

FACTUAL HISTORY

On November 4, 2004 appellant, then a 48-year-old work study student, filed a traumatic injury claim, alleging that he injured his back while lifting boxes on October 28, 2004. On November 30, 2005 OWCP accepted the claim for lumbar strain with radiculopathy. In 2006, appellant was placed on the periodic compensation rolls and attendant care for two hours a day was authorized in September 2008. In October 2008, he was referred to vocational rehabilitation. In accordance with the provisions of sections 8113(b) and 8104 of FECA, by decision dated April 22, 2010, OWCP adjusted appellant's monetary compensation to zero because he failed, without good cause, to cooperate with vocational rehabilitation efforts. On February 16, 2011 appellant was granted a schedule award for 16 percent impairment of the left lower extremity and 16 percent impairment on the right.² In a merit decision dated June 17, 2011, OWCP denied modification of the April 22, 2010 decision. Appellant requested reconsideration on June 13, 2012. In an April 15, 2013 decision, OWCP denied his request, finding that the reconsideration request was untimely filed and did not establish clear evidence of error.³

On July 29, 2013 OWCP issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$5,172.30 because he received duplicate reimbursements for nursing services between November 1, 2011 and April 1, 2012. It found him at fault because he submitted two claims for reimbursement for the same period. Appellant was provided an overpayment action request form and an overpayment questionnaire.⁴

The record includes a claim for medical reimbursement submitted by appellant dated August 8, 2012 that indicated that he was claiming reimbursement totaling \$8,830.64 for services of Barbara Dupree for the period November 1, 2011 through April 30, 2012. On a second form that is undated, he also claimed reimbursement totaling \$8,830.64 for services by Ms. Dupree during the same period. Copies of receipts from Ms. Dupree for this period are found in the record. Remittance vouchers dated September 15 and October 27, 2012 show that OWCP paid appellant two checks of \$2,586.15 for services beginning on November 1, 2011, for a total of \$5,172.30. A third remittance voucher dated November 17, 2012 shows that he was paid \$8,830.64 for this same period. Copies of checks, endorsed by appellant, dated September 20 and November 1, 2012 for \$2,586.15 each and a third check for \$8,830.64 dated November 23, 2012 are found in the record.

² The record indicates that appellant is also in receipt of Veterans Affairs benefits for paranoid schizophrenia.

³ In a December 2, 2013 order remanding case, the Board set aside the April 15, 2013 OWCP decision finding that the reconsideration request was timely filed. The Board remanded the case to OWCP for application of the standard for reviewing a timely request for reconsideration as set forth in 20 C.F.R. § 10.606(b)(2). Docket No. 13-1350 (issued December 2, 2013).

⁴ An OWCP fiscal officer initially sent an overpayment letter on January 8, 2013 with supporting documentation. On July 29, 2013 OWCP informed appellant that he was sent the overpayment letter in error, noting that it was the type sent to medical providers and had limited appeal rights.

On an overpayment action request dated August 21, 2013, appellant requested waiver, stating that he did not know there was an overpayment. The record also contains overpayment questionnaires completed by him on April 24 and August 21, 2013.

On September 26, 2013 OWCP finalized the July 29, 2013 preliminary overpayment decision, finding that appellant was at fault in creating the \$5,172.30 overpayment because he knew or should have known that he was not entitled to a check for \$8,830.64, the full amount of his request for reimbursement of Ms. Dupree's services, when he had already received two checks of \$2,586.16 each, for a total of \$5,172.30. It explained that he was only entitled to a further payment of \$3,658.29 rather than the full amount requested (\$8,830.64), which yielded an overpayment of compensation of \$5,172.30. OWCP directed appellant to forward monthly payments of \$50.00.

LEGAL PRECEDENT -- ISSUE 1

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.⁵ While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁶ In interpreting section 8103(a) of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP's authority is that of reasonableness.⁷

Section 8111 of FECA provides that the Secretary of Labor may pay an employee who has been awarded compensation an additional sum of not more than \$1,500.00 a month, as the Secretary considers necessary, when the Secretary finds that the service of an attendant is necessary constantly because the employee is totally blind or has lost the use of both hands or both feet or is paralyzed and unable to walk or because of other disability resulting from the injury making him or her so helpless as to require constant attendance.⁸

⁵ 5 U.S.C. § 8103; *see Dona M. Mahurin*, 54 ECAB 309 (2003).

