

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

P.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Orange, CA, Employer**

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**Docket No. 13-1627
Issued: September 11, 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 June 28, 2013 appellant filed a timely appeal of a May 9, 2013 decision of the Office of Workers' Compensation Programs (OWCP) which found an overpayment of compensation in the amount of \$5,822.16. 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 this case.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,822.16; and (2) whether it properly found that she was at fault in the creation of the overpayment and therefore not entitled to waiver of the recovery of the overpayment.

On appeal, appellant contends that she had been approved to return to work on July 26, 2012, but only for limited duty of four hours a day and this caused part of her confusion as to the overpayment. On July 19, 2012 she had an accident and broke her left leg which

¹ 5 U.S.C. § 8101 *et seq.*

complicated her return to work. Appellant contended that she was told by her caseworker to stay on the periodic payroll. She was paid a total of 72 hours of sick leave for the period July 20 through September 28, 2012 and that she could pay back this amount or ½ of the amount that OWCP stated that she owed. Appellant noted that she had direct deposit and that when she received the check from OWCP she told the employing establishment to stop paying her as she was receiving compensation from OWCP.

FACTUAL HISTORY

On October 18, 2008 appellant, then a 58-year-old letter carrier, filed an occupational disease claim alleging an injury to her right knee as a result of driving and making deliveries. On November 25, 2008 OWCP accepted her claim for tear of the lateral meniscus of the right knee and right popliteal synovial cyst. Appellant received compensation benefits.

In a note of a telephone conference dated July 31, 2012, a claims examiner spoke with appellant about her case. Appellant informed him that she had recently broke her left leg. The claims examiner advised her to cancel her leave request on her broken left leg and await either an actual return to work or formal decision. He explained that otherwise OWCP would continue to pay her every 28 days until one of those things happened and that, if appellant did not cancel her leave, she was going to have an overpayment. On August 29, 2012 the claims examiner returned a call from appellant and left a message that if she had not returned to work, she needed to let him know immediately as there would probably be an overpayment. In an August 29, 2012 note, he indicated that she left a message that she hurt herself and that the employing establishment was trying to force her to take a job and then take leave. The claims examiner returned appellant's call but someone picked up and there was no verbal response. On September 5, 2012 he received a voice message advising that she sustained injuries off the clock and was using sick leave. The claims examiner left a voice mail stating that, if the employing establishment was trying to force appellant to take leave on a personal injury, she should speak to her union steward and then call him back. On September 12, 2012 he told appellant that he could not advise her as to what she should do, but since she received regular compensation payments, she could be removed from the rolls only if she returned to work or was formally taken off the rolls.

A September 20, 2012 OWCP compensation form noted that appellant was paid wage-loss benefits from July 26 through 28, 2012 in the amount of \$293.92; from July 29 through August 25, 2012 in the amount of \$2,764.12; and from August 26 through September 22, 2012 in the amount of \$2,764.12. The total amount of the overpayment was calculated to be \$5,822.16.

On March 19, 2013 OWCP made a preliminary determination that appellant was overpaid in the amount of \$5,822.16 because she returned to full-time light-duty work on July 26, 2012 a full salary but continued to be paid wage-loss compensation until September 22, 2012. It found that she was at fault in the creation of the overpayment because she accepted payments that she knew or reasonably should have known to be incorrect.

On April 6, 2013 appellant advised that she sustained an off-the-job injury on July 19, 2012. She informed her claims examiner, who told her to stay on compensation benefits. Appellant stated that she was never offered a job and stayed home until

October 31, 2012. For the month of October, she used sick leave and that she did not return to work until October 31, 2012. Appellant noted that she had direct deposit. She contended that she never received notification from OWCP about her compensation being cancelled. Appellant did not submit any financial information, but argued that she was not at fault in the creation of the overpayment as she was advised to stay on compensation and the employing establishment never offered her a job within her restrictions. She returned to full-duty on October 30, 2012. Appellant submitted copies of pay stubs for pay periods 15 through 22 for the year 2012. For pay period 15, she had 80 hours of leave without pay. For pay period 16, appellant received sick leave for 16 hours and the remaining 64 hours were leave without pay. For pay period 17, she took 16 hours sick leave and the remaining 64 hours were leave without pay. Appellant took no sick leave for pay period 18; the entire 80-hour pay period was listed as leave without pay. For pay period 19, she took 32 hours of sick leave and 48 hours are listed as leave without pay. For pay period 20, appellant took 8 hours of sick leave and 72 hours of leave without pay. She did not take any sick leave in pay periods 21 and 22 so the entire 80 hours for each pay period was listed as leave without pay. The total amount of sick leave that appellant took for pay periods 15 through 22 was 72 hours.

In a decision dated May 9, 2013, OWCP found that appellant received an overpayment of compensation in the amount of \$5,822.16. It further found that she was at fault in the creation of the overpayment as she accepted payments that she knew or should have known were not correct.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.² FECA, however, also places limitations on an employee's right to receive compensation benefits. Section 8116 provides that, while an employee is receiving benefits, he or she may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.³ OWCP regulations further state that compensation for wage loss due to disability is available only for the period where an employee's work-related medical condition prevents him or she from earning the wages earned before the work-related injury.⁴ A claimant is not entitled to receive temporary total disability and actual earnings for the same period.⁵ OWCP procedures provide that an overpayment in compensation is created when a claimant returns to work and has earnings but continues to receive wage-loss compensation.⁶ The Board

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116(a).

⁴ 20 C.F.R. § 10.500(a).

⁵ See *Daniel Renard*, 51 ECAB 466, 469 (2000).

⁶ See *L.S.*, 59 ECAB 350 (2008); Federal (FECA) Procedure Manual, Part 6 -- *Debt Management, Initial Overpayment Actions*, Chapter 6.200.2(a) (September 2010).

determined that if an employee receives sick leave from the employing establishment at the same time he or she is being paid compensation, this will cause an overpayment.⁷

ANALYSIS -- ISSUE 1

OWCP determined that appellant received an overpayment of compensation for the period July 28 through September 22, 2012 as she received sick leave from the employing establishment at the same time she received wage-loss compensation under FECA. It found the entire amount of compensation she received for this time period, \$5,822.16, to be an overpayment.

The Board notes that appellant submitted pay stubs that suggest that for this time period she received sick leave for only 72 hours. The record reflects that she received sick leave as follows: for pay period 16, she received 16 hours of sick leave; for pay period 17 appellant received 16 hours of sick leave; for pay period 19 she received 32 hours of sick leave; and for pay period 20 appellant received 8 hours of sick leave. The pay stubs suggest that appellant did not receive any salary for work performed during this period as the remaining time is listed as leave without pay. On appeal, she concedes that she received an overpayment of compensation for 72 hours as she used sick leave while in receipt of compensation benefits.

The Board finds that appellant received an overpayment of compensation during some portion of the period July 28 through September 22, 2012. However, the amount of compensation of \$5,822.16 as found by OWCP is not supported by the record. The Board will affirm OWCP's finding that appellant received an overpayment for the period July 28 through September 22, 2012, and remand the case to redetermine the amount of the overpayment. Based on this finding, issue 2 is rendered moot.

CONCLUSION

The Board finds that appellant received an overpayment of compensation from OWCP, but the amount of the overpayment needs recalculation.

⁷ E.V., Docket No. 10-1284 (issued February 3, 2011).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 9, 2013 is affirmed in part and set aside in part, and the case is remanded for further consideration of the amount of the overpayment.

Issued: September 11, 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