

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

OWCP accepted that on August 17, 2015 appellant, then a 42-year-old police officer, sustained a tear of the medial meniscus of the left knee while in the performance of duty. Benefits were paid and authorized, including an October 1, 2015 arthroscopic surgery.<sup>2</sup>

In a letter dated November 2, 2015, OWCP advised appellant that he would be receiving continuing wage-loss compensation on the periodic rolls covering a 28-day period. The first regular payment was for the period October 18 through November 14, 2015. Appellant was advised that he must notify OWCP immediately upon his return to work and, if he worked for any portion of the period covered by a payment, he must return the payment to OWCP.

Appellant returned to regular full-time work on November 8, 2015.

An overpayment explanation form dated November 20, 2015 noted that appellant had received a net payment of \$3,083.78 during the period October 18 through November 14, 2015. However, he should have only received a net payment of \$2,310.81 for that same period.

On November 23, 2015 OWCP informed appellant of its preliminary determination that he had received an overpayment in compensation for the period November 8 through 14, 2015 in the amount of \$772.97 for which he was not at fault. It found that appellant was paid on the periodic rolls from October 18 through November 14, 2015 when he returned to work on November 8, 2015. Appellant was not at fault in the creation of the overpayment as he was not aware or could not have been aware that he was not entitled to the payment received. OWCP requested that appellant complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents to assist OWCP in its evaluation of appellant's eligibility for waiver. Additionally, it notified him 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 prerecoupment hearing.

Appellant did not submit any supporting financial documentation relevant to his overpayment.

By decision dated January 11, 2016, OWCP finalized its determination that appellant had received an overpayment of compensation in the amount of \$772.97 for the period November 8 through 14, 2015 as he had returned to full-duty work on November 8, 2015, but received compensation for the period October 18 through November 14, 2015. It found that he was not at fault in the creation of the overpayment, but denied waiver of the overpayment because financial documentation was not received. OWCP determined that the overpayment amount of \$772.97 could be repaid in full within 30 days and, if payment was not received within 30 days, then the employing establishment would be asked to offset appellant's salary as an alternate method of recovery.

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<sup>2</sup> Appellant received supplemental roll benefits from October 1 to 17, 2015.

### **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 a personal injury sustained while in the performance of his duty.<sup>3</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>4</sup>

Section 8116 of FECA defines the limitations on the right to receive compensation benefits. This section of FECA provides that, while an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States, except in limited circumstances.<sup>5</sup> OWCP regulations provide that compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.<sup>6</sup> An employee is not entitled to compensation for total disability after returning to full-time work.<sup>7</sup>

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

The Board finds that appellant has received an overpayment of compensation in the amount of \$772.97 for the period November 8 to 14, 2015. The record supports that he continued to receive total disability compensation from the date of his return to work on November 8 to 14, 2015. For this period, appellant received compensation in the amount of \$772.97. As he was not entitled to compensation after his return to work, OWCP properly found that an overpayment in compensation in the amount of \$772.97 had been created.<sup>8</sup> Appellant has not challenged the amount or period of the overpayment.

### **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.<sup>9</sup> 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.<sup>10</sup> When a claimant is found to be

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<sup>3</sup> *Supra* note 1 at § 8102(a).

<sup>4</sup> *Id.* at § 8129(a).

<sup>5</sup> *Id.* at § 8116(a); *R.H.*, Docket No. 09-1981 (issued June 11, 2010).

<sup>6</sup> 20 C.F.R. § 10.500.

<sup>7</sup> *M.J.*, Docket No. 09-469 (issued August 24, 2009).

<sup>8</sup> 5 U.S.C. § 8116(a); 20 CFR § 10.500; *J.J.*, Docket No. 14-1649 (issued November 24, 2015).

<sup>9</sup> *See Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>10</sup> 5 U.S.C. § 8129(b).

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's regulations provides:

“(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.”<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

OWCP determined that appellant was without fault in the creation of the overpayment of \$772.97 for the period of November 8 through 14, 2015 as he was not aware or could not have been aware that he was not entitled to the payments received. As OWCP found appellant without fault in the creation of the overpayment of compensation, waiver must be considered and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>12</sup>

OWCP requested in its preliminary notice of overpayment dated November 23, 2015 that appellant provide supporting financial documentation and a completed overpayment recovery questionnaire to support waiver of recovery. Appellant, however, failed to provide any supporting financial information and did not complete an overpayment questionnaire. The burden rests with the claimant to show that waiver would defeat the purpose of FECA.<sup>13</sup> Appellant has not alleged and the evidence does not demonstrate that he relinquished a valuable right or changed his position for the worse due to the payment of the erroneous amount of compensation. Because he has not shown that recovery would defeat the purpose of FECA or would be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

On appeal appellant argues that collection of the overpayment would be against equity and good conscience based on his current financial status. He requests a reasonable repayment plan. As previously discussed, failure to submit the requested financial information within 30 days of a request from OWCP will result in a denial of a waiver of recovery of the overpayment

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<sup>11</sup> 20 C.F.R. § 10.438.

<sup>12</sup> *Id.* at §§ 10.436, 10.437.

<sup>13</sup> *See supra* note 8.

and no further requests for waiver will be considered until the information is submitted to OWCP.<sup>14</sup>

The Board further notes that its jurisdiction is limited to recovery of an overpayment where OWCP seeks recovery from compensation under FECA.<sup>15</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$772.97 for the period November 8 through 14, 2015 for which he was without fault. The Board further finds that OWCP properly denied waiver of recovery for the overpayment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 11, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 18, 2016  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

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<sup>14</sup> *Supra* note 11 at § 10.438(b); *Robert B. Hutchins*, 52 ECAB 344 (2001).

<sup>15</sup> 20 CFR § 10.441 provides that 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 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