⁶ *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

⁷ *R.L.*, Docket No. 08-855 (issued October 6, 2008).

⁸ 5 U.S.C. § 8111. OWCP procedures allows payment for services of an attendant where it is medically documented that the claimant requires assistance to care for personal needs such as bathing, dressing, eating, *etc.* Such services are paid as a medical expense directly to the provider of services under 5 U.S.C. § 8103. Prior to the January 1999 revision to the Federal Regulations, an attendant allowance was paid directly to the claimant. Any such allowance approved prior to January 1999 continued to be paid to the claimant until the need for the attendant ceased. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.21 (September 2010).

When a claimant receives a duplicate reimbursement payment for a period that he or she has already received reimbursement, an overpayment of compensation is created.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,172.30 because he received duplicate reimbursements for nursing services between November 1, 2011 and April 1, 2012. The record reflects that appellant submitted a claim for medical reimbursement on August 8, 2012 which indicated that he was claiming reimbursement for services of Ms. Dupree for the period November 1, 2011 through April 30, 2012, totaling \$8,830.64. On a second form that is undated, he also claimed reimbursement for services by Ms. Dupree for the same period, also totaling \$8,830.64. Copies of receipts from Ms. Dupree for this period are in the record. Remittance vouchers dated September 15 and October 27, 2012 show that OWCP paid appellant \$2,586.15 on two occasions for services beginning on November 1, 2011, for a total of \$5,172.30. A third remittance voucher dated November 17, 2012 shows that he was paid \$8,830.64 for this same period. Copies of checks endorsed by appellant, dated September 20 and November 1, 2012 for \$2,586.15 each and a third check for \$8,830.64 dated November 23, 2012 are found in the record.

As appellant was only entitled to reimbursement of \$8,830.64, an overpayment of compensation in the amount of \$5,172.30 was created.

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.”¹⁰

Section 10.433(a) of OWCP 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 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

⁹ See generally *C.W.*, Docket No. 10-263 (issued September 14, 2010).

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

(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).”¹¹

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.¹²

ANALYSIS -- ISSUE 2

OWCP found that appellant accepted a payment he knew or should have known was incorrect. As explained above, appellant submitted two reimbursement claims for services for the same period. Each claim was for a total of \$8,830.64. Remittance vouchers dated September 15 and October 27, 2012 show that OWCP paid appellant a total of \$5,172.30 in two checks of \$2,586.15 and a third remittance voucher of \$8,830.64 for the same services. Copies of the two checks, endorsed by appellant, dated September 20 and November 1, 2012 for \$2,586.15 and the third check for \$8,830.64 dated November 23, 2012 are found in the record.

Appellant’s wage-loss compensation was reduced to zero on April 22, 2010 because he had failed to cooperate with rehabilitative efforts. On February 16, 2011 he was granted a schedule award for 16 percent impairment of the left lower extremity and 16 percent impairment on the right. The period of the award was August 24, 2010 to May 30, 2012. At the expiration of the schedule award on May 30, 2012, appellant was not entitled to any monetary compensation and therefore had no expectation of reimbursement from OWCP other than further request reimbursement of \$8,830.64 for the services of Ms. Dupree for the period November 1, 2011 and April 1, 2012.

Under these circumstances, the Board finds that appellant knew or should have known he was not entitled to reimbursements for Ms. Dupree’s services for the period November 1, 2011 and April 1, 2012 totaling \$14,002.94, when he had requested reimbursement of \$8,830.64. OWCP, therefore, properly found him at fault.¹³ As appellant was at fault in the creation of the overpayment he was not entitled to waiver.¹⁴

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

¹² *Id.* at 10.433(b); *Neill D. Dewald*, 57 ECAB 451 (2006).

¹³ The Board notes that it is unclear why OWCP was paying appellant directly for Ms. Dupree’s services since, in accordance with OWCP procedures, care authorized after 1999 is paid directly to the provider. Federal (FECA) Procedure Manual, *supra* note 8. In this case attendant care was authorized in September 2008.

¹⁴ 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).

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,1762.30 and that, as he was at fault, he was not entitled to waiver.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 17, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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