

steps while delivering mail. OWCP accepted the claim for contusion of right hip, contusion of left hip, left side lumbago with sciatica, and left hip trochanteric bursitis. Appellant stopped work following the injury and received wage-loss compensation on the supplemental rolls as of May 28, 2016 and on the periodic rolls from June 26 to October 15, 2016.

On September 30, 2016 appellant accepted an offer of modified assignment to return to full-time work as a city carrier. In a telephone memorandum dated October 13, 2016, OWCP noted that appellant had called to advise that she had returned to full-time light-duty work on September 30, 2016. Appellant requested that her periodic rolls benefits be stopped.

By letter dated October 26, 2016, OWCP made a preliminary determination that appellant received an overpayment of compensation in the amount of \$1,624.80 from September 30 through October 15, 2016 because she continued to receive disability compensation after her return to full-time work with no wage loss. It found that she was not at fault in the creation of the overpayment, making her eligible for waiver of recovery of the overpayment. An OWCP memorandum and fiscal worksheet noted that appellant was on periodic rolls and received compensation every 28-calendar days in the amount of \$2,843.41. It divided this amount by 28 days, and multiplied the daily rate by the 16-calendar days overpaid to calculate an overpayment of \$1,624.80. OWCP provided appellant with an overpayment recovery questionnaire (Form OWCP-20) and advised that she could request a preresoupment hearing if she wished to challenge the fact of overpayment or to request waiver of recovery of the overpayment. If she wished a waiver of the overpayment, appellant was advised to submit financial information and a completed overpayment recovery questionnaire (Form OWCP-20) within 30 days.

On November 15, 2016 appellant contested the overpayment decision and requested that OWCP make a decision based on the written evidence on the issues of fault and possible waiver of overpayment. She argued that she called OWCP on September 30, 2016 to notify them that she was returning to work.

On November 15, 2016 OWCP received appellant's completed overpayment recovery questionnaire, which indicated that she received a net monthly income of \$3,800.00. Appellant reported monthly household expenses totaling \$2,160.00 in the amount of \$400.00 for food, \$100.00 for clothing, \$700.00 for rent/mortgage, \$650.00 for utilities, and \$310.00 for miscellaneous expenses. She itemized other debts for a total \$3,433.00 in monthly expenses. Appellant reported \$60.00 in cash on hand and negative \$290.00 in her checking account, totaling negative \$230.00 in net assets. She explained that she notified OWCP as soon as she went back to work so that she would not receive an overpayment.

By decision dated December 13, 2016, OWCP finalized the preliminary determination finding that appellant was overpaid in the amount of \$1,624.80 from September 30 through October 15, 2016 because she continued to receive disability compensation after her return to full-time work. It noted that she currently owed only \$878.80 as \$746.01 had been recovered from her compensation check after she had returned to work. The decision found appellant without fault. The decision further found that as appellant had not responded to the preliminary decision or returned the overpayment questionnaire along with financial documentation as requested, she was not eligible for waiver of recovery. It determined that appellant could pay \$50.00 per month beginning on January 18, 2017 to repay the debt.

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.²

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.³ 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 or her from earning the wages earned before the work-related injury.⁴ A claimant is not entitled to receive temporary total disability and actual earnings for the same period. OWCP's procedures provide that an overpayment in compensation is created when a claimant returns to work but continues to receive wage-loss compensation.⁵

ANALYSIS -- ISSUE 1

In the present case, appellant began receiving wage-loss compensation for total disability as of May 28, 2016. OWCP placed her on the periodic compensation rolls as of June 26, 2016. Appellant continued to receive compensation for total disability every 28 days, through October 15, 2016. The record indicates, however, that she had returned to full-time, light-duty work on September 30, 2016. Appellant does not contest that she returned to light-duty work on that date.

As noted above, a claimant is not entitled to receive compensation for total disability during a period in which he or she had actual earnings. Therefore, an overpayment of compensation was created in this case.

The amount of the overpayment was calculated to be \$1,624.80. This represented the net compensation appellant was paid for the 16 calendar days from September 30 to October 15, 2016. No contrary evidence was submitted. The Board accordingly finds that OWCP properly found that an overpayment of compensation in the amount of \$1,624.80 was created during the period September 30 to October 15, 2016.

LEGAL PRECEDENT -- ISSUE 2

5 U.S.C. 8129(b) provides: "Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when

² 5 U.S.C. § 8102.

³ *Id.* at § 8116(a).

⁴ 20 C.F.R. § 10.500.

⁵ *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).

adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.”⁶ A claimant who is at fault in creating the overpayment is not entitled to waiver.⁷ On the issue of fault, 20 C.F.R. § 10.433 provides that an individual will be found at fault if he or she has done any of the following: “(1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) failed to provide information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have known was incorrect.”

The Board has held that an employee who receives payments from OWCP in the form of direct deposit may not be at fault the first time incorrect funds are deposited into her account, as the acceptance of the resulting overpayment lacks the requisite knowledge.⁸

ANALYSIS -- ISSUE 2

In its October 26, 2016 preliminary decision, OWCP determined that appellant received an overpayment of compensation in the amount of \$1,624.80 from September 30 through October 15, 2016 because she continued to receive disability compensation after her return to full-time light-duty work. It further found that she was without fault in the creation of the overpayment, making her eligible for waiver of recovery of the overpayment.

The final decision dated December 13, 2016 found appellant without fault in the creation of the overpayment rendering her eligible for waiver of recovery of the overpayment.

The Board finds that OWCP properly found appellant without fault, but notes that OWCP’s December 13, 2016 decision incorrectly found that appellant had not responded to the preliminary finding or contest the decision with regard to waiver of recovery of the overpayment. The evidence of record establishes that appellant had submitted a timely overpayment action request, received on November 15, 2016, contesting the overpayment decision and requesting waiver of recovery.

Since the Board’s jurisdiction of a case is limited to reviewing that evidence which is before OWCP at the time of its final decision,⁹ it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision. As the Board’s decisions are final as to the subject matter appealed,¹⁰ it is crucial that all evidence relevant to that subject matter which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed.¹¹

⁶ 5 U.S.C. § 8129(b).

⁷ See *Robert W. O’Brien*, 36 ECAB 541, 547 (1985).

⁸ *Tammy Craven*, 57 ECAB 689 (2006).

⁹ See 20 C.F.R. § 501.2(c).

¹⁰ *Id.* at § 501.6(c).

¹¹ See *William A. Couch*, 41 ECAB 548, 553 (1990).

The Board, therefore, must set aside OWCP's December 13, 2016 decision and remand the case so that OWCP may fully consider the evidence that was properly submitted by appellant prior to the issuance of this decision, regarding the issue of waiver of recovery of the overpayment.¹² Following such further consideration and after such further development as it deems necessary, OWCP shall issue a *de novo* decision.¹³

CONCLUSION

The Board finds that appellant received a \$1,624.80 overpayment of compensation for the period September 30 through October 15, 2016. The Board further finds that this case is not in posture for decision regarding waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the December 13, 2016 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. This case is remanded to OWCP for further proceedings consistent with this decision.

Issued: August 9, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹² *M.P.*, Docket No. 16-1325 (issued November 2, 2016).

¹³ *J.B.*, Docket No. 11-2005 (issued July 23, 2012).