

On appeal, appellant asserts that she cannot repay the overpayment due to financial hardship.

FACTUAL HISTORY

On June 17, 2011 appellant, then a 55-year-old manual distribution clerk, filed an occupational disease claim alleging that she suffered from bilateral hip arthritis as a result of her repetitive work duties. OWCP accepted the claim for aggravation of bilateral osteoarthritis.

By letter dated January 16, 2013, OWCP advised appellant that compensation would be paid every 28 days. It noted that the first payment would be for the period December 8, 2012 to January 12, 2013 and regular payments would be made starting for the period January 13 to February 9, 2013. OWCP advised appellant that, when she returned to work, she must return any payment received if she worked for any portion of the payment period.

On December 16, 2013 appellant informed OWCP that she had returned to full-time full-duty work on October 22, 2013.²

OWCP noted that appellant received her compensation payments by check. For the period October 22 to November 16, 2013, under check dated November 16, 2013, appellant was paid \$2,158.60 in net wage-loss compensation. From November 17 to December 14, 2013, under check dated December 14, 2013, she received \$2,324.65. OWCP found that the total amount of \$4,483.25 constituted an overpayment of compensation as appellant received wage-loss compensation for total disability after returning to work on October 22, 2013 with no loss of wages.

By letter dated May 19, 2014, OWCP advised appellant of its preliminary determination that she was overpaid \$4,483.25 in compensation from October 22 through December 14, 2013. It explained the calculation of the overpayment and found that she was at fault in creating the overpayment as she accepted payments which she knew or should have known to be incorrect as there was no entitlement to receive wage-loss benefits after returning to full-time work. OWCP afforded appellant 30 days to submit financial information and to request either a telephone conference, decision on the written evidence, or a precoupment hearing.

Appellant did not respond to the preliminary determination. In a decision dated June 26, 2014, OWCP finalized the fact and amount of the preliminary overpayment determination, and the finding of fault. It directed recovery of the full amount of the overpayment within 30 days.

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.³ Section 8129(a) of FECA provides, in pertinent part, "When an

² In an October 3, 2013 work restriction form, Dr. Eugene P. Lopez, a Board-certified orthopedic surgeon, released appellant to return to work without restrictions on October 22, 2013.

³ 5 U.S.C. § 8102(a).

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.”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 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.⁶ An employee is not entitled to compensation for total disability after returning to full-time work.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has received an overpayment of compensation in the amount of \$4,483.25 for the period October 22 to December 14, 2013. The record supports that she continued to receive total disability compensation from the date of her return to work on October 22 to December 14, 2013. For this period appellant received compensation in the amount of \$4,483.25. As she was not entitled to compensation after her return to work, OWCP properly found that an overpayment of compensation in the amount of \$4,483.25 had been created.⁸

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of FECA provides that 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 this subchapter or would be against equity and good conscience.⁹ No waiver of an overpayment is possible if the claimant is at fault in creating the overpayment.¹⁰

On the issue of fault, 20 C.F.R. § 10.433(a) provides that an individual is with fault in the creation of an overpayment who: (1) made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or (2) failed to furnish information which the individual knew or should have known to be material; or (3) with respect to the overpaid

⁴ *Id.* at § 8129(a).

⁵ *Id.* at § 8116(a); *R.H.*, Docket No. 09-1981 (issued June 11, 2010).

⁶ *Id.* at § 10.500.

⁷ *M.J.*, Docket No. 09-469 (issued August 24, 2009).

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

⁹ *Id.* at § 8129(b).

¹⁰ *Gregg B. Manston*, 45 ECAB 344, 354 (1994).

individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.¹¹

With respect to whether an individual is without fault, section 10.433(b) of OWCP's regulations provide that whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.¹²

ANALYSIS -- ISSUE 2

OWCP applied the third standard in this case, finding that appellant accepted compensation payments for the period October 22 to December 14, 2013 that she knew or should have known were incorrect. Appellant accepted compensation payments by checks dated November 16 and December 14, 2013, encompassing the period October 22 to December 14, 2013, after she returned to work on October 22, 2013 with no wage loss.

OWCP advised appellant by letter dated January 16, 2013 of her obligation to return any compensation payments that covered a period after she returned to work. This establishes that she knew or should have known that she was not entitled to accept compensation for total disability after she returned to full-time work at her regular salary. Additionally, each check and form sent with the check reflects the specific period for which the payment was being made. Appellant did not return either the November 16 or December 14, 2013 check as instructed. OWCP properly found her at fault in creation of the overpayment as the evidence reflects that she accepted payments which she knew or should have known to be incorrect. Therefore, recovery of the \$4,483.25 overpayment of compensation may not be waived.¹³

On appeal, appellant asserted that she could not repay the overpayment due to financial hardship. However, for the reasons stated, she is not entitled to a waiver of recovery.

CONCLUSION

The Board finds that OWCP properly found that appellant received a \$4,483.25 overpayment of compensation from October 22 to December 14, 2013. The Board further finds that OWCP properly found that appellant was at fault in creation of the overpayment and thereby not entitled to waiver of recovery of the overpayment.

¹¹ 20 C.F.R. § 10.433(a). See *Kenneth E. Rush*, 51 ECAB 116, 118 (1999).

¹² *Id.* at § 10.433(b).

¹³ The Board does not have jurisdiction over the recovery of the overpayment as OWCP did not direct recovery from continuing compensation payments. See *Desiderio Martinez*, 55 ECAB 245 (2004) (the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA).

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 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