

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

R.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pico Rivera, CA, Employer**

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**Docket No. 16-1129
Issued: December 27, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 6, 2016 appellant filed a timely appeal from an April 1, 2016 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.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received a \$385.75 overpayment of compensation for the period February 3 to 6, 2016; and (2) whether OWCP properly found that appellant was at fault in the creation of the overpayment and, therefore, not entitled to waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence to OWCP after the April 1, 2016 decision was issued. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On July 17, 2013 appellant, then a 43-year-old city carrier, was attacked by a dog while delivering mail. OWCP accepted his traumatic injury claim (Form CA-1) for right biceps tendon tear, right pectoralis partial tear, left chest wall contusion, left rib fracture, lumbar sprain, and lumbar disc herniation at L5-S1.³ Appellant stopped work on September 4, 2013 because the employing establishment could not accommodate his medical restrictions. OWCP paid wage-loss compensation beginning September 4, 2013, and placed appellant on the periodic compensation rolls effective October 20, 2013.

In an October 29, 2013 letter, OWCP informed appellant that, in order to avoid an overpayment of compensation, he should immediately provide OWCP notification of a return to work. It further advised him to return any check or direct deposit that covered a period in which he earned wages.

On January 17, 2014 appellant elected to receive his compensation payments through direct deposit.

In a report of termination of disability and/or payment (Form CA-3) dated February 3, 2016, the employing establishment advised OWCP that appellant had returned to part-time modified work that day.

In a February 3, 2016 rehabilitation action report (OWCP-44), appellant's vocational rehabilitation counselor noted that appellant had returned to work that day and was currently in training for two days.

In a February 3, 2016 letter, OWCP informed appellant that it made a preliminary determination that he received an overpayment of compensation in the amount of \$385.75 from February 3 to 6, 2016 when he returned to work, when OWCP terminated benefits because he received compensation benefits after he returned to work. It calculated the overpayment by dividing the net compensation paid each compensation period, \$2,057.82 by the 28 days in each period to find a daily total of \$73.49. OWCP multiplied \$73.49 by 4, the number of days in the period of the overpayment, to find a total overpayment of \$293.97, plus \$91.78 for child support, totaling \$385.75. It further advised appellant of its preliminary determination that he was at fault in the creation of the overpayment because he was aware or should have reasonably been aware that there was no entitlement to receive wage-loss benefits after returning to work. OWCP requested that he complete the enclosed overpayment recovery questionnaire (OWCP-20) and submit supporting financial documentation. Additionally, it notified appellant 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.

On February 6, 2016 OWCP issued appellant an electronic funds transfer (EFT) payment in the amount of \$2,057.82 (net), covering the period January 10 to February 6, 2016. That same day, it issued a separate EFT payment to the California State Disbursement Unit (CASDU) in the

³ Additionally, OWCP authorized three surgical procedures, which appellant underwent on June 16 and August 16, 2014, and January 26, 2015.

amount of \$642.46 (net) for appellant's child support obligation. The payment history reports noted that appellant had returned to work on February 3, 2016.

On February 10, 2016 appellant filed a claim for compensation (Form CA-7) for the period February 3 through 5, 2016.⁴ The employing establishment indicated that he returned to part-time, light-duty work effective February 3, 2016. A separate time analysis form (Form CA-7a) indicated that appellant had six hours of work-related training on February 3, 2016 and he claimed two hours of leave without pay (LWOP). On February 4, 2016 appellant participated in two hours of work-related training and claimed six hours of LWOP. On February 5 and 6, 2016 he worked four hours of light duty and claimed four hours of LWOP each day. For the four-day period, appellant reportedly worked a total of 16 hours and claimed 16 hours of LWOP. On the February 10, 2016 claim for compensation (Form CA-7a), the employing establishment noted that appellant had already been paid for the claimed period, which resulted in an overpayment. It requested that OWCP "please recover the overpayment from [February 3 through 5, 2016]."

On February 16, 2016 OWCP confirmed that appellant continued to work four hours of light duty per day, five days per week.

Apart from filing several CA-7 forms, there is no indication from the record that appellant specifically responded to OWCP's February 3, 2016 preliminary overpayment determination.

For the period February 9 through March 18, 2016, OWCP paid appellant wage-loss compensation based on his part-time, light-duty work status.

