

which arose on or about September 1, 2012. OWCP also accepted that he experienced a recurrence of disability beginning September 29, 2014. Appellant received wage-loss compensation for temporary total disability. OWCP placed him on the periodic compensation rolls, effective December 14, 2014.

On March 23, 2015 appellant advised OWCP that he planned to return to full-time regular duty, effective March 28, 2015. On March 30, 2015 the employing establishment confirmed (Form CA-3) that he resumed his full-time regular duties on March 28, 2015. OWCP subsequently removed appellant from the periodic compensation rolls.

On April 4, 2015 OWCP paid appellant net compensation in the amount of \$1,496.78 for the 28-day period of March 8 through April 4, 2015. The payment was disbursed *via* electronic funds transfer (EFT/direct deposit). On that same date, OWCP disbursed an additional \$1,181.48 (EFT) for appellant's child support obligation.

On May 20, 2015 OWCP notified appellant of its preliminary determination that he received an overpayment of compensation in the amount of \$765.22 for the period March 28 through April 4, 2015. It explained that the overpayment occurred because he received wage-loss compensation for temporary total disability following his March 28, 2015 return to full-time work. Appellant was entitled to wage-loss compensation for only 20 of the 28 days covered by the April 4, 2015 periodic rolls payment.² OWCP also advised of its preliminary determination that he was not at fault in creating the overpayment. The May 20, 2015 preliminary determination advised appellant of his appeal rights. OWCP instructed him to complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation.

On May 27, 2015 appellant requested a prerecoumment hearing, which was scheduled for February 18, 2016. He submitted his May 27, 2015 Form OWCP-20 overpayment recovery questionnaire wherein he reported total monthly income of \$4,845.09 and total monthly expenses of \$4,133.00, which included child support. In part 3 of the form -- without fault statement -- appellant noted that "[t]he overpayment was an error of OWCP not me. It shouldn't have to be my problem now." He did not submit any financial documentation to support his reported monthly income and expenses.

Appellant did not participate in the scheduled prerecoumment hearing, therefore, the Branch of Hearings and Review treated his request as a review of the written record.

By decision dated May 4, 2016, the hearing representative found that appellant received an overpayment of compensation in the amount of \$765.22 for the period March 28 to April 4, 2015. She also determined that he was not at fault in the creation of the overpayment. Additionally, the hearing representative denied waiver of recovery of the overpayment, noting that appellant failed to provide any documentation supporting his claimed expenses.

² Of the total funds (\$2,678.26) disbursed on April 4, 2015, appellant's was only entitled to receive \$1,913.04 ($\$2,678.26 \div 28 \text{ days} = \$95.65 \text{ per day} \times 20 \text{ days}$), which represented an overpayment of compensation in the amount of \$765.22.

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.³

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.⁴ 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.⁵

A claimant is not entitled to receive temporary total disability and actual earnings for the same period.⁶ OWCP procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$765.22. The record supports, and appellant has not disputed, that he returned to full-time work on March 28, 2015, but continued to receive wage-loss compensation for temporary total disability through April 4, 2015. When an employee returns to work and ceases to have any loss of wages, he is no longer entitled to compensation for wage loss.⁸ Appellant does not dispute the amount of the overpayment, but rather argues that "[t]he overpayment was an error of OWCP not me. It shouldn't have to be my problem now." As he has not disputed the amount of the overpayment and he returned to work on March 28, 2015, appellant was not entitled to disability compensation for the eight-day period following his return to work. Accordingly, OWCP properly found an overpayment of compensation in the amount of \$765.22.

The Board will affirm the hearing representative's May 4, 2016 finding regarding the fact and amount of the overpayment. Additionally, the Board will not disturb the hearing representative's finding that appellant was not at fault in creating the above-noted overpayment.

³ 5 U.S.C. § 8102.

⁴ *Id.* at § 8116(a).

⁵ 20 C.F.R. § 10.500(a).

⁶ *See R.W.*, Docket No. 13-1285 (issued November 13, 2013).

⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2a (May 2004).

⁸ *See Kenneth E. Rush*, 51 ECAB 116 (1999).

LEGAL PRECEDENT -- ISSUE 2

The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.⁹ These statutory guidelines are found in section 8129(b) of FECA which states: 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 when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.¹⁰ When a claimant is found to be without fault in the matter of the overpayment, then, in accordance with section 8129(b), OWCP may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of FECA nor be against equity and good conscience.¹¹

Section 10.438 of OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary. Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.¹²

ANALYSIS -- ISSUE 2

Appellant failed to provide any financial information within the appropriate time period to show that he was entitled to waiver of recovery of the overpayment of compensation. The Board notes that he merely filled in his income and expenses, but did not provide any documentation to support his reported financial situation. Because appellant did not comply with section 10.438 of OWCP's regulations, he is not entitled to waiver of recovery of the \$765.22 overpayment of compensation.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$765.22. The Board also finds that OWCP properly denied waiver of recovery of the overpayment.

⁹ See *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁰ 5 U.S.C. § 8129(b).

¹¹ *M.G.*, Docket No. 14-1917 (issued January 22, 2015).

¹² 20 C.F.R. § 10.438.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 2017
Washington, DC

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

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

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