

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

M.N., Appellant)
and) Docket No. 16-0360
DEFENSE AGENCIES DLA, DISTRIBUTION)
REGION WEST INJURY COMPENSATION)
CENTER, Fort Belvoir, VA, Employer)
Issued: July 5, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 21, 2015 appellant filed a timely appeal from a November 19, 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 over the merits of this case.

ISSUES

The issues are: (1) whether appellant received a \$451.58 overpayment of compensation for the period July 26 through August 22, 2015; (2) whether OWCP abused its discretion in denying waiver of the overpayment; and (3) whether it properly found the overpayment should be recovered by deducting \$225.79 monthly from appellant's continuing compensation payments.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on May 17, 1984 appellant, then a 43-year-old preservation servicer, sustained a thoracic sprain in the performance of duty. Appellant stopped work on October 24, 1984 and began receiving compensation benefits for which she was placed on the periodic rolls.

In a FECA periodic disability payment report, the record reflected that appellant's health benefit insurance premium totaled \$451.58 every 28 days. Health benefits in the amount of \$451.58 were deducted from appellant's gross compensation for the period June 28 through July 25, 2015.

By letter dated July 31, 2015, the National Postal Mail Handlers Union (the Union) reported that appellant was delinquent in her required membership dues and requested that her enrollment in the Mail Handlers Health Benefit Plan be terminated.

In a FECA periodic disability payment plate, health benefit enrollment was suspended for the compensation period July 26 through August 22, 2015.

By letter dated August 14, 2015, the Union reported that the prior information provided had been incorrect and that appellant was current in her dues. It requested that her health insurance benefits be reinstated.

In a FECA periodic disability payment plate, OWCP reinstated appellant's health benefits in the amount of \$451.58 to be deducted from gross compensation for the period August 23 through September 19, 2015.

In an August 28, 2015 Fiscal Payment Worksheet, it was determined that appellant owed \$451.58 for health benefit premiums for the period July 26 through August 22, 2015.

On September 29, 2015 OWCP made preliminary findings of an overpayment of \$451.58 for the period July 26 through August 22, 2015 because health insurance premiums had not been collected. OWCP found that appellant was without fault in the creation of the overpayment.

As OWCP determined that appellant was without fault in the creation of the overpayment, it requested that she submit financial information pursuant to an enclosed overpayment recovery questionnaire (OWCP-20 form) within 30 days if she were requesting waiver of the overpayment. It further informed appellant that she could submit additional evidence in writing, or at a prerecoupment hearing, but that a prerecoupment hearing must be requested within 30 days of the date of the written notice of overpayment.

On October 26, 2015 appellant disagreed with the fact and amount of overpayment and requested a waiver of repayment. She argued that she should not be required to repay the overpayment because it occurred through no fault of her own. No evidence was received with appellant's appeal and she had not submitted the overpayment recovery questionnaire.

By decision dated November 19, 2015, OWCP finalized the overpayment in the amount of \$451.58 for the period July 26 through August 22, 2015 because deductions had not been

deducted for health benefit insurance premiums. It further found that appellant was not at fault in the creation of the overpayment; however, because appellant had not submitted the requested financial information, the overpayment was not subject to waiver. Thus, there was no evidence in the record that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. Based on the evidence of record, OWCP found that she could repay the overpayment by deducting \$225.79 from continuing compensation payments every 28 days beginning December 13, 2015. It noted that the overpayment would be absorbed by approximately January 10, 2016.

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.² 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.”³

In each pay period for which health benefits withholding or direct premium payments are not made, but during which the enrollment of an employee or annuitant continues, he or she incurs an indebtedness due the United States in the amount of the proper employee withholding required for that pay period.⁴ The regulations further provide that an agency that withholds less than or none of the proper health benefits contributions from an individual’s pay, annuity, or compensation must submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under 5 U.S.C. § 8906 to OPM for deposit in the Employee’s Health Benefits Fund.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$451.58 for the period July 26 through August 22, 2015.⁶

Appellant’s health benefit insurance premiums were not deducted from her gross compensation during the period July 26 through August 22, 2015. As no deduction had been made for health insurance premiums during the 28-day calendar cycle covering the period

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8129(a).