By decision dated April 1, 2016, OWCP finalized its preliminary determination that appellant received a \$385.75 overpayment of compensation from February 3 to 6, 2016 for which he was at fault in creating. It advised that the overpayment occurred because he returned to work on February 3, 2016 and continued to receive compensation for total disability until February 6, 2016. OWCP found that appellant was at fault in creating the overpayment because he reasonably should have been aware that he was not entitled to compensation benefits for total disability after he returned to work. It stated that he should forward a check for the full amount of \$385.75 within 30 days.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁵ Monetary compensation for total or partial disability due to an employment injury is paid as a percentage of pay,⁶ meaning pay at the time of injury or pay at the time disability begins or pay at the time compensable disability recurs if

⁴ Appellant also filed CA-7 forms on February 20, and March 5, and 18, 2016 for wage-loss compensation for the period February 6 through March 18, 2016.

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at §§ 8105, 8106.

the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater.⁷

A claimant is not entitled to receive temporary total disability benefits and actual earnings for the same time period.⁸ An overpayment of compensation occurs when a claimant returns to work and continues to receive compensation.⁹

Section 8129(a) of FECA provides that when an overpayment has been made to an individual 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 the individual is entitled.¹⁰

Section 10.431 of the implementing regulations provides that, before seeking to recover an overpayment or adjust benefits, OWCP will advise the individual in writing that the overpayment exists and the amount of the overpayment.¹¹ The written notification must also include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.¹² Additionally, OWCP is obliged to advise the individual of his right to inspect and copy the government records relating to the overpayment.¹³ Lastly, the preliminary notice must inform the individual of the right to challenge the fact or amount of the overpayment, the right to contest the preliminary finding of fault in the creation of the overpayment, if applicable, and the right to request a waiver of recovery of the overpayment.¹⁴

ANALYSIS

OWCP accepted appellant's claim and paid wage-loss compensation, placing him on the periodic compensation rolls. On February 3, 2016 appellant returned to work in a part-time, light-duty capacity. However, OWCP subsequently paid him wage-loss compensation for total disability through February 6, 2016. This resulted in an overpayment of compensation.¹⁵ A claimant is not entitled to receive temporary total disability benefits and actual earnings for the

⁷ *Id.* at § 8101(4); *John D. Williamson*, 40 ECAB 1179 (1989).

⁸ *L.S.*, 59 ECAB 350, 352-53 (2008).

⁹ *Id.*; Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2a (May 2004).

¹⁰ 5 U.S.C. § 8129(a).

¹¹ 20 C.F.R. § 10.431(a).

¹² *Id.* at § 10.431(b).

¹³ *Id.* at § 10.431(c).

¹⁴ *Id.* at § 10.431(d).

¹⁵ *See J.W.*, Docket No. 15-1163 (issued January 13, 2016).

same time period.¹⁶ The Board, however, finds that this case is not in posture for decision regarding the amount of the overpayment.

In its April 1, 2016 decision, OWCP found that appellant received an overpayment of compensation in the amount of \$385.75 from February 3 to 6, 2016 because he returned to work and received compensation for total disability for a brief period following his return to work. It calculated the overpayment by dividing the net compensation paid for the entire 28-day period (\$2,057.82) by 28, which resulted in a daily compensation rate of \$73.49. OWCP performed a similar calculation with respect to the separate child support payment ($\$642.46 \div 28 = \22.94) it disbursed on February 6, 2016. It multiplied \$73.49 by 4, the number of days in the period of the overpayment, to find a total overpayment of \$293.97, plus \$91.78 for child support, totaling \$385.75. However, appellant did not return to full-time work. He returned to part-time, modified duty on February 3, 2016. The first two days appellant was in training and did not work a full day, and beginning February 5, 2016, he worked only four hours per day and claimed LWOP for the remaining four hours per day. Based on CA-7 forms submitted by appellant and verified by the employing establishment, he worked only 16 hours over the four-day period February 3 through 6, 2016. Because it does not appear that OWCP correctly calculated the amount of the overpayment, the Board will set aside OWCP's April 1, 2016 decision and remand the case for further development. OWCP should recalculate the overpayment appellant received for the period February 3 to 6, 2016.¹⁷ It should also revisit the issue of fault, and provide appellant an overpayment recovery questionnaire (OWCP-20) and the opportunity to submit information regarding his current monthly income, expenses, and assets to help decide whether he is entitled to waiver of recovery of the overpayment. Following such further development as it deems necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that OWCP properly determined that an overpayment of compensation was created. The Board further finds that this case is not in posture for decision regarding the amount of the overpayment appellant received for the period February 3 through 6, 2016.

¹⁶ *Supra* note 8.

¹⁷ In view of the disposition of issue 1, issue 2 is moot.

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case remanded for further proceedings consistent with this decision of the Board.

Issued: December 27, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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