

compensation benefits by deducting \$203.00 every 28 days as a means of recovering the overpayment of compensation.

On appeal, appellant reiterated her argument that she was not at fault in creating the overpayment.

FACTUAL HISTORY

The employee, a 57-year-old aircraft mechanic, quality control and metals inspector died on September 24, 1993 after having worked for the employing establishment for several periods of employment (1961 to 1969) and (1981 to 1991) where he had either heavy or light asbestos exposure. By decision dated May 1, 1996, OWCP ultimately accepted that appellant's death was employment related and granted appellant survivor benefit compensation. Appellant had been receiving survivor benefits from Office of Personnel Management (OPM) from August 25, 1993 to May 31, 1996. She retroactively elected to receive FECA benefits and by decision dated July 23, 1996 she was advised of her compensation benefits commencing June 1, 1996 which would be retroactive to August 25, 1993. Upon the employee's death, the wife of the employee (appellant) filed a claim for survivor benefits claiming his death was employment related.

On September 19, 2014 appellant advised OWCP that her bank account information on file was incorrect. She thought Commerce Bank had notified OWCP that her account was closed, but it had not. Appellant requested that her compensation payment be reissued to her account at New Era Bank.

On September 26, 2014 OWCP notified appellant that if it reissued the check to her home address it would delay her compensation payment. To avoid a delay, appellant went through the electronic compensation process. New Era Bank scanned a canceled check for her and sent it to OWCP. OWCP received the document and advised appellant that it would reissue a direct payment to be deposited into her New Era Bank account on October 3, 2014.

OWCP payment records establish that an electronic funds transfer (EFT) check in the amount of \$2,019.34 for the period July 27 to August 23, 2014 had been deposited and processed through Commerce Bank on August 22, 2014. It made arrangements to cancel the EFT check sent to Commerce Bank and reissued appellant's compensation payment *via* direct pay to New Era Bank. OWCP payment records establish that an EFT check in the amount of \$2,019.34 for the period July 27 to August 23, 2014 was deposited and processed through New Era Bank on October 3, 2014.

The record contains documentation indicating that Commerce Bank returned an EFT check dated September 19, 2014 in the amount of \$2,038.30 to the treasury department.

On January 16, 2015 OWCP issued a preliminary determination that appellant had received an overpayment of compensation in the amount of \$2,019.34 because she received a double payment for the period July 27 to August 23, 2014. It found that she was at fault in creating the overpayment because she accepted a payment that she knew or reasonably should have known was incorrect.

In a January 30, 2015 letter, appellant stated that she had not been overpaid and did not receive an additional compensation check. She explained that New Era Bank purchased Commerce Bank in July 2014 and failed to meet the deadline to have automatic deposits transferred between banks. Appellant stated that on September 19, 2014 her scheduled compensation check went to Commerce Bank and they told her that they had to send the check back to the treasury department. On October 3, 2014 she received her compensation check for September 2014 at New Era Bank.

By decision dated February 18, 2015, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$2,019.34 for the period July 27 to August 23, 2014. It further found that she was at fault in the creation of the overpayment and reduced her continuing compensation benefits by deducting \$203.00 every 28 days as a means of recovering the overpayment of compensation.

LEGAL PRECEDENT -- ISSUE 1

FECA authorizes payment of compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.³ An overpayment arises where an employee receives multiple payments from OWCP for the same period of lost wages. Section 8129(a) of FECA provides authority for recovery of an overpayment made to an individual because of an error of fact or law.⁴

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$2,019.34 for the period July 27 to August 23, 2014.

On September 19, 2014 appellant advised OWCP that her bank account information on file was incorrect. She thought Commerce Bank had notified OWCP that her account was closed, but it had not. Appellant wanted her compensation payment to be reissued to her account at New Era Bank. OWCP made arrangements to cancel the EFT check sent to Commerce Bank, however, an EFT check in the amount of \$2,019.34 for the period July 27 to August 23, 2014 had already been deposited and processed through Commerce Bank on August 22, 2014. Nonetheless an EFT check in the amount of \$2,019.34 for the period July 27 to August 23, 2014 was also deposited and processed through New Era Bank on October 3, 2014. Thus, the record establishes that appellant was paid twice for the period July 27 to August 23, 2014.

There is no evidence that appellant returned the duplicate payment. The record establishes that an EFT check dated September 19, 2014 in the amount of \$2,038.30 was canceled and returned to the treasury department. However, this compensation check was for the period August 24 to September 20, 2014, not the period in question. Accordingly, the Board finds that appellant received an overpayment of compensation in the amount of \$2,019.34 for the period July 27 to August 23, 2014.

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8129(a).

