

FACTUAL HISTORY

On September 7, 2006 appellant, then a 56-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on September 2, 2006 she sustained injuries when while in the performance of duty she fell down steps. OWCP accepted bilateral contusions of her shoulders and upper arms, left leg abrasion, abrasions of other multiple sites, closed fracture alveolar border of body, and headaches. Appellant received compensation benefits on the supplemental rolls from October 29, 2006.

Appellant returned to work as a telemetry health technician on April 13, 2008. By decision dated July 31, 2008, OWCP found her actual earnings represented her wage-earning capacity. Appellant's compensation was reduced to reflect her wage-earning capacity.

By letter dated May 31, 2013, the employing establishment indicated that appellant had retired from federal employment on December 15, 2012. The record indicates that she periodically submitted EN1032 reports regarding receipt of other federal benefits. In an EN1032 dated June 22, 2013, appellant indicated that she received Office of Personnel Management (OPM) retirement benefits. Appellant also wrote that she currently received Social Security Administration (SSA) retirement benefits, noting that she retired when she reached 62½ years of age.

OWCP sent appellant a letter dated July 11, 2013, informing her that if she was receiving OPM disability retirement benefits, she should notify OWCP of the date the annuity began. It indicated that if appellant was receiving compensation benefits, receipt of OPM benefits would be a prohibited dual benefit. In addition, OWCP requested a copy of her SSA award letter.

Appellant responded on July 19, 2013, writing that she was receiving a small amount of "regular" retirement, and a little more from SSA. She indicated that she did retire earlier than planned due to her headaches. The record indicates that appellant submitted EN1032 forms on June 20, 2014 and June 22, 2015. Appellant indicated on both forms that she was receiving OPM and SSA benefits.

By letter dated June 23, 2016, OWCP advised appellant of a preliminary determination of an overpayment in the amount of \$4,231.61 because she had received OPM retirement benefits since December 15, 2012 while on the periodic rolls receiving compensation based on a loss of wage-earning capacity. As to the calculation of the amount of the overpayment, it noted that there were 1,261 calendar days and provided payment amounts for each year listed. OWCP also made a preliminary determination that appellant was at fault in creating the overpayment, as she knowingly accepted compensation that was erroneous.

On July 18, 2016 appellant submitted evidence that included an OWCP-20 overpayment recovery questionnaire and financial documents.

By decision dated August 22, 2016, OWCP finalized its preliminary determination of an overpayment of compensation in the amount of \$4,231.61. It also denied waiver of recovery of the overpayment, finding appellant had accepted payments she knew or should have known to be incorrect.

LEGAL PRECEDENT -- ISSUE 1

5 U.S.C. § 8116 defines the limitations on the right to receive compensation benefits. Section 8116(a) provides that, while an employee is receiving workers' compensation benefits, he or she may not receive salary, pay, or remuneration of any type from the United States, except in return for services actually performed or for certain payments related to service in the Armed Forces, including benefits administered by the Department of Veterans Affairs, unless such benefits are payable for the same injury or the same death being compensated for under FECA.

Section 10.421(a) of OWCP's implementing regulations provides that a claimant may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.

When a claimant is entitled to disability benefits under FECA and annuity benefits from OPM under either Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS), the employee must make an election of benefits.² The employee has the right to elect the monetary benefits that are most advantageous.³ The election, once made, is revocable.⁴ Concurrent wage-loss compensation and OPM benefits constitute a prohibited dual benefit.⁵

ANALYSIS -- ISSUES 1 & 2

The Board finds that OWCP failed to make proper findings in its June 23, 2016 preliminary determination and August 22, 2016 final decision with respect to the overpayment issues in this case.

As to fact of overpayment, OWCP briefly refers to the receipt of OPM benefits since December 15, 2012. The record indicated that appellant retired from federal employment as of December 15, 2012. There is no indication that OWCP contacted OPM to confirm when appellant began receiving benefits and the amount of such benefits. There is also no evidence in the record with respect to appellant's election of OPM benefits or other relevant information. It is well established that there must be evidence from OPM as to the amount and period of OPM benefits issued to a claimant.⁶ Appellant had also reported that she received SSA benefits, but no findings were made in this regard.

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4a (February 1995).

³ *Id.*

⁴ 20 C.F.R. § 10.421(a).

⁵ *Supra* note 6.

⁶ *See D.O.* Docket No. 15-1004 (issued July 28, 2015) (Board remanded as there was no documentation from OPM regarding benefits received); *D.R.*, Docket No. 13-1531 (issued October 21, 2013); *see also R.A.*, Docket No. 16-0467 (issued May 23, 2016) (hearing representative had remanded the case as there was no documentation from OPM concerning benefits received). *Cf. A.M.*, Docket No. 16-1260 (issued November 7, 2016) (evidence of record confirmed election of OPM benefits, the period and amounts received); *H.T.*, Docket No. 16-0482 (issued July 14, 2016).

In addition, there is no explanation in the preliminary or final determination as to how the amount of an overpayment was calculated -- OWCP simply lists numbers with no explanation as to how the numbers were determined. It did not provide a clearly written statement explaining how the overpayment was calculated such that appellant could determine that the calculation was correct.⁷

The Board further notes that there is no reference to FECA or other authority to provide the foundation for the finding that appellant had received an improper dual benefit. The June 23, 2016 preliminary determination cites only the regulations with respect to fault, and the final decision provides no citations.

As to fault, OWCP finds appellant accepted payments she should have known were incorrect, with little explanation. It did not refer to specific payments or explain how she would have or should have known they were incorrect.⁸

It is a well-established principle that OWCP must make proper findings of fact and a statement of reasons in its final decisions.⁹ The August 22, 2016 OWCP decision did not meet this standard. OWCP did not identify the proper statutory or regulatory authority, did not properly develop the record, or make clear findings on the overpayment issues presented. The case will be remanded to OWCP for further development. After proper further development of the evidence, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds the case is not in posture for decision.

⁷ See *J.H.*, Docket No. 14-1584 (issued October 5, 2016).

⁸ See *James M. Devine*, Docket No. 05-0438 (issued May 6, 2005).

⁹ See *Arietta K. Cooper*, 5 ECAB 11 (1952); 20 C.F.R. § 10.126.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 22, 2016 is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: June 7, 2017
Washington, DC

Godfrey, Chief Judge
Compensation Appeals Board

Christopher J.
Employees'

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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