

FACTUAL HISTORY

On March 22, 2013 appellant, then a 37-year-old postal clerk, filed an occupational disease claim (Form CA-2) alleging a right shoulder injury due to performing heavy lifting at work. OWCP accepted temporary aggravation of right rotator cuff and OWCP paid disability compensation on the daily rolls beginning February 16, 2013.²

In an August 19, 2013 notice, OWCP advised appellant of its preliminary determination that she had received a \$2,645.41 overpayment of compensation for the period February 16 to March 19, 2013.³ It also made a preliminary determination that she was not at fault in the creation of the overpayment. In an accompanying memorandum, OWCP explained that, due to a glitch in the computerized Integrated Federal Employees' Compensation System (IFECS), appellant was paid an improper amount of compensation from February 16 to March 19, 2013 based on the formula found at 5 U.S.C. § 8114(d)(3). The amount of compensation paid at an improper pay rate for the period February 16 to March 19, 2013 was \$3,890.01. OWCP calculated that, using the correct formula and the correct pay rate of \$615.81 per week, appellant should have received \$1,244.60 for the period February 16 to March 19, 2013. It explained that the difference between the \$3,890.01 and \$1,244.60 figures constituted the overpayment of compensation of \$2,645.41.⁴

In its August 19, 2013 notice, OWCP advised appellant that she could submit evidence challenging the fact, amount, or finding of fault and request waiver of the overpayment. It informed her that she could submit additional evidence in writing or at prerecoupment hearing, but that a prerecoupment hearing must be requested within 30 days of the date of the written notice of overpayment. OWCP requested that appellant complete and return an enclosed financial information questionnaire within 30 days even if she was not requesting waiver of the overpayment. Appellant did not respond.

In an August 11, 2015 decision, OWCP determined that appellant received a \$2,645.41 overpayment of compensation.⁵ It found that she was not at fault in the creation of the overpayment, but that recovery of the overpayment was not subject to waiver because she had not submitted financial information to allow OWCP to consider waiver of recovery. OWCP required repayment of the overpayment by deducting \$282.15 from appellant's compensation payments every 28 days.

² Appellant received disability compensation on the periodic rolls beginning June 30, 2013.

³ The August 19, 2013 preliminary overpayment notice was sent to appellant's proper address of record at that time.

⁴ The record contains payment sheets and worksheets documenting the pay rate and compensation history described by OWCP as creating the \$2,645.41 overpayment of compensation.

⁵ The record also includes May 15 and July 28, 2015 decisions of OWCP which contain text similar to that of the August 11, 2015 decision. OWCP acknowledged that these decisions were sent to improper addresses and were not received by appellant. In a letter dated February 15, 2013, but not received until after the July 28, 2015 decision was mailed, she informed OWCP of her new address. The August 11, 2015 decision was sent to appellant's proper address of record at that time.

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 or her duty.⁶ 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.”⁷

Section 8101(4) of FECA defines “monthly pay” for purposes of computing compensation benefits as follows:

“[T]he monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater....”⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$2,645.41. Appellant has not contested the fact or amount of the overpayment, either before OWCP or on appeal. OWCP provided an explanation of how the \$2,645.41 overpayment was created which is supported by the evidence of record and the relevant standards for calculating compensation. It explained that, due to a glitch in IF ECS, appellant was paid an improper amount of compensation from February 16 to March 19, 2013 based on the formula found at 5 U.S.C. § 8114(d)(3).⁹ OWCP indicated that the amount of compensation paid at an improper pay rate for the period February 16 to March 19, 2013 was \$3,890.01 and that, using the proper formula and the correct pay rate of \$615.81 per week, she should have received \$1,244.60 for the period February 16 to March 19, 2013. The record contains payment sheets and worksheets documenting the pay rate and compensation history described by OWCP as creating the \$2,645.41 overpayment. The difference between the \$3,890.01 and \$1,244.60 figures is \$2,645.41. Therefore, OWCP properly determined that appellant received a \$2,645.41 overpayment of compensation.

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8129(a).

⁸ *Id.* at § 8101(4). In an occupational disease claim, the date of injury is the date of last exposure to the employment factors which caused or aggravated the claimed condition. *Patricia K. Cummings*, 53 ECAB 623, 626 (2002). If the evidence shows that an employee did not work in the employment in which he or she was injured substantially for the entire year immediately preceding the injury and that he or she would not have been afforded employment for substantially a whole year, except for the injury, 5 U.S.C. § 8114(d)(3) of FECA provides the relevant standard for calculating pay rate for compensation purposes. *See* 5 U.S.C. § 8114(d)(3).

⁹ *Id.*

LEGAL PRECEDENT -- ISSUE 2

The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.¹⁰ These statutory guidelines are found in section 8129(b) of FECA which states: "Adjustment or recovery [of an overpayment] 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."¹¹ 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.

Section 10.438 of OWCP 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. 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."¹²

ANALYSIS -- ISSUE 2

OWCP properly determined that appellant did not establish eligibility for waiver of recovery of the \$2,645.41 overpayment under the relevant standards. Appellant did not provide financial information within the appropriate time period to allow OWCP to consider waiver of recovery of the overpayment.¹³ OWCP's August 19, 2013 preliminary overpayment notice was sent to her proper address of record at the time and OWCP requested that she complete and return an enclosed financial information questionnaire within 30 days even if she was not requesting waiver of recovery of the overpayment. However, appellant did not submit the requested financial information within the allotted period and OWCP had no basis to find that recovery of the overpayment would defeat the purpose of FECA or be against equity and good

¹⁰ See *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹¹ 5 U.S.C. § 8129(b).

¹² 20 C.F.R. § 10.438.

¹³ On appeal, appellant asserted that the \$2,645.41 overpayment should be waived because she was not aware of the creation of the overpayment. However, OWCP found that she was not at fault in the creation of the overpayment and denied waiver for the reason that she did not submit financial information supporting such waiver. On appeal, appellant discussed her current financial situation, but such new evidence cannot be considered for the first time on appeal to the Board. See 20 C.F.R. § 501.2(c).

conscience.¹⁴ Therefore, OWCP properly found that she was not entitled to waiver of recovery of the \$2,645.41 overpayment of compensation.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of Title 20 of the Code of Federal Regulations provide in pertinent part:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”¹⁵

ANALYSIS -- ISSUE 3

The record supports that, in requiring repayment of the overpayment by deducting \$282.15 from appellant’s compensation payments every 28 days, OWCP took into consideration the financial information of record as well as the factors set forth in section 10.441 and found that this method of recovery would minimize any resulting hardship on her.¹⁶ Therefore, OWCP properly required repayment of the overpayment by deducting \$282.15 from her compensation payments every 28 days.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$2,645.41. The Board further finds that OWCP did not abuse its discretion by refusing to waive recovery of the overpayment, and that OWCP properly required repayment of the overpayment by deducting \$282.15 from her compensation payments every 28 days.

¹⁴ See *supra* note 12.

¹⁵ 20 C.F.R. § 10.441(a); see *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

¹⁶ Appellant was receiving compensation payments of approximately \$1,600.00 every 28 days at the time the August 11, 2015 decision was issued.

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 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