

ring finger while in the performance of duty. OWCP accepted the claim for left elbow tendinitis and subsequently expanded the acceptance of the claim to include cubital tunnel syndrome of the left elbow. On August 13, 2002 appellant accepted a limited-duty assignment. He stopped work completely on August 23, 2002 and filed a recurrence of disability (Form CA-2a).² OWCP paid appellant compensation for temporary total disability on the supplemental rolls as of August 23, 2002 and paid wage-loss compensation and medical benefits on the periodic rolls as of November 3, 2002.

Appellant elected to receive Office of Personnel Management (OPM) retirement benefits effective February 6, 2008. By letter dated July 14, 2008, OPM advised that appellant had not received any OPM benefits and had cancelled his election of benefits.

By letter dated July 17, 2008, OWCP advised appellant that he had been placed on the periodic rolls and outlined his entitlement to compensation benefits and his responsibility to return to work in connection with the accepted injury. Appellant's weekly pay rate was calculated to be \$857.37. OWCP instructed: "In order to avoid an overpayment of compensation, NOTIFY THIS OFFICE IMMEDIATELY WHEN YOU RETURN TO WORK. Each payment made through its automated system will include the period for which payment is made. If you have worked for any portion of this period, you must return the check to this office. Otherwise, an overpayment of compensation may result." (Emphasis in the original.)

On April 5, 2013 appellant elected to receive his compensation benefits by direct deposit.

On August 27, 2015 OWCP referred appellant to Dr. Hormozan Aprin, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the nature and extent of disability. In a September 2, 2015 medical report, Dr. Aprin provided work restrictions and reported that appellant could return to full-time sedentary light-duty work.

By letter dated September 18, 2015, OWCP requested that the employing establishment provide appellant a job offer within Dr. Aprin's restrictions.

On December 18, 2015 appellant accepted an offer of modified assignment (limited duty) as a city carrier within his medical restrictions. The assignment was identified as an eight-hour job offer.

In a January 28, 2016 CA-110 telephone note, the employing establishment informed OWCP that it was still in the process of rehiring appellant since having accepted the job offer, and would call again with a firm date on when he could return to work.

² The Board notes that appellant had two prior workers' compensation claims. On September 13, 2000 appellant was delivering mail when his right leg and foot fell through the steps he was descending. OWCP accepted the claim for right calf leg sprain under OWCP File No. xxxxxx274. Appellant returned to full-duty work on November 3, 2000.

Appellant filed another claim for injury on September 19, 2001 when he was lifting his pushcart for mail onto the back of his mail vehicle and felt shooting pain in his lower back. He stopped work and returned on September 25, 2001 under a limited-duty assignment. By decision dated November 3, 2001, OWCP accepted the claim for lumbar sprain and lumbar closed subluxation under OWCP File No. xxxxxx900. Appellant filed a recurrence of disability claim commencing on October 29, 2001 which was accepted by OWCP for medical benefits only. No other information pertaining to his prior claims is before the Board.

On February 18, 2016 appellant submitted a Health Benefits Election Form (Form 2809) and requested his enrollment be changed.

On April 21, 2016 appellant filed a claim for compensation (Form CA-7) for leave without pay (LWOP) for the period April 2 through 15, 2016. In an accompanying time analysis form (Form CA-7a), he reported working 35.04 hours and requested LWOP for 44.96 hours because no work was available within his medical restrictions.

By letter dated April 29, 2016, OWCP notified the employing establishment that appellant filed a claim for compensation (Form CA-7) for the period April 2 through 15, 2016. It had only just removed him from the periodic rolls as the last communication from the employing establishment dated back to late January 2016 when it was still attempting to place appellant. OWCP noted that appellant's Form CA-7 was the first formal indication that he was working. It explained that the claim for compensation was not payable since he had been issued compensation on the periodic rolls through April 30, 2016 and thus an overpayment would be declared. OWCP requested that the employing establishment submit a copy of appellant's current modified job offer and the number of hours he was presently working.

On May 2, 2016 appellant filed a Form CA-7 for LWOP for the period April 16 through 29, 2016. In an accompanying Form CA-7a, he reported working 32.62 hours and requested LWOP for 47.38 hours because no work was available within his medical restrictions.

In a May 2, 2016 return to work worksheet (Form CA-3), the employing establishment reported that appellant returned to work on April 2, 2016 in a part-time modified-duty position with restrictions for eight hours per day. A copy of the December 18, 2015 offer of modified assignment was submitted, as well OWCP's April 29, 2016 letter with a handwritten note, "Job offer will change if restrictions change. Job offer is for eight hours a day."

