

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

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T.F., Appellant )

and )

DEPARTMENT OF THE NAVY, U.S. MARINE )  
CORPS, MARINE CORPS BASE CAMP )  
BUTLER, Okinawa, Japan, Employer )

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**Docket No. 16-0436**  
**Issued: August 2, 2016**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 7, 2016 appellant filed a timely appeal from a December 17, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> The record also contains an October 30, 2015 nonmerit decision of OWCP, but appellant has not appealed this decision.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). By order dated May 5, 2016, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 16-0436 (issued May 5, 2016). The Board's *Rules of Procedure* provide that any appeal in which a request for oral argument is not granted by the Board will proceed to a decision based on the case record and any pleadings submitted. 20 C.F.R. § 501.5(b).

## **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received a \$94,981.93 overpayment of compensation; and (2) whether it properly determined that appellant was at fault in the creation of the overpayment of compensation, thereby precluding waiver of recovery of the overpayment.

## **FACTUAL HISTORY**

On March 25, 1999 appellant, then a 49-year-old public works maintenance supervisor, filed an occupational disease claim (Form CA-2) alleging that he sustained acquired Parkinson's syndrome due to working as a welder in poorly ventilated spaces for more than 20 years. He indicated that he first became aware of his claimed condition on December 17, 1998 and that he first realized on December 17, 1998 that it was caused or aggravated by his employment.

On March 8, 2000 OWCP accepted that appellant sustained acquired Parkinson's syndrome (toxic) causally related to factors of his federal employment.

In a November 13, 2002 decision, OWCP granted appellant a schedule award for 65 percent permanent impairment of his right upper extremity, 64 percent permanent impairment of his left upper extremity, 48 percent permanent impairment of his right lower extremity, and 48 percent permanent impairment of his left lower extremity. It advised him that the schedule award ran for 678.96 weeks and that the "Period of Award" was August 10, 2000 to August 14, 2013. OWCP noted, "Your compensation stops when you have been paid for the last day shown in the 'Period of Award' above."

In May 2011 OWCP sent appellant a CA-1032 form, which contained questions about his employment activities and earnings for the prior 15 months, and requested that he complete and return the form. The top of the form contains a notation indicating an "Expiration Date" of April 30, 2014 under the listed form number. In May 2015, OWCP sent appellant another CA-1032 form and requested that he complete and return the form. The top of the form contains a notation indicating an "Expiration Date" of May 31, 2017 under the listed form number.

In an August 24, 2015 notice, OWCP advised appellant of its preliminary determination that he received a \$94,981.93 overpayment of compensation for the period August 14, 2013 to May 30, 2015 because he continued to receive compensation for his schedule award even though the award ended on August 14, 2013. The record contains payment records and worksheets showing that the amount of schedule award compensation appellant received between August 14, 2013 and May 30, 2015 equals \$94,981.93. OWCP also made a preliminary determination that he was at fault in the creation of the overpayment because he was aware or should have reasonably been aware that the schedule award ended on August 14, 2013. It advised appellant that he could submit evidence challenging the fact, amount, or finding of fault and request waiver of the overpayment. OWCP informed appellant that he could submit additional evidence in writing or at precoupment hearing, but that a precoupment hearing must be requested within 30 days of the date of the written notice of overpayment. It requested that appellant complete and return an enclosed financial information questionnaire (Form OWCP-20) within 30 days even if he was not requesting waiver of recovery of the overpayment.

On September 9, 2015 appellant spoke with an OWCP official via telephone and asserted that he did not know his schedule award ended in 2013 because “he figured he was reevaluated and determined that he would be further entitled.”

In a document postmarked September 29, 2015, appellant requested a prerecoupment hearing in connection with the preliminary overpayment determination. He indicated that he was contesting the fault finding of the preliminary overpayment determination and submitted a Form OWCP-20 which he completed on September 18, 2015.<sup>4</sup>

By decision dated October 30, 2015, OWCP denied appellant’s request for a prerecoupment hearing as untimely because it was not made within 30 days of its August 24, 2015 preliminary overpayment determination.

In a December 17, 2015 decision, OWCP determined that appellant received a \$94,981.93 overpayment of compensation for the period August 14, 2013 to May 30, 2015 because he continued to receive schedule award compensation after his schedule award ended on August 14, 2013. It found that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. OWCP noted that appellant was clearly informed that his schedule award ended on August 14, 2013.<sup>5</sup>

### **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.<sup>6</sup> Section 8129(a) of FECA provides, in pertinent part:

“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.”<sup>7</sup>

Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the

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<sup>4</sup> Appellant indicated, “The correspondence I received in May of 2011 from OWCP concerning my award that states an expiration date of April 30, 2014. In April [sic] of this year (2015), I received correspondence extending the expiration date to May 31, 2017.... I contend that based on the correspondence I received from [OWCP] my payment will continue up to May 31, 2017.”

<sup>5</sup> OWCP indicated that appellant should forward a check in the amount of \$94,981.93. With respect to the recovery of an overpayment, the Board’s jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *D.R.*, 59 ECAB 148 (2007); *Miguel A. Muniz*, 54 ECAB 217 (2002). As appellant was not in receipt of continuing compensation at the time of OWCP’s overpayment determination, the Board does not have jurisdiction over the method of recovery of the overpayment in this case. *See Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

<sup>6</sup> 5 U.S.C. § 8102(a).

