

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

D.G., Appellant)	
)	
and)	Docket No. 16-0281
)	Issued: April 21, 2016
U.S. POSTAL SERVICE, POST OFFICE,)	
Lincoln, NE, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 1, 2015 appellant filed a timely appeal of an October 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 to consider the merits of the case.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$757.29 for the period May 12 through 29, 2015 for which he was not at fault; and (2) whether appellant was eligible for waiver of recovery of the overpayment.

On appeal appellant alleged that the employing establishment refused to pay him the continuation of pay (COP) compensation on the basis that he was terminated for cause. Appellant contends that he is entitled to compensation for wage loss from May 12 through June 22, 2015 as he has not received COP.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 8, 2015 appellant, then a 74-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that he injured his left foot when he tripped on a step while delivering a parcel that was too big for the mailbox. On June 10, 2015 OWCP accepted his claim for sprain of the left foot.

The employing establishment submitted a notification of personnel action (PS Form 50) dated May 21, 2015, which indicated that appellant had been separated from his employment for not reporting an accident. Appellant's last day in pay status was May 12, 2015.

Appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation from May 12 through 29, 2015. OWCP authorized compensation in the amount of \$757.29 for the period May 12 through 29, 2015. Appellant filed a second Form CA-7 requesting wage-loss compensation from May 30 through June 12 on June 28, 2015. On July 8, 2015 he filed a Form CA-7 for the period June 13 through 26, 2015. OWCP authorized compensation in the amount of \$279.01 for the period June 23 through 26 on July 21, 2015.

In a letter dated July 21, 2015, OWCP informed the employing establishment of its duty to provide COP for up to 45 days. It asserted that the COP may only be terminated when a preliminary notice of disciplinary action is issued before the injury and becomes final during the COP period.² OWCP notified the employing establishment that the COP period was May 9 through June 22, 2015.

Appellant's physician released him to return to regular-duty work on July 21, 2015. On August 6, 2015 OWCP authorized wage-loss compensation for the period June 27 through July 10, 2015.

In a preliminary determination of overpayment dated September 11, 2015, OWCP informed appellant that he had been overpaid benefits in the amount of \$757.29 because OWCP paid him wage-loss compensation for the period May 12 through 29, 2015 which was the COP period. It noted that the COP period ran from May 9 through June 22, 2015 and that the employing establishment should pay him for this entire period. OWCP found that appellant was without fault in the creation of the overpayment. It further found that as he was terminated from employment due to the accepted condition he was entitled to receive wage-loss compensation. OWCP provided appellant with an overpayment recovery questionnaire as well as his appeal rights.

By decision dated October 29, 2015, OWCP finalized the overpayment of compensation in the amount of \$757.29 and found that, even though appellant was without fault in the creation of the overpayment, he was not eligible for waiver of recovery of the overpayment.

² OWCP provided the employing establishment with a citation to section 10.222(b) of OWCP's regulations. 20 C.F.R. § 10.222(c).

LEGAL PRECEDENT -- ISSUE 1

Section 8129(a) of FECA provides in pertinent part that, 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(a) of FECA provides that an employee who is receiving compensation for an employment injury may not receive wages for the same time period.⁴ Section 8118(c) of FECA provides that compensation for disability does not begin until termination of continuation of pay or the use of annual or sick leave ends.⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$757.29. The record reflects that appellant filed a claim for wage loss for the period May 12 through 29, 2015. During this period, he received compensation payments for temporary total disability from OWCP, but was also entitled to continuation of pay from the employing establishment. OWCP determined an overpayment existed in the amount of \$757.29. Because appellant is entitled to receive COP from the employing establishment during the period May 12, through 29, 2015, he was not entitled to disability compensation from OWCP for the same period. The Board finds that his receipt of wage-loss benefits from OWCP during the COP period created an overpayment of compensation.⁶

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment of compensation shall be recovered by OWCP unless “incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of [FECA] or would be against equity and good conscience.”⁷ When a claimant is found to be without fault in the matter of the overpayment, then, in accordance with section 8129(b), OWCP may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of FECA nor be against equity and good conscience.⁸

Section 10.438 of 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

³ 5 U.S.C. § 8129(a).

⁴ *Id.* at § 8116(a).

⁵ *Id.* at § 8118(c).

⁶ *Y.L.*, Docket No. 10-364 (issued October 18, 2010).

⁷ 5 U.S.C. § 8129.

⁸ *S.W.*, Docket No. 15-1178 (issued December 17, 2015).

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. This information will also be used to determine the repayment schedule, if necessary.

“(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.”⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant failed to establish waiver of the recovery of the \$757.20 overpayment.

Section 10.438 of the regulations state that a claimant who received an overpayment of compensation is responsible for providing information about income, expenses and assets to OWCP so that it may determine whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁰ Failure to submit the information, which will also be used to determine a repayment schedule if necessary, within 30 days of a request from OWCP, will result in a denial of a waiver of recovery of the overpayment and no further requests for waiver of recovery will be considered until the information is submitted.¹¹

Appellant failed to provide financial information within the allotted period after OWCP's preliminary overpayment determination. He did not submit evidence showing that he was eligible for waiver of recovery of the overpayment because adjustment or recovery would defeat the purpose of the relevant subchapter of FECA or would be against equity and good conscience. Therefore, OWCP did not abuse its discretion by refusing to waive recovery of the \$757.20 overpayment.

With respect to the recovery of the overpayment, the Board notes its jurisdiction on appeal is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA.¹² As appellant is no longer receiving wage-loss compensation benefits, the Board does not have jurisdiction with respect to OWCP's recovery of the overpayment under the Debt Collection Act.

On appeal appellant argues that the employing establishment has not provided him with COP in accordance with OWCP's directions and that he has therefore not received an overpayment of compensation. He further argues that he is entitled to additional wage-loss compensation for the remainder of the COP period. The terms of FECA are specific as to the methods and payment of compensation. Section 8118(c) of FECA provides that compensation for disability does not begin until termination of continuation of pay. Appellant's entitlement to COP did not end until

⁹ 20 C.F.R. § 10.438.

¹⁰ *Id.* at § 10.438(a).

¹¹ *Id.*, *Linda Hilton*, 52 ECAB 476 (2001).

¹² *Lewis George*, 45 ECAB 144 (1993).

June 22, 2015. Unless a claimant's contentions are in keeping with the scope or intent of FECA, *i.e.*, unless the statute authorizes payment of the kind demanded, OWCP's decision must be affirmed.¹³ Neither OWCP nor the Board has the authority to enlarge the terms of FECA.¹⁴

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$757.29 and that OWCP properly determined that appellant was not eligible for waiver of recovery of the overpayment.

ORDER

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

Issued: April 21, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹³ 5 U.S.C. § 8118(c).

¹⁴ *D.W.*, Docket No. 10-1967 (issued June 22, 2011); *Raymond H. Chandler*, 49 ECAB 480 (1998); *Alonzo R. Witherspoon*, 43 ECAB 1120 (1992).