

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

T.Y., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Tonawanda, NY, Employer

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**Docket No. 15-0751
Issued: September 2, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 18, 2015 appellant filed a timely appeal of a January 29, 2015 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 OWCP properly found that an overpayment in compensation in the amount of \$1,068.63 had been created because appellant received compensation for the period March 26 to April 5, 2014 after he returned to work; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On June 25, 2012 appellant, then a 43-year-old city carrier, filed a traumatic injury claim alleging that on that day while performing his duties he sustained a left elbow injury when he fell

¹ 5 U.S.C. § 8101 *et seq.*

and hit concrete while trying to keep a dog away. OWCP accepted the claim for left elbow contusion and right superficial avulsion index finger. Appellant's claim was subsequently expanded to include left closed fracture olecranon ulna process and right open wound finger without complications.

By decision dated November 5, 2013, OWCP accepted appellant's claim for a recurrence of disability beginning May 16, 2013. In a separate letter dated November 5, 2013, it authorized left elbow surgery, which occurred on December 31, 2013.

On January 30, 2014 OWCP accepted appellant's recurrence of disability claim beginning December 31, 2013 based on a December 31, 2013 surgical report.

By letter dated February 24, 2014, OWCP placed appellant on the periodic rolls for temporary total disability. It noted the first regular payment was for the period February 9 to March 8, 2014.

Appellant returned to full-duty work on March 26, 2015.

An April 2, 2014 computer printout shows that a check was sent to appellant for payment of wage-loss compensation for the period March 9 to April 5, 2014.

On April 2, 2014 OWCP informed appellant of its preliminary determination that he received an overpayment of compensation in the amount of \$1,068.63, because he had been paid in error for the period March 26 to April 5, 2014. It noted that he had returned to work on March 26, 2014 with no loss of wages, but continued to receive compensation for total disability. OWCP found that appellant was without fault in the creation of the overpayment. It requested that he complete an overpayment recovery questionnaire and submit supporting financial documents. Additionally, OWCP notified appellant that, within 30 days of the date of the letter, he could request a telephone hearing, a final decision based on the written evidence, or a prerecoument hearing.

On April 7, 2014 appellant requested a telephonic hearing before an OWCP hearing representative. He submitted a completed overpayment recovery questionnaire form stating that he had a total monthly income of \$3,700.00 and monthly expenses of \$4,050.00. Appellant indicated that he had \$50.00 cash on hand and \$1,500.00 in a checking account, and \$500.00 in a savings account. Under expenses, he listed \$1,100.00 for rent/mortgage, \$550.00 for food, \$200.00 for clothing, \$900.00 for utilities, and \$800.00 for other debts. No supporting financial documentation was submitted.

At the November 12, 2014 telephonic hearing, appellant testified that it would be a hardship to repay the overpayment. At the hearing he testified that his monthly income was less than it had been because he was not working a lot of overtime due to his elbow pain. Appellant testified that his monthly income was between \$2,500.00 and \$2,700.00. Next he provided testimony regarding his expenditures and assets. An OWCP hearing representative instructed appellant to submit supporting financial documentation for the claimed expenditures. No additional evidence was received.

By decision dated January 29, 2015, an OWCP hearing representative finalized the preliminary determination that an \$1,068.63 overpayment was created. She found that appellant

was erroneously paid wage-loss compensation for the period March 26 to April 5, 2014 after appellant returned to work on March 26, 2014. The hearing representative found appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as appellant failed to submit any supporting financial documentation.

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.² Section 10.500 of Title 20 of the Code of Federal 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.

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$1,068.63 because he had been paid in error for the period March 26 through April 5, 2014. Appellant returned to full-time work on March 26, 2014 but continued to receive compensation for partial disability from OWCP through April 5, 2014. As he received regular full-time wages from the employing establishment from March 26 to April 5, 2014, appellant was not entitled to disability compensation from OWCP for this same period. OWCP determined that the amount of compensation that appellant had received for the period totaled \$1,068.63. Appellant has not challenged the amount and period of the overpayment.

LEGAL PRECEDENT -- ISSUE 2

According to section 10.436,³ recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her current income (including compensation benefits) to meet current, ordinary, and necessary living expenses and also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.⁴ For waiver under this standard, appellant must meet the two-pronged test and show that he both needs substantially

² 5 U.S.C. § 8116(a).

³ 20 C.F.R. § 10.436.

⁴ OWCP procedures provide that assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent, plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (October 2004).

all of his current income to meet current ordinary and necessary living expenses,⁵ and that his assets do not exceed the resource base.⁶

The burden is on the claimant to show that the expenses are reasonable and needed for a legitimate purpose.⁷ OWCP's regulations provide:

“(a) 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 of an overpayment would defeat the purpose of [FECA] or be against equity and good conscience....

“(b) 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.”⁸

ANALYSIS -- ISSUE 2

OWCP determined that appellant was without fault in the creation of an overpayment of \$1,068.63 for the period March 26 through April 5, 2014.

The Board notes that appellant did not dispute the fact of overpayment or the amount of overpayment. OWCP requested in a preliminary notice of overpayment dated April 2, 2014 and at the telephonic hearing held on November 12, 2014 that he provide financial information to support the claimed expenses. Appellant failed to provide any financial information supporting his claimed expenses for OWCP to determine whether waiver of the overpayment was appropriate. The burden is on the claimant to show that waiver would defeat the purpose of FECA or would be against equity and good conscience. Because appellant has not shown that recovery would defeat the purpose of FECA or would be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

On appeal appellant requests additional time to prove his claim of hardship. The regulations mandate that the failure to submit requested information results in the denial of waiver of the overpayment.⁹ Appellant failed to provide OWCP with supporting financial documentation as requested. Thus, OWCP properly denied his request for waiver of recovery of the overpayment.

⁵ 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. *Desiderio Martinez*, 55 ECAB 245, 250 (2004).

⁶ *See supra* note 4. *W.F.*, 57 ECAB 705 (2006).

⁷ *Id.*

⁸ 20 C.F.R. § 10.438. *See Madelyn Y. Grant*, 57 ECAB 533 (2006).

⁹ *Id.*

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,068.63 for the period March 26 through April 5, 2014 because he received compensation from OWCP after he had returned to work. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 29, 2015 is affirmed.

Issued: September 2, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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