

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

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**S.W., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Washington, DC, Employer**

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**Docket No. 15-1178  
Issued: December 17, 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  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 4, 2015 appellant filed a timely appeal from an April 2, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 a \$2,396.69 overpayment of compensation; and (2) whether it abused its discretion by refusing to waive recovery of the overpayment.

**FACTUAL HISTORY**

OWCP accepted that on January 21, 2012 appellant, then a 46-year-old rural carrier, sustained right shoulder adhesive capsulitis and muscle spasm due to a vehicular accident at work. Appellant stopped work and received disability compensation on the daily rolls effective

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

March 26, 2012. She received disability compensation on the periodic rolls effective November 18, 2012. By letter dated November 16, 2012, OWCP advised appellant that she was required to provide notice upon return to any work and to return all payments received for periods after return to work. Appellant returned to full-time regular work for the employing establishment on May 1, 2013.<sup>2</sup>

In a July 19, 2013 notice, OWCP advised appellant of its preliminary determination that she received a \$2,396.69 overpayment of compensation for the period May 1 to June 1, 2013 because she continued to receive total disability after she returned to full-time regular work for the employing establishment on May 1, 2013.<sup>3</sup> It also made a preliminary determination that she was at fault in the creation of the overpayment. OWCP noted that appellant was aware or reasonably should have been aware that she could not accept disability compensation monies after she returned to full-time regular work on May 1, 2013. It advised appellant that she could submit evidence challenging the fact, amount, or finding of fault and request waiver of recovery of the overpayment. OWCP requested that appellant complete and return an enclosed financial information questionnaire within 30 days even if she was not requesting waiver of the overpayment.

In a form dated August 1, 2013 and received August 2, 2013, appellant contested OWCP's preliminary determination that she was at fault in the creation of the claimed \$2,396.69 overpayment. She asserted that she contacted OWCP on several occasions, by letter and telephone, regarding her return to work. It does not appear that appellant provided the requested financial information within 30 days of OWCP's July 19, 2013 notice.

OWCP requested that the employing establishment clarify whether appellant returned to work on May 1 or June 1, 2013. In a March 31, 2015 e-mail to OWCP, the employing establishment confirmed that appellant returned to work on May 1, 2013.

In an April 2, 2015 decision, OWCP determined that appellant had received a \$2,396.69 overpayment of compensation and that she was not at fault in the creation of the overpayment because she appeared to have been confused about her return to work date.<sup>4</sup> It further found that appellant had not established eligibility for waiver of recovery of the \$2,396.69 overpayment of compensation because she did not submit financial information within the allotted time period which would justify such a waiver of recovery. With respect to the recovery of an 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). As appellant was not in receipt of continuing compensation at the time of OWCP's overpayment determination, the Board does not have jurisdiction over the method of recovery of the overpayment in this case. *See Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

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<sup>2</sup> In a May 28, 2013 letter to OWCP, appellant indicated that she should not receive any compensation after June 1, 2013 and that "June 1, 2013 should be my last check."

<sup>3</sup> The record contains evidence showing that appellant received \$2,396.69 in compensation for the period May 1 to June 1, 2013.

<sup>4</sup> It was noted that in a May 28, 2013 letter to OWCP appellant asserted that "June 1, 2013 should be my last check."

### **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 his or her duty.<sup>5</sup> Section 8129(a) of FECA provides, in pertinent part:

“When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.”<sup>6</sup>

Section 8116(a) of FECA provides that while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.<sup>7</sup>

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

The Board finds that appellant received a \$2,396.69 overpayment of compensation for the period May 1 to June 1, 2013. Appellant received wage-loss compensation during this period despite the fact that she returned to full-time regular work on May 1, 2013. She was not entitled to receive both a salary and wage-loss compensation for the same period.<sup>8</sup> The record contains evidence showing that appellant received \$2,396.69 in compensation for the period May 1 to June 1, 2013. For these reasons, the Board finds that she received a \$2,396.69 overpayment of compensation.

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

The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP’s discretion pursuant to statutory guidelines.<sup>9</sup> These statutory guidelines are found in section 8129(b) of FECA which states: “Adjustment or recovery [of an overpayment] 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 this subchapter or would be against equity and good conscience.”<sup>10</sup> When a claimant is found to be without fault in the matter of the overpayment, then, in accordance with section 8129(b), OWCP may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of FECA nor be against equity and good conscience.

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Id.* at § 8129(a).

<sup>7</sup> *Id.* at § 8116(a).

<sup>8</sup> *See supra* note 9.

<sup>9</sup> *See Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>10</sup> 5 U.S.C. § 8129(b).

Section 10.438 of OWCP's regulations provide:

“(a) 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. This information will also be used to determine the repayment schedule, if necessary.

“(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.”<sup>11</sup>

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

The Board finds that appellant failed to establish waiver of the recovery of the \$2,396.69 overpayment. Appellant failed to provide financial information within the allotted period after OWCP's July 19, 2013 preliminary overpayment determination.<sup>12</sup> She did not submit evidence showing that she was entitled to waiver of the overpayment because adjustment or recovery would defeat the purpose of the relevant subchapter of FECA or would be against equity and good conscience.<sup>13</sup> Therefore, OWCP did not abuse its discretion by refusing to waive recovery of the \$2,396.69 overpayment.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received a \$2,396.69 overpayment of compensation. The Board further finds that OWCP did not abuse its discretion by refusing to waive recovery of the overpayment.

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<sup>11</sup> 20 C.F.R. § 10.438.

<sup>12</sup> See *supra* note 13.

<sup>13</sup> See *supra* note 12.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board