

FACTUAL HISTORY

On March 21, 2013 appellant, then a 53-year-old transportation section inspection -- cargo explosive detection canine handler/inspector, filed a traumatic injury claim alleging that on that date he injured his right shoulder when a canine he was rewarding pulled and yanked on a toy he held. OWCP accepted the claim for right shoulder and upper arm infraspinatus sprain and rotator cuff. It authorized right shoulder arthroscopic surgery, rotator cuff repair surgery, and biceps tendon repair, which occurred on February 17, 2014. By letter dated April 24, 2014, OWCP placed appellant on the periodic rolls for temporary total disability.

Appellant completed direct deposit election forms on January 24, 2014 and the record reflects that his compensation payments were directly deposited into his bank account.

Appellant returned to full-time light-duty work on August 6, 2014 and regular duty on August 18, 2014. On August 23, 2014 he received a compensation payment for the period July 27 to August 23, 2014 in the amount of \$4,563.72.

On August 27, 2014 the employing establishment advised OWCP that appellant had returned to a limited-duty position on August 6, 2014 and to full-duty work on August 18, 2014.

A computer printout sheet dated September 12, 2014 showed that he was entitled to \$434.30 in premium pay for the period August 6 to 17, 2014.

On September 12, 2014 OWCP informed appellant of its preliminary determination that he had received an overpayment of compensation in the amount of \$2,499.52 because he had been paid on August 23, 2014 in error for the period August 6 through 23, 2014. It noted that he had returned to an eight-hour light-duty job on August 6, 2014 and regular work on August 18, 2014, but continued to receive compensation for total disability until August 23, 2014.

OWCP stated that appellant was paid \$4,563.72 on August 23, 2014 or \$162.99 per day, for the 28-day compensation cycle from July 27 to August 23, 2014. In calculating the overpayment, it multiplied the daily pay rate of \$162.99 times 18 days, the number of days between August 6 and 23, 2014, to find the total overpayment compensation received during this period of \$2,933.82. Next, OWCP determined the amount of premium pay appellant had been entitled to for the period between August 6 and 23, 2014. This amount was \$434.30. As appellant was entitled to \$434.30 during this period, OWCP then subtracted the \$434.30 from the compensation amount of \$2,933.82, to find the amount of overpayment to be \$2,499.52. It found that he was without fault in the creation of the overpayment. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. 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. No completed overpayment recovery questionnaire was received by OWCP.

By decision dated October 15, 2014, OWCP finalized the preliminary determination that an overpayment of compensation in the amount of \$2,499.52 had been created during the period

August 6 to 23, 2014 and that appellant was not at fault in creating the overpayment. It denied waiver of recovery of the overpayment as he had not submitted any evidence to justify waiver.

LEGAL PRECEDENT -- ISSUE 1

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.³ 20 C.F.R. § 10.500 provides 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.

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$2,499.52 because he had been paid in error for the period August 6 through 23, 2014. Appellant returned to an eight-hour limited-duty job on August 6, 2014, resumed full-duty work on August 18, 2014, but continued to receive compensation for disability from OWCP through August 23, 2014. As he received full-time wages for an eight-hour position job for the period August 6 to 23, 2014, he was not entitled to disability compensation from OWCP for this same period. Therefore, appellant received an overpayment of compensation.

In calculating the amount of overpayment, OWCP determined the amount of compensation appellant received between August 6 and 23, 2014. It offset the amount of compensation he received during this time period by the amount of premium pay he should have received while performing light-duty work for the period August 6 to 17, 2014. The record reflects that appellant was entitled to an additional \$434.30 for premium pay. In *C.D.*,⁴ a factually similar case, the Board found that OWCP properly offset the amount of the overpayment for the period May 28 through December 31, 2010 by an underpayment of compensation based on an incorrect pay rate during the period May 28 to July 3, 2010. As in *C.D.*, the calculation involved in determining the amount of overpayment was a recalculation of the amount of compensation appellant should have received during the period in question. It did not involve an impermissible offset by a future⁵ or retroactive entitlement.⁶ The record reflects that on August 29, 2014 OWCP determined that appellant had been entitled to premium pay for a portion of the overpayment amount. The Board finds that OWCP properly determined that appellant had received an overpayment of compensation in the amount of \$2,499.52 for the period August 6 to 23, 2014 (\$2,933.82 - \$434.30).

³ 5 U.S.C. § 8116(a).

⁴ Docket No. 11-1095 (issued November 9, 2011).

⁵ See *Michael A. Grossman*, 51 ECAB 673 (2000).

⁶ See *B.T.*, Docket No. 13-1619 (February 24, 2014).

LEGAL PRECEDENT -- ISSUE 2

When an overpayment of compensation has been made 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.⁷ OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating an overpayment.⁸

The individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is necessary to determine whether an overpayment should be waived. This information will also be used to determine the repayment schedule, if necessary. 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.⁹

ANALYSIS -- ISSUE 2

OWCP determined that appellant was without fault in the creation of an overpayment of compensation in the amount of \$2,499.52 for the period August 6 through 23, 2014. In its preliminary determination of overpayment dated September 12, 2014, it requested that he provide financial information and a completed overpayment recovery questionnaire if he wished to request waiver of the overpayment. Appellant failed to provide any financial information or a completed overpayment questionnaire form for OWCP to determine whether waiver of the overpayment was appropriate. Because he failed to submit the requested information within 30 days, OWCP had no discretion in the matter; the law required a denial of waiver.¹⁰ OWCP regulations mandate that the failure to submit requested information results in the denial of waiver of the overpayment.¹¹ Thus, it properly denied appellant's request for waiver of recovery of the overpayment.

CONCLUSION

The Board finds that OWCP properly found that an overpayment of compensation in the amount of \$2,499.52 had been created. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

⁷ 5 U.S.C. § 8129(a).

⁸ 20 C.F.R. § 10.433(a).

⁹ *Id.* at § 10.438.

¹⁰ *Supra* note 4.

¹¹ 20 C.F.R. § 10.438(b).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 15, 2014 is affirmed.

Issued: November 25, 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