

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

E.S., Appellant

and

**DEPARTMENT OF THE AIR FORCE, TRAVIS
AIR FORCE BASE, CA, Employer**

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**Docket No. 17-1041
Issued: December 27, 2017**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 13, 2017 appellant filed a timely appeal from a December 7, 2016 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.

ISSUES

The issues are: (1) whether OWCP properly found an overpayment of \$3,168.84 was created due to incorrect payment of travel reimbursements; and (2) whether it properly found appellant was at fault in creating the overpayment and was therefore not entitled to waiver of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

Appellant filed an occupational disease claim (Form CA-2) alleging that on July 31, 1992 she sustained an emotional condition causally related to factors of her federal employment. OWCP initially denied her claim on March 3, 1993 as she had not established a compensable factor of employment. After several requests for reconsideration, following which OWCP denied modification, appellant filed an appeal with the Board. By decision dated April 3, 1997, the Board remanded the case to OWCP, finding that she had substantiated compensable work factors with respect to unwarranted sexually explicit comments made by a coworker. The Board found that the medical evidence of record was sufficient to require further development.

On May 30, 1997 OWCP accepted the claim for dysthymic disorder. The record does not indicate whether appellant received wage-loss compensation. OWCP did pay for medical treatment related to the accepted condition. The record contains a bill pay history that shows payments to Dr. John Brandes, a psychologist.

In a memorandum of telephone call (Form CA-110) dated February 25, 2016, OWCP indicated that appellant had requested reimbursement for travel to/from medical providers from 2000 to 2014. It further indicated that she was advised that bills for travel must be submitted by December 31 of the year after the travel was incurred. Appellant was advised to submit Form 957 with medical evidence confirming the dates of appointment.³ By letter dated March 21, 2016, she wrote that she had done everything OWCP had asked and wanted to get paid for mileage.

OWCP made part of the record a "Bill Pay History Report" which documented individual payments made to appellant for dates of service from January 1, 2000 through April 18, 2016. Duplicative payments on the same date of service were not noted.

The record also contains "bill status response" lists which indicate that OWCP denied "private transportation claims" for specific dates. By letter dated April 20, 2016, OWCP advised appellant that she was being reimbursed for medical travel after January 6, 2014. As to dates from March 2, 2001 to January 5, 2014, it found that further evidence was required.

On May 17, 2016 a fiscal document was made part of the record which substantiated the amount of travel reimbursement paid on dates from January 6, 2014 to June 1, 2015 for duplicate and triplicate units of travel. The total amount of the overpayment due to the duplicative payments was totaled to be \$3,168.84.

By letter dated May 17, 2016, OWCP advised appellant of a preliminary determination that a \$3,168.84 overpayment of compensation had been created. It included a list of duplicative

² Docket No. 95-0332 (issued April 3, 1997).

³ The record does not contain forms requesting travel mileage reimbursement.

payments for travel made for 68 specific dates from January 6, 2014 to December 7, 2015. OWCP indicated that the proper distance between appellant's home and Dr. Brandes was 19 miles, or 38 miles round trip. The payments indicated that some of the duplicative payments had been for 77 miles, as appellant had improperly exaggerated the claimed mileage. As to fault, OWCP found that appellant was at fault in creating the overpayment. According to OWCP, the travel refund request form (Form 957) included a certification clause that the information provided was true to the best of the claimant's knowledge. It found that appellant had accepted payments she knew were incorrect.

Appellant submitted a letter dated May 25, 2016, asserting that she was mentally disabled and she needed additional information from OWCP. She requested information regarding the amount of money OWCP had paid for travel reimbursement, and the dates of the payments. According to appellant, she did not receive an overpayment recovery questionnaire and she needed a 90-day extension to submit further information.

In a letter dated May 31, 2016, OWCP indicated that it was resending the overpayment recovery questionnaire (OWCP-20) form and appellant should respond within 14 days. Appellant responded in a June 2, 2016 letter that she wanted information as to the money she received from OWCP for travel in 2014 through 2016. A June 3, 2016 CA-110 OWCP memorandum of telephone call indicated that appellant had asserted that she was confused, and it was explained to her why she was overpaid. By letter dated June 6, 2016, appellant asked for additional explanation regarding the standards for a finding of fault.

On June 23, 2016 appellant requested a prerecoupment hearing before an OWCP hearing representative and submitted an OWCP-20 form. In a June 16, 2016 letter, she wrote that she was told by OWCP that she had to submit a "box of papers" with the dates she saw her psychologist. Appellant asserted that on the "second box" she made a mistake as to the distance and she alerted OWCP on October 15, 2015.

