

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

A.A., Appellant)

and)

DEPARTMENT OF AGRICULTURE,)
INSPECTION OPERATIONS PROGRAM,)
Athens, GA, Employer)

**Docket No. 14-1996
Issued: February 5, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 16, 2014 appellant filed a timely appeal from an August 27, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the case.²

ISSUES

The issues are: (1) whether appellant received an overpayment in compensation in the amount of \$1,039.44; and (2) whether OWCP properly denied waiver of the overpayment.

¹ 5 U.S.C. §§ 8101-8193.

² *J.T.*, 59 ECAB 293 (2008); 20 C.F.R. § 501.2(c)(1). Although appellant asserts on appeal that she timely submitted the requested documentation to OWCP, the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision.

On appeal appellant asserts that she timely submitted documentation, including a prerecoupment telephone interview request. She requested waiver of the overpayment.

FACTUAL HISTORY

On January 30, 2014 appellant, then a 42-year-old consumer safety inspector, filed a traumatic injury claim alleging that she slipped and fell on a greasy floor that day, injuring her lower and middle back and right leg. She stopped work and OWCP accepted that she sustained contusions of the back and the right knee. Appellant received continuation of pay for the period January 31 to March 16, 2014 and filed CA-7 forms, claims for compensation, for the period March 17 to April 5, 2014. She received compensation and was placed on the periodic compensation rolls effective April 6, 2014.

Appellant returned to full duty without restriction on June 19, 2014. The record indicates that she received a periodic payment covering the period June 1 to 28, 2014. In correspondence dated June 26, 2014, OWCP noted that a final compensation payment had or shortly would be issued that covered the period after her return to work. It directed her to return this payment.

By letter dated July 2, 2014, OWCP issued a preliminary determination that appellant had received an overpayment in compensation in the amount of \$1,039.44 for the period June 19 through 28, 2014 because she continued to receive disability compensation after her return to work. It explained the calculation of the overpayment and found her without fault in its creation. Appellant was provided an overpayment action request form and an overpayment questionnaire. She was allowed 30 days to submit a response.

Appellant did not respond to the preliminary determination. By decision dated August 27, 2014, OWCP finalized the preliminary overpayment decision, finding that appellant received an overpayment in compensation in the amount of \$1,039.44 and, while she was without fault, she was not entitled to waiver of the overpayment because she failed to provide the requested information. Repayment was due in full.

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.³

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.⁴ 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-

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116(a); *see Danny E. Haley*, 56 ECAB 393 (2005).

related medical condition prevents him or her from earning the wages earned before the work-related injury.”⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$1,039.44. The record supports that appellant returned to work on June 19, 2014. Appellant received a wage-loss compensation payment for the period June 1 through 28, 2014. As noted, both FECA and the implementing regulations of OWCP provide that a claimant may not receive wage-loss compensation concurrently with a federal salary or other remuneration.⁶ The record indicates that appellant received compensation of \$1,039.44 for the period after her return to work on June 19, 2014. This yielded an overpayment of compensation in that amount.⁷

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.”⁸ Section 10.438 of OWCP regulations provide that 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 on an overpayment would defeat the purpose of FECA or be against equity and good conscience.⁹ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁰

⁵ 20 C.F.R. § 10.500.

⁶ 5 U.S.C. § 8116(a); *id.* at § 10.500.

⁷ Appellant’s gross 28-day compensation of \$3,481.23, divided by 28- calendar days, yields a \$124.33 daily compensation rate. This, multiplied by 10-calendar days (compensation received after appellant returned to work), yields gross overpaid compensation of \$1,243.30. After allowed deductions, a net overpayment of \$1,039.44 was created.

⁸ 5 U.S.C. § 8129.

⁹ Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current or ordinary and necessary living expenses; and (b) the beneficiary’s assets do not exceed a specified amount as determined by OWCP from data furnished by the Bureau of Labor Statistics. 20 C.F.R. § 10.436. 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. 20 C.F.R. § 10.437.

¹⁰ *Id.* at § 10.438.

ANALYSIS -- ISSUE 2

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹¹ Appellant, however, had the responsibility to provide financial information to OWCP¹² and did not do so.

In its preliminary determination dated July 2, 2014, OWCP clearly explained the importance of providing the requested financial information and advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. Appellant did not submit a completed overpayment questionnaire or otherwise submit financial information supporting her income and expenses at any time prior to the August 27, 2014 final overpayment decision. Because OWCP did not have the necessary financial information, it could not determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience. Consequently, as appellant did not submit the financial information required under section 10.438 of OWCP regulations, necessary to determine her eligibility for waiver, it properly denied waiver of recovery of the overpayment in compensation in the amount of \$1,039.44.¹³

With respect to recovery of the overpayment in compensation, the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA.¹⁴ As appellant is no longer receiving wage-loss compensation, the Board does not have jurisdiction with respect to the recovery of the overpayment under the Debt Collection Act.¹⁵

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,039.44 and that OWCP properly denied waiver of the overpayment.

¹¹ *Supra* note 9.

¹² *Supra* note 10.

¹³ *Id.*

¹⁴ *Cheryl Thomas*, 55 ECAB 610 (2004).

¹⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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