWCP found that appellant was not at fault in creating the overpayment of compensation and thus considered whether he was entitled to waiver of recovery of the overpayment. Waiver is only possible if recovery would defeat the purpose of FECA or would be against equity and good conscience. In order to establish that repayment of the overpayment would defeat the purpose of FECA, appellant must show that he requires substantially all of his income to meet

⁹ 20 C.F.R. § 10.436. OWCP procedures provide that assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (October 2004).

¹⁰ *Id.*

¹¹ *Id.*

¹² 20 C.F.R. § 10.436.

¹³ *Id.* at § 10.437(b)(1).

current ordinary and necessary living expenses and that his assets do not exceed the established limit as determined by OWCP's procedures.¹⁴

OWCP determined that appellant's assets exceeded the allowed resource base. Appellant provided an overpayment recovery questionnaire listing assets of \$13,283.36. OWCP procedures provide that assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent plus \$960.00 for each additional dependent.¹⁵ Appellant has three dependents and thus his qualifying amount for waiver is \$9,920.00.¹⁶ As his assets of \$13,283.36 exceed the amount specified, he has not shown that recovery would defeat the purpose of FECA.¹⁷

Additionally, the evidence does not demonstrate that repayment of the overpayment would be against equity and good conscience. Appellant submitted no evidence that he relied upon the incorrect payments to his detriment or that he would experience severe financial hardship attempting to repay the debt. Consequently, OWCP properly denied waiver of recovery of the overpayment.

On appeal appellant noted that he told OWCP that he had returned to work in June 2011 but that it did not inform him of the overpayment until September 2011. OWCP, however, found that he was not at fault in creating the overpayment. The fact that an error by it resulted in an overpayment does not relieve a claimant from liability for repayment.¹⁸

Appellant further related that he informed OWCP before his appeal that he had additional dependents and that his assets had decreased.¹⁹ The Board, however, cannot consider evidence that was not before OWCP at the time it issued its final decision.²⁰ If appellant's circumstances have significantly changed, he can again request waiver before OWCP and submit supporting financial information.²¹

¹⁴ *Id.* at § 10.436.

¹⁵ *See supra* note 8.

¹⁶ OWCP found that appellant's assets needed to be under \$7,680.00 rather than \$9,920.00 to qualify for waiver; however, this does not affect its finding that his assets exceed the limit for showing that recovery would defeat the purpose of FECA.

¹⁷ *See J.F.*, Docket No. 10-1185 (issued February 1, 2011).

¹⁸ 20 C.F.R. § 10.435(a); *Lawrence J. Dubuque*, 55 ECAB 667 (2004).

¹⁹ Appellant also indicated that he was appealing a decision dated July 25, 2013; however, the correspondence dated July 25, 2013 does not purport to be a final decision and is not accompanied by appeal rights. *See* 20 C.F.R. § 10.126.

²⁰ *See* 20 C.F.R. § 501.2(c).

²¹ *See id.* at § 10.438(b); *see also K.M.*, Docket No. 11-1083 (issued February 14, 2012).

CONCLUSION

The Board finds that appellant received an overpayment of \$13,031.44 from April 15 to July 30, 2011 because he received compensation after he returned to work. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.²²

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2014
Washington, DC

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

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

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

²² With respect to recovery of the overpayment, the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA. 20 C.F.R. § 10.441; *see Miguel A. Muniz*, 54 ECAB 217 (2002).