⁴ 5 C.F.R. § 890.502(b)(1).

⁵ *Id.* at § 890.502(d); see *John Skarbek*, 53 ECAB 630, 632-33 (2002); *Jennifer Burch*, 48 ECAB 633 (1997).

⁶ S.W., Docket No. 11-895 (issued December 5, 2011).

July 26 through August 22, 2015, OWCP properly found that an overpayment in the amount of \$451.58 occurred.⁷

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.⁸ 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.⁹ If OWCP finds a claimant to be without fault in the matter of an 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 the implementing federal regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁰ This information is needed to determine whether recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The regulations further provide that failure to submit the requested information within 30 days of the request shall result in the denial of waiver and no further request for waiver shall be considered until the requested information is furnished.¹¹

ANALYSIS -- ISSUE 2

In this case, appellant was found to be without fault in the creation of the overpayment. Accompanying the September 29, 2015 preliminary notice of overpayment was an OWCP-20 form overpayment recovery questionnaire in which appellant was to provide information about her income, assets, and expenses. Appellant failed to submit the completed overpayment recovery questionnaire with supporting financial information. Further, she made no argument that she gave up a valuable right or changed her position for the worse in reliance on the overpaid compensation.

⁷ R.M., Docket No. 08-1848 (issued September 24, 2009).

⁸ See *Robert Atchison*, 41 ECAB 83, 87 (1989).

⁹ 5 U.S.C. § 8129(b).

¹⁰ 20 C.F.R. § 10.438(a).

¹¹ *Id.* at § 10.438(b).

By failing to submit the requested information, as required by section 10.438 of its regulations, appellant was not entitled to a waiver.¹² The Board finds that OWCP properly denied waiver of recovery of the \$451.58 overpayment of compensation.¹³

LEGAL PRECEDENT -- ISSUE 3

The individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information will be used to determine the repayment schedule, if necessary.¹⁴

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

Appellant receives \$2,377.00 in continuing gross compensation benefits every 28 days. OWCP determined that the overpayment could be recovered by deducting \$225.79 from her continuing compensation payments every 28 days. The Board notes that a claimant is responsible for submitting necessary information with respect to income, expenses, and assets as required by OWCP.¹⁶ In this case, appellant failed to submit any information regarding her financial circumstances to sufficiently document her income and expenses.

Thus, the Board finds that OWCP did not abuse its discretion and took into consideration the factors set forth in 20 C.F.R. § 10.441 to minimize hardship.¹⁷ OWCP followed collection guidelines by requiring installments large enough to collect the debt promptly and minimizing any resulting hardship on appellant.¹⁸ Therefore, the Board finds OWCP properly required

¹² *Id.*

¹³ *B.T.*, Docket No. 14-1669 (issued December 28, 2015); *M.S.*, Docket No. 11-96 (issued August 17, 2011).

¹⁴ *Id.*

¹⁵ 20 C.F.R. § 10.441(a).

¹⁶ *R.H.*, Docket No. 09-1981 (issued June 11, 2010).

¹⁷ *W.M.*, Docket No. 13-291 (issued June 12, 2013).

¹⁸ OWCP found that appellant could repay the overpayment by deducting \$225.79 from continuing compensation payments every 28 days beginning December 13, 2015. It noted that the debt would be paid in full on January 10, 2016. *E.J.*, Docket No. 15-1734 (issued April 12, 2016).

repayment of the overpayment by deducting \$225.79 from appellant's continuing compensation payments every 28 days.¹⁹

On appeal appellant argues that she paid her union dues and provided a copy of a cancelled check in support of her claim. As appellant was found to be without fault in the creation of the overpayment, this argument is irrelevant to her overpayment claim.

CONCLUSION

The Board finds that OWCP properly determined that appellant received a \$451.58 overpayment of compensation for the period July 26 through August 22, 2015. The Board further finds that she was not at fault for the overpayment and that OWCP properly denied waiver of the overpayment based on the evidence of record. The Board also finds that OWCP properly determined the overpayment should be recovered by deducting \$225.79 from continuing compensation every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 5, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁹ M.G., Docket No. 07-2317 (issued April 11, 2008).