

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

M.F., Appellant)	
)	
and)	Docket No. 15-1378
)	Issued: September 8, 2016
)	
U.S. POSTAL SERVICE, POST OFFICE,)	
New Orleans, LA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On June 10, 2015 appellant filed a timely appeal from a May 4, 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.²

ISSUES

The issues are: (1) whether appellant received a \$987.84 overpayment of compensation; and (2) whether she was at fault in the creation of the \$987.84 overpayment and, therefore, ineligible for waiver of recovery.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal after OWCP rendered its May 4, 2015 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence. 20 C.F.R. § 501.2(c)(1).

On appeal, appellant contends that she worked on January 29 and 30, 2015, but that from January 31 to February 14, 2015 she was told to not report to work until she had completed her driver training. She relates that she completed her training on February 13, 2015 and was not in a paid status until February 14, 2015.

FACTUAL HISTORY

On March 8, 2008 appellant, a 40-year-old letter carrier, sustained injury to her right eye and experienced headaches on March 8, 2008 when she was punched in the jaw by a young man who walked up to her truck and asked for rubber bands. She filed a claim for traumatic injury (Form CA-1), which OWCP accepted for a contusion on the right side of her face, scalp, and neck; exostosis in an unspecified site; articular disc disorder in the temporomandibular joint; and post-traumatic stress disorder.

By letter dated June 3, 2008, OWCP advised appellant of her receipt of compensation every 28 days on the periodic rolls effective April 24, 2008 and her responsibility to return to work in connection with the accepted injury. In an attached Form EN1049, appellant was advised that she must notify OWCP immediately upon her return to work and, if she worked for any portion of the period covered by a payment, she must return the payment to OWCP.

The record reflects that appellant received compensation by direct deposit payments.

Appellant was released to return to work and began full-time modified duty on January 29, 2015. Total disability compensation payments were continued through February 7, 2015. However, the record does not contain any payroll information for the period January 29 through February 7, 2015 setting forth actual earnings for the period of the alleged overpayment. The record contains correspondence which notes that the claims examiner spoke with appellant on February 2, 2015 regarding her unsuccessful return to work as the employing establishment did not, in fact, have a route within her restrictions at that time. The claims examiner informed appellant to file a wage-loss claim and that if the employing establishment found work for her to let OWCP know if she is still in receipt of compensation benefits.³

On April 2, 2015 OWCP issued a preliminary determination that an overpayment occurred in the amount of \$987.84 for the period January 29 through February 7, 2015 because appellant continued to receive disability compensation after her return to work. It explained the calculation of the overpayment and found that she was at fault in its creation because she was aware or should have reasonably been aware that there was no entitlement to receive total disability wage-loss benefits after returning to full-time work. OWCP noted that the attachment to its June 3, 2008 letter advised appellant that compensation would be paid every 28 days, that she was responsible to inform OWCP upon return to any work, and that she was to return all payments received for periods after a return to work. It further noted that, a reasonable amount of time had passed for her to confirm receipt of the payment. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents to determine the issue of waiver. Additionally, it notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final

³ The file does not contain a contemporaneous Form CA-7.

decision based on the written evidence, or a prerecoupment hearing if she disagreed with the decision. Appellant did not respond to the preliminary determination.

By decision dated May 4, 2015, OWCP finalized the fact and amount of the preliminary overpayment determination, and the finding of fault. It directed recovery of 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 his duty.⁴ 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.”⁵

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.⁶ 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.⁷ An employee is not entitled to compensation for total disability after returning to full-time work.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not meet its burden of proof to establish that appellant received an overpayment of compensation in the amount of \$987.84 for the period January 29 through February 7, 2015.

OWCP is required by statute and regulations to make findings of fact.⁹ It procedures further specify that a final decision of OWCP must include findings of fact and provide clear reasoning which allows the claimant to understand the specific defect of her claim and the kind

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8129(a).

⁶ *Id.* at § 8116(a); *R.H.*, Docket No. 09-1981 (issued June 11, 2010).

⁷ 20 C.F.R. § 10.500.

⁸ *M.J.*, Docket No. 09-469 (issued August 24, 2009).

⁹ 5 U.S.C. § 8124(a) provides that OWCP shall determine and make a finding of fact 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.

of evidence which would tend to overcome it.¹⁰ These requirements are supported by Board precedent.¹¹ The Board finds that OWCP did not follow its procedures when it issued its preliminary determination of overpayment on April 2, 2015 as the notice does not contain factual findings supported by citation to evidence of record of appellant's actual earnings during the period of alleged overpayment nor does it provide a clearly written explanation of how the evidence of record supports an overpayment in the amount of \$987.84. Rather, OWCP cites only to a return to work date of January 28, 2015 without actual evidence of earnings from January 29 to February 7, 2015. Such records are important in this case because appellant had contemporaneously notified OWCP that the employing establishment did not actually have a suitable position available for her on the date she was scheduled to return to work. This notice was clearly of record prior to the April 2, 2015 preliminary determination of overpayment. Thus, the information of record relied on by OWCP is incomplete as to the fact or period of overpayment. Therefore, the Board finds the evidence of record insufficient to establish that appellant received an overpayment in the amount of \$987.84.

On appeal, appellant contends that she reported to work on January 29 and 30, 2015, but that she was told that she could not report to work until she had completed her driver training. She states that she completed her training on February 13, 2015 and was not in a paid status until February 14, 2015. As noted, OWCP failed to follow its procedures in calculating the alleged overpayment and did not provide a clear explanation to appellant as to how the overpayment occurred when the employing establishment did not have suitable work available for her to perform and she had no actual earnings. The Board will reverse the May 4, 2015 decision regarding the fact and amount of the overpayment. As OWCP has not established the alleged overpayment of compensation, the issue of fault is rendered moot.

CONCLUSION

The Board finds that OWCP failed to establish the fact or amount of the overpayment. OWCP did not comply with its procedures by providing a detailed calculation of the amount of the overpayment citing to payroll records or any other evidence of record.

¹⁰ See *R.W.*, Docket No. 11-1303 (issued January 9, 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

¹¹ See *id.*; *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated and finalized May 4, 2015 is reversed.

Issued: September 8, 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