

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

_____)	
J.L., Appellant)	
)	
and)	Docket No. 15-0530
)	Issued: July 29, 2015
U.S. POSTAL SERVICE, MANAGER,)	
COLUMBUS PROCESSING & DISTRIBUTION)	
CENTER, Columbus, OH, Employer)	
_____)	

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 20, 2015 appellant filed a timely appeal from a December 29, 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 this case.

ISSUES

The issues are: (1) whether appellant received a \$3,156.49 overpayment of compensation; and (2) whether OWCP abused its discretion in denying waiver of recovery of the overpayment.

FACTUAL HISTORY

OWCP accepted that appellant, a parcel post distribution machine clerk, sustained bilateral carpal tunnel syndrome as a result of his repetitive work duties. Appellant stopped work

¹ 5 U.S.C. § 8101 *et seq.*

on February 14, 2013 to undergo left carpal tunnel release authorized by OWCP. The procedure was performed on February 15, 2013.

By letter dated April 12, 2013, OWCP advised appellant that he would be receiving continuing wage-loss compensation covering a 28-day period. Appellant was advised that he must notify OWCP immediately upon his return to work and, if he worked for any portion of the period covered by a payment, he must return the payment to OWCP.

On August 2, 2013 appellant underwent authorized right carpal tunnel release.

On January 13, 2014 appellant advised OWCP that he had returned to full-time limited-duty work on December 10, 2013, but received a compensation payment. OWCP advised him not to spend the money and that he would receive a letter stating an overpayment amount that he would need to submit as repayment.

By letter dated February 14, 2014, OWCP made a preliminary determination that appellant received an overpayment of compensation in the amount of \$3,156.49 from December 10, 2013 to January 11, 2014 because he continued to receive disability compensation after his return to work. It explained the calculation of the overpayment and found that he was without fault in its creation because he provided prompt notification about his receipt of compensation on January 13, 2014 in an effort to return these funds. OWCP requested that appellant complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents to assist OWCP in its evaluation of appellant's eligibility for waiver. Additionally, it notified him that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing.

On March 10, 2014 appellant requested a telephone conference with OWCP. He disagreed with the fact and amount of the overpayment. Appellant requested waiver of repayment, contending that repayment of the overpayment would cause him financial hardship.

On May 10, 2014 appellant completed a Form OWCP-20 and submitted accompanying financial documents. He listed his monthly income as \$5,200.00. Appellant listed his nine-year-old grandson as a dependent. He listed monthly expenses as \$1,123.51 for rent or mortgage, \$450.00 for food, \$700.00 for clothing, \$1,000.00 for utilities, \$600.00 for other expenses, and \$288.14 and \$86.52 for credit union loans, totaling \$4,248.18. Appellant noted that he had no cash on hand, \$81.00 in a checking account, \$2.34 in a savings account, and \$1,500.00 for the value of other personal property and other funds. He further noted \$35,238.00 in stocks in a Thrift Savings Program account.

During an October 7, 2014 telephone conference, appellant stated that his wife was his only dependent. He also stated that his rent/mortgage was currently \$1,258.00. Appellant reported that the \$288.14 payment previously noted on his Form OWCP-20 was for his daughter's car. He also reported \$700.00 for a second car payment and \$385.00 for a third car payment. Appellant further reported \$82.00 for a personal loan, \$178.00 for a credit union credit card, \$33.00 for a Dick's Sporting Goods credit card, and \$25.00 for a Lowe's credit card.

In a December 29, 2014 decision, an OWCP hearing representative finalized the \$3,156.49 overpayment, finding that appellant was not entitled to waiver of recovery of the

overpayment because his monthly income of \$5,200.00 exceeded his allowable monthly expenses by \$425.00. He noted appellant's monthly expenses as \$1,258.00 for rent/mortgage, \$450.00 for food, \$700.00 for clothing, \$1,000.00 for utilities, \$600.00 for other expenses, \$82.00 for a personal loan, \$700.00 for a car payment, and \$385.00 for a second car payment. The hearing representative disallowed \$400.00 for clothing and \$288.14 for appellant's daughter's car note as they did not constitute ordinary and necessary living expenses. He disallowed the three credit card payments as they were already included in ordinary and necessary living expenses. The hearing representative calculated \$4,775.00 in allowable monthly expenses. He determined that appellant's monthly income exceeded his monthly expenses by \$425.00 and directed repayment of the overpayment in the amount of \$150.00 per month.

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 duty.² 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."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 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.⁵ An employee is not entitled to compensation for total disability after returning to full-time work.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant has received an overpayment of compensation in the amount of \$3,156.49 for the period December 10, 2013 to January 11, 2014. The record supports that he continued to receive total disability compensation from the date of his return to work on December 10, 2013 to January 11, 2014. For this period appellant received compensation in the amount of \$3,156.49. As he was not entitled to compensation after his

² *Id.* at § 8102(a).