LEGAL PRECEDENT -- ISSUE 2

OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in either accepting or creating the overpayment.⁵ Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments she receives from OWCP are proper.⁶ Recipients must show good faith and exercise a high degree of care in regard to receipt of their benefits.⁷ A recipient will be found to be at fault with respect to creating an overpayment if she accepted a payment which she knew or should have known to be incorrect.⁸

ANALYSIS -- ISSUE 2

The Board finds that appellant was at fault in the creation of the overpayment.

OWCP found appellant at fault because she accepted payment which she knew or should have known to be incorrect. Whether an individual is at fault in creating an overpayment depends on the circumstance of the overpayment.⁹ The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that she is being overpaid.¹⁰ In determining fault OWCP applies a reasonable person standard.¹¹

In a January 30, 2015 letter, appellant stated that she had not been overpaid and did not receive an additional compensation check. She explained that that New Era Bank purchased Commerce Bank in July 2014 and failed to meet the deadline to have automatic deposits transferred. Appellant indicated that on October 3, 2014 she received her compensation check for September 2014 at New Era Bank. The Board finds, however, that the October 3, 2014 compensation check was for the period July 27 to August 23, 2014, not the month of September 2014.

As noted, appellant advised OWCP on September 19, 2014 that her account at Commerce Bank had been closed and requested that her compensation payment be reissued to her new account at New Era Bank. On September 26, 2014 OWCP notified her that if it reissued the check to her home address it would delay her compensation payment. To avoid a delay, appellant went through the electronic compensation process. OWCP received the electronic deposit document and advised her that it would reissue a direct payment to be deposited into her New Era Bank account on October 3, 2014. Payment records establish that an EFT check in the

⁵ *Id.* at § 8129(b); 20 C.F.R. § 10.433(a).

⁶ 20 C.F.R. § 10.433(a).

⁷ *Id.*

⁸ *Id.* at § 10.433(a)(3).

⁹ *Id.* at § 10.433(b).

¹⁰ *Id.*; *see also M.R.*, Docket No. 14-0549 (issued June 11, 2014).

¹¹ *See L.D.*, 59 ECAB 673, 679 (2008).

amount of \$2,019.34 for the period July 27 to August 23, 2014 was deposited and processed through Commerce Bank on August 22, 2014 and an EFT check in the amount of \$2,019.34 for the same period July 27 to August 23, 2014 was deposited and processed through New Era Bank on October 3, 2014.

The Board finds that appellant is at fault in the creation of the overpayment of compensation for the period July 27 to August 23, 2014 because she accepted two compensation checks for the same period that she knew or should have known to be incorrect. Appellant notified OWCP that her bank account information had changed. OWCP promptly reissued her compensation check and deposited into her New Era Bank account on October 3, 2014. Appellant knew or should have known that she was not entitled to both the original payment and the October 3, 2014 replacement check, *i.e.*, that she was not entitled to be paid twice for the same period of time.¹² That OWCP may have been negligent in issuing the August 22, 2014 check to her through Commerce Bank does not mitigate this finding.¹³ Even if an overpayment resulted from negligence by OWCP, this does not excuse appellant from accepting payment which she knew or should have been expected to know she was not entitled to receive.¹⁴ As appellant is at fault in the creation of the overpayment of compensation, she is not eligible for waiver of recovery.¹⁵

LEGAL PRECEDENT -- ISSUE 3

When an overpayment has been made to an individual who is entitled to further payments and no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors so as to minimize any hardship.¹⁶ The individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁷ This information is used to determine an appropriate repayment schedule, if necessary.¹⁸

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly reduced appellant's continuing compensation benefits by deducting \$203.00 every 28 days as a means of recovering the overpayment of compensation.

¹² See *M.R.*, *supra* note 10.

¹³ 20 C.F.R. § 10.435(a); see *William E. McCarty*, 54 ECAB 525 (2003).

¹⁴ See *Diana L. Booth*, 52 ECAB 370 (2001).

¹⁵ 20 C.F.R. § 10.441(b).

¹⁶ *Id.* at § 10.441(a); see 5 U.S.C. § 8129(a).

¹⁷ *Id.* at § 10.438(a).

¹⁸ *Id.*

Appellant failed to submit an overpayment recovery questionnaire (OWCP-20) in response to OWCP's preliminary overpayment determination. As such, there is limited information in the record regarding her current financial circumstances. OWCP ordered that \$203.00 be deducted from appellant's 28-day gross compensation payments of \$2,268.92. The 8.95 percent reduction in benefits would resolve appellant's debt in less than a year. Under the circumstances, the Board finds that OWCP reasonably imposed a repayment schedule of \$203.00 every 28 days to be withheld from appellant's continuing compensation payments.¹⁹

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$2,019.34 for the period July 27 to August 23, 2014. The Board further finds that she was at fault in the creation of the overpayment and OWCP properly reduced her continuing compensation benefits by deducting \$203.00 every 28 days as a means of recovering the overpayment of compensation.

ORDER

IT IS HEREBY ORDERED THAT the February 18, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 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

¹⁹ See *M.R.*, *supra* note 10.