In a May 6, 2016 CA-110 telephone note, OWCP informed appellant that he could keep the last payment since he was not notified prior to its issuance. Appellant reported that, despite signing an eight-hour tour of duty, he was only working four to five hours each day because eight hours of work had not been available within his restrictions. As such, he was filing Form CA-7's for the remaining hours. Appellant further asked if he needed to return the April 30, 2016 payment.

On May 13, 2016 appellant filed a Form CA-7 for LWOP for the period April 30 through May 13, 2016. In an accompanying Form CA-7a, he reported working 33.22 hours and requested LWOP for 46.78 hours because no work was available within his medical restrictions.³ On May 23, 2016 OWCP approved wage-loss compensation for 41.42 hours for the period May 1 through 13, 2016. It noted that the 41.42 hours did not include the intermittent wage-loss

³ Appellant reported working 2.64 hours on April 30, 2016 and requested LWOP for 5.36 hours.

amount for April 30, 2016, which was included in the last periodic rolls payment appellant received.⁴

A payroll computer printout listed that appellant continued to receive wage-loss compensation from April 3 through 30, 2016 even though he returned to full-time limited duty on April 3, 2016. It noted that his 28-day gross compensation amounted to \$3,208.00. Following appropriate deductions for health insurance, life insurance, and retirement, appellant received a net amount of \$1,805.26 for the period April 3 through 30, 2016, thereby creating an overpayment. The check date was noted as April 30, 2016.

By letter dated May 29, 2016, OWCP made a preliminary determination that appellant received an overpayment of compensation in the amount of \$1,805.26 for the period April 3 through 30, 2016 because he continued to receive disability compensation after his return to full-time light-duty work. It further found that he was at fault in creating the overpayment because he accepted payments that he knew or reasonably should have known that he was not entitled to after returning to full-time work. OWCP noted that appellant was not entitled to receive 28 days of payment from April 3 through 30, 2016 resulting in a net overpayment of \$1,805.26. It informed him of his review rights and instructed him to complete an enclosed overpayment recovery questionnaire form (OWCP-20) and submit supporting documentation within 30 days.

In a June 6, 2016 overpayment action request, appellant contested the overpayment decision and requested OWCP make a decision based on the written evidence on the issues of overpayment, fault, and waiver of recovery of the overpayment. He argued that he notified OWCP that he was returning to work in the Form 2809 change of health insurance. Appellant further explained that he submitted his CA-7 and CA-7a forms because he did not know that he would continue to receive a monthly OWCP check. He argued that he did not work the full 160 hours and therefore should receive from OWCP the remaining hours he did not work. Appellant attempted to contact OWCP about the check and was instructed to keep it. He further reported that his health insurance payment was taken from both his OWCP check and his work check for the same time period, and he was entitled to reimbursement from one of the payments. Appellant further argued that OWCP had not processed his CA-7 and CA-7a forms for April 3 through 30, 2016 and thus, the overpayment amount was incorrect.

In an accompanying June 6, 2016 OWCP-20 form, appellant again argued that he was not at fault with regard to the overpayment. He explained that he did not expect to receive full payment from April 3 to 30, 2016 which is why he filed the CA-7 and CA-7a forms for missing work hours. Appellant reported that these forms were not processed because he was paid by OWCP through the end of the month for those hours. He contacted OWCP and was instructed to keep the check. Appellant further noted that he notified OWCP he was returning to work when he first sent in his Form 2809 which was also not processed.

⁴ The Board notes that on May 27, 2016, appellant filed another Form CA-7 and CA-7a for the period May 14 through 26, 2016 reporting 29.07 hours of work and claiming LWOP for 50.93 hours because no work was available within his medical restrictions. On June 3, 2016 OWCP approved wage-loss compensation for 50.93 hours from May 14 to 27, 2016 in the amount of \$1,025.60. On June 10, 2016 appellant filed a Form CA-7 and Form CA-7a for the period May 28 through June 10, 2016, reporting 22.49 hours of work and claiming LWOP for 33.51 hours because no work was available within his medical restrictions. On June 20, 2016 OWCP approved wage-loss compensation for 33.51 hours from May 28 through June 10, 2016 in the amount of \$674.81.

Appellant submitted a copy of OWCP's May 29, 2016 preliminary overpayment finding. He noted that OWCP was incorrect as he did not return to full-time work for eight hours per day on April 3, 2016. Appellant also submitted a copy of a March 4, 2016 letter from OWCP acknowledging receipt of his February 18, 2016 Form 2809 which could not be processed as open season was closed. He referenced this letter to show that he notified OWCP that he was returning to work since he requested his health insurance be changed.

