

tunnel syndrome. Appellant was released to modified duty on August 25, 2012. The employing establishment could not accommodate his restrictions and was placed on the periodic compensation rolls.² Effective October 28, 2013, OWCP forwarded \$860.64 per compensation period to the Ohio child support enforcement agency for court ordered child support.³

Appellant returned to full-time, full-duty work on March 19, 2014. The record indicates that he received compensation in the amount of \$1,869.66 for the period March 9 through April 5, 2014. A child support payment of \$860.64 was also made for this period, for total compensation of \$2,730.30 for the period.

By letter dated April 7, 2014, OWCP issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$1,755.19 because he continued to receive wage-less compensation after his return to work. It explained the calculation of the overpayment and found him not at fault in its creation. Appellant was provided an overpayment action request form and an overpayment questionnaire. The preliminary determination noted that he received net compensation of \$1,869.66 plus an \$860.64 child support payment, for total net compensation of \$2,730.30 for this period when he should have received \$975.11, which yielded an overpayment of compensation in the amount of \$1,755.19 for the period March 19 through April 5, 2014. Appellant was given 30 days to submit a response.

Appellant did not respond to the preliminary overpayment letter. By decision dated May 16, 2014, OWCP finalized the preliminary overpayment decision, finding that he received an overpayment in compensation in the amount of \$1,755.19 and, while he was found not at fault, he was not entitled to waiver of the overpayment because he 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.⁴

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.⁵ Section 10.500 of OWCP's regulations provide that "compensation for

² The record indicates that appellant has a separate claim, adjudicated by OWCP under File No. xxxxxx188 that was accepted for a left wrist condition. Under that claim he received a schedule award for 41 percent impairment of the left arm. The instant claim was adjudicated by OWCP under File No. xxxxxx467.

³ In September 2013, appellant was referred to Dr. Richard H. Deerhake, a Board-certified orthopedic surgeon, for a second opinion evaluation. In reports dated October 17, 2013, Dr. Deerhake advised that appellant could return to his usual job without restrictions. On March 17, 2014 Dr. Paul Eby, an attending physician Board-certified in family and occupational medicine, discharged appellant from his care.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116(a); *see Danny E. Haley*, 56 ECAB 393 (2005).

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."⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment in compensation in the amount of \$1,755.19. The record supports that he returned to work on March 19, 2014, but continued to receive wage-loss compensation on the periodic rolls through April 5, 2014. As noted, both FECA and implementing regulations of OWCP provide that a claimant may not receive wage-loss compensation concurrently with a federal salary or other remuneration.⁷ The record indicates that appellant received compensation of \$1,869.66 for this period. OWCP also forwarded a child support payment of \$860.64, yielding total compensation of \$2,730.30. Appellant, however, was only entitled to compensation of \$975.11 for this period since he returned to work on March 19, 2014. This yielded an overpayment of compensation of \$1,755.19 for the period in question.⁸

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."⁹ Section 10.438 of OWCP's implementing 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.¹⁰ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹¹

⁶ 20 C.F.R. § 10.500.

⁷ 5 U.S.C. § 8116(a); 20 C.F.R. § 10.500.

⁸ \$2,730.30 divided by 28 calendar days times 18 calendar days (when appellant returned to work) yields an overpayment of compensation of \$1,755.19.

⁹ 5 U.S.C. § 8129.

¹⁰ 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. *Id.* at § 10.437.

¹¹ 20 C.F.R. § 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.¹² Appellant, however, had the responsibility to provide financial information to OWCP.¹³

In its preliminary determination dated April 7, 2014, OWCP clearly explained the necessity of providing the requested financial information and advised appellant that it would deny waiver if he failed to furnish the requested financial information within 30 days. Appellant, however, did not submit a completed overpayment questionnaire or otherwise submit financial information supporting his income and expenses at any time. As a result, OWCP did not have the necessary financial information to 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, OWCP properly denied waiver of recovery of the overpayment in compensation in the amount of \$1,755.19.

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 \$1,755.19 and that OWCP properly denied waiver of the overpayment.

¹² *Supra* note 10.

¹³ *Supra* note 11.

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

¹⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 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