

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

C.G., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Fredericksburg, VA, Employer)

**Docket No. 14-1727
Issued: April 20, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 15, 2014 appellant filed a timely appeal from a June 11, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the overpayment issue.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$6,872.00 during the period December 4, 2013 through February 8, 2014; and (2) whether OWCP properly found that appellant was at fault in creating the overpayment, thereby precluding waiver of the overpayment.

¹ Appellant timely requested oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). The Board denied the request in a February 24, 2015 order as her arguments could be adequately addressed based on a review of the case record. Order Denying Request for Oral Argument, Docket No. 14-1727 (issued February 24, 2015).

² 5 U.S.C. § 8101 *et seq.*

On appeal, appellant asserts that the overpayment decision was incorrect as she was placed off work due to another condition in a different case, claim number xxxxxx209.

FACTUAL HISTORY

On July 25, 2011 appellant, then a 40-year-old rural letter carrier, filed a traumatic injury claim, alleging that she sustained a neck injury when a private vehicle struck her postal vehicle from behind. She stopped work that day. OWCP accepted the claim for a neck strain and back sprain, thoracic region and paid all periods of disability. Appellant returned to limited duty on June 6, 2012.

On March 23, 2013 appellant stopped work as the employing establishment could no longer accommodate her restrictions. OWCP paid her compensation on the periodic compensation rolls.

Appellant was released to full-time work on November 21, 2013 with restrictions regarding driving and accepted a full-time modified-duty assignment and returned to work on December 4, 2013. However, she stopped work again due to an elbow condition.³ On February 6, 2014 appellant accepted another full-time modified-duty assignment and returned to work.

By letter dated March 20, 2014, OWCP advised appellant of a preliminary determination that an overpayment of \$6,872.00 had occurred during the period December 4, 2013 through February 8, 2014 as she was paid compensation after her return to full duty on December 4, 2013. The calculations indicate that on December 14, 2013 appellant received a check for \$1,128.86 for the period December 4 to 14, 2013; on January 11, 2014 she received a check for \$2,873.46 for the period December 15, 2013 to January 11, 2014; and on February 8, 2014 she received a check for \$2,869.68 for the period January 12 to February 8, 2014, for a total overpayment of \$6,872.00.⁴ OWCP found that appellant was at fault in creating the overpayment as she knew or should have known that she could not receive wage-loss compensation after returning to full-time work. It advised her to complete an OWCP-20 questionnaire and submit supporting financial documents, as this was necessary information on the issues of waiver and recovery of the overpayment.

In a March 27, 2014 report of telephone call, appellant advised OWCP that she has another claim, xxxxxx209, and that her claim for disability under that claim was being developed.⁵ She did not submit any additional evidence or arguments pertaining to the overpayment of compensation found in this case.

³ The date that appellant stopped work again is unclear from the record.

⁴ Appellant was paid by check.

⁵ The record reflects that appellant filed claims for medical care for the period March 8 to 21, 2014. By decision dated April 22, 2014, OWCP advised her that her claim to obtain medical care for the period March 8 through 21, 2014 was not payable in its entirety and only authorized payment for four hours on March 12, 2014. On March 2, 2014 OWCP paid appellant \$76.45 for the period March 8 through 21, 2014.

By decision dated June 11, 2014, OWCP finalized the overpayment determination finding that an overpayment in the amount of \$6,872.00 was created for the period December 4, 2013 through February 8, 2014 for which appellant was at fault as she accepted compensation payments that she knew or reasonably should have known to which she was not entitled.

On appeal, appellant argued that her doctor under OWCP claim number xxxxxx209 put her off work until January 24, 2014 and she did not return to work until February 9, 2014.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 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.⁶

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.⁷ Section 10.500 of OWCP regulations provide that 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.⁸

ANALYSIS -- ISSUE 1

The record reflects that appellant received wage-loss compensation on the periodic rolls. She ultimately accepted a full-time modified-duty assignment on December 4, 2013 and returned to work. There is no evidence to reflect any disability due to appellant's accepted injuries for the period of the overpayment, December 4, 2013 through February 8, 2014.

