

and necessary living expenses and severe medical expenses related to his son's medical conditions.

FACTUAL HISTORY

OWCP accepted that on March 10, 2014 appellant, then a 39-year-old border patrol agent, sustained left Achilles tendinitis while conducting knee strikes during intermediate force training. It authorized microthermal topaz debridement and repair of his left Achilles tendon performed on October 24, 2014 and January 9, 2015, respectively. Appellant received wage-loss compensation for total disability on the supplemental rolls.²

On March 1, 2015 appellant returned to full-time light-duty work at the employing establishment. On March 9, 2015 he advised OWCP about his return to work, but he continued to receive compensation payment through March 7, 2015.

By letter dated May 11, 2015, OWCP made a preliminary determination that appellant received an overpayment of compensation in the amount of \$1,238.43 from March 1 to 7, 2015 because he continued to receive disability compensation after his return to work. It explained the calculation of the overpayment and found that he was without fault in its creation. 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 prerecoumment hearing.

Appellant did not respond to the preliminary overpayment determination. In a June 18, 2015 decision, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$1,238.43 from March 1 to 7, 2015. It also denied waiver of recovery of the overpayment because he did not respond to the request to submit financial information. Thus, there was no evidence that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP requested that appellant repay the full amount of the overpayment within 30 days.

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 duty.³ 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

² The Board notes that on December 4, 2014 appellant briefly returned to work, but stopped work again.

³ 5 U.S.C. § 8102(a).

law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.”⁴

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.⁵ 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.⁶

A claimant is not entitled to receive temporary total disability and actual earnings for the same period.⁷ OWCP procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$1,238.43 for the period March 1 to 7, 2015. The record supports, and appellant has not disputed, that he returned to full-time light-duty work on March 1, 2015, but continued to receive compensation from OWCP through March 7, 2015. For this period, he received compensation in the amount of \$1,238.43. As appellant was not entitled to compensation after his return to work, OWCP properly found an overpayment of compensation in the amount of \$1,238.43.⁹

LEGAL PRECEDENT -- ISSUE 2

The waiver or refusal to waive an overpayment of compensation is a matter that rests within the discretion of OWCP pursuant to statutory guidelines.¹⁰ The statutory guidelines are found at section 8129(b) of FECA, which provides that 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 then adjustment and recovery would defeat the purpose of FECA or would be against equity and good conscience.¹¹

⁴ *Id.* at § 8129(a).

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

⁶ 20 C.F.R. § 10.500.

⁷ *See R.W.*, Docket No. 13-1285 (issued November 13, 2013).

⁸ *See Danny E. Haley*, 56 ECAB 393 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2a (May 2004).

⁹ *Supra* notes 7 and 8.

¹⁰ *See E.C.*, Docket No. 14-826 (issued July 3, 2014).

¹¹ 5 U.S.C. § 8129(b).

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.¹² 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.¹³

ANALYSIS -- ISSUE 2

OWCP determined that appellant was without fault in the creation of the overpayment based on receipt of compensation after his return to full-time work. The fact that appellant is without fault, however, does not mean that he is entitled to waiver of recovery of the overpayment. OWCP advised him of the overpayment in the preliminary determination notice sent to him on May 11, 2015. Appellant was provided the reasons for the overpayment and the opportunity to submit financial information with regard to waiver. He did not respond to the preliminary determination or submit any information relevant to waiver within 30 days. As noted, the implementing regulations provide that failure to submit the requested information within 30 days will result in the denial of waiver.¹⁴ Since appellant did not submit any financial information or a completed OWCP-20 form as requested, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

With respect to recovery of the overpayment of compensation, the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA.¹⁵ As appellant is no longer receiving wage-loss compensation, the Board does not have jurisdiction with respect to the recovery of the overpayment under the Debt Collection Act.¹⁶

On appeal appellant contends that repayment of the overpayment would cause undue financial hardship for him and his family as his income and resources are needed for ordinary and necessary living expenses and severe medical expenses related to his son's medical conditions. As discussed, however, OWCP properly denied waiver as he failed to submit the requisite financial information.

¹² 20 C.F.R. § 10.438(a).

¹³ *Id.* at § 10.438(b).

¹⁴ *Id.*

¹⁵ *Cheryl Thomas*, 55 ECAB 610 (2004).

¹⁶ *Id.*

CONCLUSION

The Board finds that appellant received a \$1,238.43 overpayment of compensation for the period March 1 to 7, 2015. The Board further finds that OWCP did not abuse its discretion in denying waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the June 18, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 21, 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