<sup>7</sup> *Id.* at § 8129(a).

employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant sustained acquired Parkinson's syndrome (toxic) due to his work as a welder. In a November 13, 2002 decision, OWCP granted him a schedule award for 65 percent permanent impairment of his right upper extremity, 64 percent permanent impairment of his left upper extremity, 48 percent permanent impairment of his right lower extremity, and 48 percent permanent impairment of his left lower extremity. The period of the award was August 10, 2000 to August 14, 2013. However, appellant continued to receive schedule award payments after August 14, 2013 until these payments were stopped on May 30, 2015. The evidence of record shows that appellant received \$94,981.93 in schedule award compensation from August 14, 2013 to May 30, 2015 despite the fact that his schedule award ended August 14, 2013 and he was not entitled to receive such monies for this period. Therefore, the Board finds that appellant received a \$94,981.93 overpayment of compensation.<sup>9</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129(a) of FECA provides that where an overpayment of compensation has been made "because of an error of fact or law," adjustment shall be made by decreasing later payments to which an individual is entitled.<sup>10</sup> The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): "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."<sup>11</sup> No waiver of payment is possible if the claimant is not "without fault" in helping to create the overpayment.<sup>12</sup>

In determining whether an individual is not "without fault" or alternatively "at fault" in the creation of an overpayment, section 10.433(a) of Title 20 of the Code of Federal Regulations provides in relevant part:

"A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment:

- (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or
- (2) Failed to provide information which he or she knew or should have known to be material; or

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<sup>8</sup> *Id.* at § 8116(a).

<sup>9</sup> *See supra* notes 8 and 9.

<sup>10</sup> 5 U.S.C. § 8129(a).

<sup>11</sup> *Id.* at § 8129(b).

<sup>12</sup> *L.J.*, 59 ECAB 264 (2007).

(3) Accepted a payment which he or she knew or should have known to be incorrect....”<sup>13</sup>

Section 10.433(b) of OWCP’s regulations provides:

“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.”<sup>14</sup>

### ANALYSIS -- ISSUE 2

The Board finds that OWCP properly found appellant at fault in the creation of the \$94,981.93 overpayment of compensation because he accepted payments which he knew or should have known to be incorrect.<sup>15</sup> Appellant continued to accept schedule award payments after August 14, 2013 despite the fact that he knew or should have known that he could not accept such payments after his schedule award ended on August 14, 2013. He had been clearly advised by OWCP regarding the period of his schedule award. In the November 13, 2002 decision granting appellant’s schedule award, OWCP advised appellant that the schedule award ran for 678.96 weeks and that the “Period of Award” was August 10, 2000 to August 14, 2013. It noted, “Your compensation stops when you have been paid for the last day shown in the ‘Period of Award’ above.”

On September 9, 2015 appellant spoke with an OWCP official *via* telephone and asserted that he did not know his schedule award ended in 2013 because “he figured he was reevaluated and determined that he would be further entitled.” However, there is no indication in the record that appellant had any basis to believe that he was entitled to additional schedule award compensation other than the amount awarded on November 13, 2002.

On appeal appellant asserted that OWCP misled him regarding the date when his payments for schedule award compensation would end and therefore he was not aware that he impermissibly received compensation after his schedule award had ended. Appellant claimed that several documents advised him that the end date of his schedule award had changed. For example, he noted that a CA-1032 form which OWCP asked him to complete in May 2011 contains a notation indicating an “Expiration Date” of April 30, 2014 under the listed form number.<sup>16</sup> In May 2015, OWCP sent appellant another CA-1032 form containing a notation indicating an “Expiration Date” of May 31, 2017 under the listed form number. However, the “Expiration Date” of these forms clearly refers to the expiration date of each form, not the period of disability. These generic CA-1032 forms do not in any way inform appellant about the

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<sup>13</sup> 20 C.F.R. § 10.433(a).

<sup>14</sup> *Id.* at § 10.433(b).

<sup>15</sup> *See supra* note 14.

<sup>16</sup> The CA-1032 form contained questions about appellant’s employment activities and earnings for the prior 15 months.

conditions of his specific schedule award payments and they could not reasonably be interpreted as referring to the expiration date of his November 13, 2002 schedule award.<sup>17</sup>

When an employee is at fault in the creation of an overpayment of compensation, no waiver of recovery of the overpayment is possible under FECA.<sup>18</sup> For the above-described reasons, OWCP properly found that appellant was at fault in the creation of the \$94,981.93 overpayment and it properly denied waiver of recovery of the overpayment.

**CONCLUSION**

The Board finds that OWCP properly determined that appellant received a \$94,981.93 overpayment of compensation. The Board further finds that OWCP properly determined that appellant was at fault in the creation of the overpayment of compensation, thereby precluding waiver of recovery of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 17, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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

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<sup>17</sup> Moreover, the CA-1032 form that appellant received in May 2015 was received almost two years after his schedule award ended on August 14, 2013 and, therefore, it could not in any way serve as a basis for him to reasonably believe in 2013 that the end date of his schedule award had been changed.

<sup>18</sup> See *supra* note 13.