Appellant is not entitled to wage-loss compensation upon her return to work at full salary. The record establishes that she received wage-loss compensation from December 4, 2013 through February 8, 2014. Appellant received a compensation payment in the amount of \$1,128.86 by check dated December 14, 2013 for the period December 4 through 14, 2013. She also received compensation payments in the amount of \$2,873.46 by check dated January 11, 2014 for the period December 15, 2013 through January 11, 2014, and in the amount of \$2,869.68 by check dated February 8, 2014 for the period January 12 through February 8, 2014. The resulting overpayment totaled \$6,872.00 (\$1,128.86 + \$2,873.46 + \$2,869.68).

On appeal, appellant contends that her doctor, under OWCP claim number xxxxxx209 put her off work on January 24, 2014 and she was out of work waiting for a decision in that case, when she received the compensation which created the overpayment. She advised that she returned to work on February 9, 2014. However, as noted above, there is no evidence on file to

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8116(a); *see Danny E. Haley*, 56 ECAB 393 (2005).

⁸ 20 C.F.R. § 10.500.

reflect that appellant was held off work due to her accepted injuries for the period of the overpayment, December 4, 2013 through February 8, 2014. Thus, the Board finds that OWCP properly determined the fact and amount of the overpayment. The Board finds that an overpayment of \$6,872.00 was created in this case.

LEGAL PRECEDENT -- ISSUE 2

5 U.S.C. § 8129(b) provides: Adjustment or recovery by the United States may not be made when 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.⁹ A claimant who is at fault in creating the overpayment is not entitled to waiver.¹⁰ On the issue of fault, 20 C.F.R. § 10.433 provides that an individual will be found at fault if he or she has done any of the following: (1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (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 was incorrect.

ANALYSIS -- ISSUE 2

OWCP found appellant was at fault in the creation of the overpayment because she accepted payments she knew or should have known to be incorrect. Appellant accepted full-time modified work beginning December 4, 2013. She received compensation payments by check dated December 14, 2013, January 11, and February 8, 2014 for temporary total disability while waiting for a decision in another OWCP case. With respect to whether an individual is with fault, section 10.433(b) of OWCP's regulations provide that, whether or not OWCP determines that the individual was without fault with respect to the creation of the overpayment depends on the circumstances surrounding the overpayment. The degree of care expected could vary with the complexity of the circumstances and the individual's capacity to realize that he or she is being overpaid. The Board has also noted that in applying the tests to determine fault, OWCP should apply a reasonable person test.¹¹

The Board finds that appellant was at fault in the creation of the overpayment. When appellant accepted the full-time modified position on December 4, 2013, she knew that she was no longer totally disabled from her accepted work conditions and had resumed work at the employing establishment. While she notified OWCP that her physician in OWCP case number xxxxxx209 subsequently held her off work until January 24, 2014 and that she was waiting for a decision in that case, appellant did not submit evidence to support her assertions that she was disabled or submit any evidence that she could not perform the duties of the job offer which she had accepted on December 4, 2013. Furthermore, the fact that appellant informed OWCP that she was waiting for a decision in OWCP case number xxxxxx209, indicates that she knew or should have known she was accepting wage-loss compensation payments for which she was not

⁹ 5 U.S.C. § 8129(b).

¹⁰ See *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

¹¹ *C.D.*, Docket No. 12-193 (issued August 2, 2013).

entitled. The checks she received on December 14, 2013, January 11, and February 8, 2014 clearly noted the period for which wage-loss compensation covered. Even though OWCP may have been negligent in continuing to issue appellant checks for wage-loss compensation after December 4, 2013, this does not excuse her acceptance of such checks which she knew or should have known were incorrect.¹² For these reasons, it properly found her at fault in the creation of the \$6,872.00 overpayment, thereby precluding waiver of recovery of the overpayment.¹³ As appellant is no longer receiving FECA wage-loss compensation, the Board does not have jurisdiction with respect to recovery of the overpayment.¹⁴

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation during the period December 4, 2013 through February 8, 2014 in the amount of \$6,872.00. The Board further finds that OWCP properly determined that she was at fault in creating the overpayment of compensation, thereby precluding waiver of recovery of the overpayment.

¹² See *supra* note 10.

¹³ 5 U.S.C. § 8129(b); *L.J.*, 59 ECAB 264 (2007).

¹⁴ See *Desiderio Martinez*, 55 ECAB 245 (2004).

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board