In a letter dated June 30, 2016, appellant wrote that she disagreed that an overpayment occurred and disagreed with the amount. She argued that she was owed money by OWCP as they had not paid travel expenses for many years. Appellant also argued that she was not at fault, as she had provided everything to OWCP. She wrote that she had explained why she had not timely submitted travel refund requests from 2000 to 2014. Appellant also submitted a December 3, 2015 report from Dr. Brandes. In the December 3, 2015 report, Dr. Brandes opined that appellant was psychologically unable to make the effort to bill for transportation to his office.

A hearing was held on October 12, 2016. At the hearing appellant stated that her disability had caused her to be confused as to the mileage. After the hearing she submitted additional financial information.

By decision dated December 7, 2016, the hearing representative finalized the determination that an overpayment in the amount of \$3,168.84 had been created. He also denied waiver, finding that appellant was at fault in creating the overpayment. According to the hearing representative, appellant should have known that she was being overpaid.

LEGAL PRECEDENT -- ISSUE 1

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree of the period of disability, or aid in lessening the amount of monthly compensation.⁴

With respect to travel expenses for medical treatment, the regulations provide:

“(a) The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what a reasonable distance to travel is, OWCP will consider the availability of services, the employee’s condition, and the means of transportation. Generally, a round[-]trip distance of up to 100 miles is considered a reasonable distance to travel. Travel taken by the shortest route, and if practical, by public conveyance. If the medical evidence shows that the employee is unable to use these means of transportation, OWCP may authorize travel by taxi or special conveyance.”⁵

In interpreting this section, the Board has recognized that OWCP has broad discretion in approving services provided under FECA. The only limitation on OWCP’s authority is that of reasonableness.⁶ An overpayment occurs if OWCP reimburses a claimant in excess of the actual mileage necessary for medical treatment.⁷

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision as to whether appellant received an overpayment of compensation in the amount of \$3,168.84 due to incorrect payment of travel reimbursements.

OWCP paid appellant for travel to her psychologist based on the submission of OWCP travel reimbursement forms (Form 957).

In determining that an overpayment occurred and the amount of overpayment, OWCP indicated that 68 specific payments were made in error from January 6, 2014 to December 7, 2015 for appellant’s travel to Dr. Brandes’ office. It related that the overpayment occurred because appellant improperly submitted duplicative travel reimbursement requests and requested reimbursement for an incorrect mileage of 77 miles.

⁴ 5 U.S.C. § 8103.

⁵ 20 C.F.R. § 10.315(a).

⁶ A.O., Docket No. 08-0580 (issued January 28, 2009).

⁷ See R.G., Docket No. 15-0144 (issued July 27, 2016).

The evidence of record however does not include the 957 forms appellant submitted to OWCP to request travel reimbursements. The Board, therefore, cannot verify that appellant submitted duplicate requests for reimbursement and that appellant requested that she be paid for incorrect mileage.

It is particularly important to be able to review these forms because OWCP subsequently issued a decision finding that appellant received an overpayment of compensation for which she was at fault in creating. OWCP found that her signature on each OWCP-957 form certified that any information she provided was true and correct and that she could be subjected to civil penalties and/or criminal prosecution for knowingly making any false statement or misrepresentation to obtain reimbursement.⁸

The Board also notes that the bill pay history report which documents payments to appellant from January 1, 2000 through April 19, 2016 does not appear to document duplicate payments of the same date to appellant. As such, the Board finds that the documentation of record is insufficient to determine fact or amount of the overpayment appellant allegedly received during the period January 6, 2014 through December 7, 2015 for travel reimbursements.

It is not clear when appellant submitted specific travel refund forms, what the forms provided, or other relevant information. If the erroneous payments were first issued on December 24, 2015, the record must establish that at that time she accepted payments she knew or should have known were incorrect.⁹ It is not clear from the record what specifically appellant had submitted and what information had been provided to her regarding travel reimbursement.

The Board finds, therefore, that OWCP has not established that the mileage reimbursement claimed by appellant was incorrect. The Board will set aside the December 17, 2016 OWCP decision and remand the case to OWCP for reconstruction of the record, including obtaining the OWCP 957 forms completed and signed by appellant for the claimed reimbursement periods. Following reconstruction of the record, OWCP shall issue a *de novo* decision regarding the issues of fact and amount of overpayment.¹⁰

CONCLUSION

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

⁸ See C.S, Docket No. 14-1377 (issued June 23, 2015).

⁹ 20 C.F.R. § 10.320(b).

¹⁰ In light of the Board's disposition with regard to issue 1, issue 2 is premature.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 7, 2016 is set aside and the case is remanded for further action consistent with this decision of the Board.¹¹

Issued: December 27, 2017
Washington, DC

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

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

¹¹ Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.