³ *Id.* at § 8129(a).

⁴ *Id.* at § 8116(a); *R.H.*, Docket No. 09-1981 (issued June 11, 2010).

⁵ 20 C.F.R. § 10.500.

⁶ *M.J.*, Docket No. 09-469 (issued August 24, 2009).

return to work, OWCP properly found that an overpayment in compensation in the amount of \$3,156.49 had been created.⁷

LEGAL PRECEDENT -- ISSUE 2

OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.⁸

If OWCP finds that the recipient of an overpayment was not at fault, repayment will still be required unless: (1) adjustment or recovery of the overpayment would defeat the purpose of FECA; or (2) adjustment or recovery of the overpayment would be against equity and good conscience.⁹

Recovery will defeat the purpose of FECA if both: (a) the individual from whom recovery is sought needs substantially all of his current income (including periodic benefits under FECA) to meet current ordinary and necessary living expenses; and (b) the individual's assets do not exceed the resource base (including but not limited to cash, the value of stocks, bonds, savings accounts, mutual funds) of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or one dependent, plus \$960.00 for each additional dependent. The first \$4,800.00 or more, depending on the number of claimant's dependents, is also exempted from recoupment as a necessary emergency resource. If an individual has current income or assets in excess of the allowable amount, a reasonable repayment schedule can be established over a reasonable, specified period of time. It is the individual's burden to submit evidence to show that recovery of the overpayment would cause the degree of financial hardship sufficient to justify waiver.¹⁰ An individual is deemed to need substantially all of his or her income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹¹

Recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.¹² Recovery of an overpayment is also considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his position for the worse.¹³

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

⁸ 20 C.F.R. § 10.433(a).

⁹ *Id.* at § 10.434. *See* 5 U.S.C. § 8129(b).

¹⁰ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (June 2009). *See Miguel A. Muniz*, 54 ECAB 217 (2002); 20 C.F.R. §§ 10.436, 10.437.

¹¹ *Sherry A. Hunt*, 49 ECAB 467, 473 (1998).

¹² 20 C.F.R. § 10.437(a).

¹³ *Id.* at § 10.437(b).

ANALYSIS -- ISSUE 2

As OWCP found appellant without fault in the creation of the overpayment of compensation, 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.¹⁴

During the October 7, 2014 telephone conference, appellant stated that his wife was his only dependent. He also stated that his rent/mortgage was currently \$1,258.00. Appellant reported three car payments: \$288.14 for his daughter's car, \$700.00 for a second car payment, and \$385.00 for a third car. He further reported \$82.00 for a personal loan, \$178.00 for a credit union credit card, \$33.00 for a Dick's Sporting Goods credit card, and \$25.00 for a Lowe's credit card.

In a December 29, 2014 decision, an OWCP hearing representative finalized the \$3,156.49 overpayment, finding that appellant was not entitled to waiver of recovery of the overpayment because his monthly income of \$5,200.00 exceeded his allowable monthly expenses by \$425.00. He accepted the claimed monthly expenses of \$1,258.00 for rent/mortgage, \$450.00 for food, \$300.00 for clothing, \$1,000.00 for utilities, \$600.00 for other expenses, \$82.00 for a personal loan, \$700.00 for a car payment, and \$385.00 for a second car payment. The hearing representative disallowed \$400.00 for clothing and \$288.14 for appellant's daughter's car note, finding that they were not ordinary and necessary living expenses. The Board finds that the hearing representative properly disallowed these expenses as it is appellant's burden of proof to establish that the expenses are ordinary and necessary.¹⁵ The hearing representative also properly disallowed the three credit card payments because they were already included in ordinary and necessary living expenses.¹⁶ He determined that appellant had \$4,775.00 in monthly expenses. The hearing representative directed repayment of the overpayment in the amount of \$150.00 per month.

The Board thus finds that, as appellant's monthly income exceeds his documented reasonable monthly expenses by more than \$50.00, he is not entitled to waiver as he does not need substantially all of his income to meet current ordinary and necessary expenses.

Appellant does not argue, and the record does not establish, that recovery of the debt would be against equity and good conscience. He did not show that he gave up a valuable right or changed his position for the worse in reliance on the overpayment.

Because appellant has failed to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that he has failed to show that OWCP abused its discretion by refusing to waive the \$3,156.49 overpayment.

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

¹⁴ *Id.* at §§ 10.436, 10.437.

¹⁵ Federal (FECA) Procedure Manual, *supra* note 10 at Chapter 6.200.6(a)(3) (June 2009).

¹⁶ *Id.*

benefits under FECA.¹⁷ 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.¹⁸

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$3,156.49 for the period December 10, 2013 to January 11, 2014. The Board further finds that OWCP did not abuse its discretion in denying waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the December 29, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2015
Washington, DC

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

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

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

¹⁷ *Cheryl Thomas*, 55 ECAB 610 (2004).

¹⁸ *Id.*