Appellant also submitted two 2016 earnings statements for pay periods eight and nine which showed 44.96 hours and 47.38 hours of LWOP respectively. He argued that he was never paid the remaining balance as requested on his CA-7 forms and that his earnings statement showed that health insurance payments were being made from his paycheck for that time frame. Appellant provided a Department of Labor benefits statement which showed that health insurance costs were deducted from his wage-loss compensation check for the period April 3 through 30, 2016, resulting in a net payment of \$1,805.26. He argued that health insurance deductions were improperly taken from both his earnings and his wage-loss compensation. Appellant further resubmitted his CA-7 and CA-7a forms requesting leave without pay for the period April 2 through 29, 2016.

By decision dated June 29, 2016, OWCP finalized the preliminary overpayment determination finding that appellant was overpaid in the amount of \$1,805.26 from April 3 through 30, 2016 because he continued to receive disability compensation after his return to full-time work. It found that appellant was at fault in the creation of the overpayment and thus, not entitled to waiver of recovery. Recovery was directed by submitting the full amount of the overpayment within 30 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.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's regulations state in pertinent part: Compensation for wage-loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him from earning the wages earned before the work-related injury.⁷ A claimant is not entitled to receive temporary total disability and actual earnings for the same period. OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁸

⁵ 5 U.S.C. § 8102.

⁶ *Id.* at § 8116(a).

⁷ 20 C.F.R. § 10.500.

⁸ *B.H.*, Docket No. 09-292 (issued September 1, 2009); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2(a) (May 2004).

Section 8129(a) of FECA provides that when an overpayment has been made to an individual 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 the individual is entitled.⁹

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim and paid wage-loss compensation, placing him on the periodic rolls. It determined that on April 3, 2016, appellant returned to work in a full-time, light-duty capacity. However, OWCP subsequently paid him wage-loss compensation for total disability from April 3 through 30, 2016, resulting in an overpayment of compensation.¹⁰ A claimant is not entitled to receive temporary total disability benefits and actual earnings for the same time period.¹¹ The Board finds, however, that this case is not in posture for decision regarding the amount of the overpayment.

In its June 29, 2016 decision, OWCP found that appellant received an overpayment of compensation in the amount of \$1,805.26 from April 3 to 30, 2016 because he returned to work and received 28 days of compensation for total disability. It based its decision on the employing establishment's May 2, 2016 CA-3 worksheet which established that appellant returned to full-time light-duty work for eight hours per day beginning April 2, 2016.

With respect to appellant's work status, the employing establishment reported on its CA-3 worksheet that appellant returned to work on April 2, 2016 and identified "part-time modified duty: with restrictions for eight hours per day."

The Board notes that contrary to OWCP's finding, the employing establishment did not identify appellant as having returned to full-time work as it reported part-time modified duty. Appellant filed timely CA-7 and CA-7a forms for leave without pay beginning April 2, 2016 and continuing. He cited partial hours worked on each day because no full-time work was available within his medical restrictions. The LWOP hours were further verified by the employing establishment on these claim for compensation forms. These forms, coupled with the employing establishments CA-3 worksheet, provide support that appellant did not return to full-time work on April 3, 2016, but rather returned in a part-time modified capacity.¹² Moreover, OWCP processed appellant's subsequent Form CA-7's for LWOP beginning May 1, 2016 and continuing, because a full eight hours of work daily was not available within his medical restrictions. As such, it remains unclear why it did not process the hours requested for the period April 2 to 30, 2016. The Board therefore finds that, due to the incorrect designation of appellant's time records, OWCP has failed to establish that it correctly calculated the amount of

⁹ 5 U.S.C. § 8129(a).

¹⁰ See *J.W.*, Docket No. 15-1163 (issued January 13, 2016).

¹¹ *L.S.*, 59 ECAB 350, 352-53 (2008).

¹² *R.G.*, Docket No. 16-1129 (issued December 27, 2016).

the overpayment for the period April 3 through 30, 2016. Therefore, the Board will set aside OWCP's June 29, 2016 decision and remand the case for further development.¹³

On remand, OWCP should recalculate the overpayment for the period April 3 through 30, 2016, taking into account the CA-7 and CA-7a forms requesting LWOP from April 2 through 30, 2016.¹⁴ It should also clarify whether health benefit deductions were dually made from appellant's wages and his FECA benefits during the time period in question. Following such further development as it deems necessary, OWCP shall issue a *de novo* decision.¹⁵

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 17, 2017
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹³ *K.L.*, Docket No. 16-1490 (issued May 26, 2017).

¹⁴ *Id.*

¹⁵ In view of the Board's findings regarding the amount of the overpayment, it is premature to address fault and recovery.