

FACTUAL HISTORY

On July 7, 2012 appellant, then a 27-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her lower back when lifting bowling balls. On August 30, 2012 OWCP accepted her claim for sprain of the lumbar region of the back. It placed appellant on temporary total disability and paid compensation and medical benefits. On December 11, 2012 appellant was placed on the periodic rolls.

On February 5, 2015 OWCP made a preliminary determination that appellant had been overpaid in the amount of \$1,286.70 because she had returned to part-time work on October 2, 2013 but was still being paid for full loss of wages through November 16, 2013. It noted that she was paid \$1,595.20 every 28 days. OWCP divided \$1,595.20 by 28 days and multiplied this figure by 46 for the days appellant received an overpayment to equal \$2,620.69 for the period October 2 to November 16, 2013. It then determined that she was entitled to 133 hours of compensation for the period October 2 through November 16, 2013, which would equal \$1,333.99. Subtracting \$1,333.99 from \$2,620.69, OWCP determined that appellant received an overpayment in the amount of \$1,286.70. It also made a preliminary determination that she was at fault in the overpayment because she should have known that she was not entitled to full compensation once she returned to part-time work with the employing establishment.

Although there is some conflicting evidence with regard to appellant's work hours, the record contains the time and attendance forms for this period. For pay period 19 she worked 16 hours, for pay period 20 she worked 40 hours and received 8 hours holiday pay in addition to the 40 hours, for pay period 21 she worked 35 hours, and for pay period 22 she worked 32 hours and received an additional 4 hours of holiday leave. The time and attendance sheets also indicate that appellant was charged LWOP for 145 hours from October 2 through November 16, 2013. The CA-7 forms filed by appellant, however, are inconsistent with these numbers.

On February 23, 2015 appellant requested a prerecoupment hearing. In checking this box, she affirmed that she had submitted her completed overpayment questionnaire and supporting financial documents. Appellant also noted that she believed the overpayment had occurred through no fault of her own and requested a waiver. For an explanation, she wrote: "See statement and supporting documentation." Appellant explained that she was not at fault because she had notified the claims examiner prior to returning to work. She noted that when she returned to work during the government shutdown, management briefed the staff that government would be releasing emergency funds to government employees, so she was not alarmed when she received the funds.

By decision dated March 13, 2015, OWCP finalized the finding of overpayment in the amount of \$1,286.70. The claims examiner noted that she had obtained a Form CA-7a, day-by-day leave analysis for the period October 2 through November 16, 2013 and she had recalculated the overpayment and found it accurate. She determined that appellant was at fault in the creation of the overpayment and therefore not entitled to waiver.

LEGAL PRECEDENT

Section 8102 of FECA provides that the United States shall pay compensation for the disability of any employee resulting from personal injury sustained while in the performance of duty.³

Section 8116 of FECA defines the limitations on the right to receive compensation benefits. The section of FECA provides that, while an employee is receiving compensation, she may not receive salary, pay, or remuneration of any type from the United States, except in limited circumstances.⁴ Compensation for wage loss due to disability is available only for any periods during which an employee's work-related conditions prevents him or her from earning the wages earned before the work-related injury.⁵

In determining whether a claimant has discharged her burden of proof and is entitled to compensation benefits, OWCP is required by statute and regulations to make findings of fact.⁶ OWCP's procedure further specifies that a final decision of OWCP must include findings of fact and provide clear reasoning which allows the claimant to understand the precise defect of the claim and the kind of evidence which would tend to overcome it.⁷ These requirements are supported by Board precedent.⁸

ANALYSIS

OWCP accepted appellant's claim and paid wage-loss compensation benefits until she was placed on the periodic rolls. Appellant returned to part-time duty on October 2, 2013. However, OWCP continued to pay compensation at a full-time rate through November 16, 2013. This resulted in an overpayment of compensation.

The Board is unable to determine how OWCP calculated the amount of the overpayment. OWCP determined that appellant claimed 133 hours for the period October 2 to November 16, 2013. The Board is unable to determine how OWCP arrived at this figure. Although there is some conflicting evidence with regard to appellant's work hours, the record contains the time and attendance forms for this period. For pay period 19 she worked 16 hours, for pay period 20 she worked 40 hours and received 8 hours holiday pay in addition to the 40 hours, for pay period 21 she worked 35 hours and for pay period 22 she worked 32 hours and received an additional 4 hours of holiday leave. The time and attendance sheets also indicate

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116(a).

⁵ 20 C.F.R. § 10.500(a).

⁶ *Id.* at § 8124(a) provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation. 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP shall contain findings of fact and a statement of reasons.

⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

⁸ *R.W.*, Docket No. 11-1303 (issued January 9, 2012).

that she was charged LWOP for 145 hours for October 2 through November 16, 2013. The CA-7 forms filed by appellant, however, are inconsistent with these numbers.

The Board finds that, while OWCP listed the period of the overpayment, it did not accurately determine the overpayment or provide supporting evidence to certify the calculation.⁹ The Board is unable to determine from the record whether OWCP properly determined the amount of the overpayment. It is necessary that OWCP provide a clear explanation as to how the overpayment was determined.¹⁰ On remand, it must fully explain how the amount was determined and provide supporting documentation, to be followed by any necessary development and a *de novo* decision. In light of the disposition of the first issue, the second issue is moot.

CONCLUSION

The Board finds that this case is not in posture for decision as OWCP must issue a new decision further explaining its calculation of the amount of the overpayment.

⁹ *S.M.*, Docket No. 12-1431 (issued December 11, 2012)

¹⁰ *See O.R.*, 59 ECAB 432 (2008) (with respect to overpayment decisions, OWCP must provide clear reasoning showing how the overpayment was calculated); *Jenny M. Drost*, 56 ECAB 587 (2005) (to comply with the OWCP procedures, an overpayment decision must contain a clearly written explanation indicating how the overpayment was calculated).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 13, 2015 is set aside and the case is remanded for further proceedings consistent with this decision.

Issued: January 13, 2016
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