United States Department of Labor
Employees' Compensation Appeals Board

L.J., Appellant)	
)	
and)	**Docket No. 17-1591**
)	**Issued: November 16, 2017**
U.S. POSTAL SERVICE, MOUNT HOOD)	
DELIVERY DISTRIBUTION CENTER,)	
Portland, OR, Employer)	
)	

Appearances: *Case Submitted on the Record*
Appellant, pro se
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 30, 2017 appellant filed a timely appeal from a May 15, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 determined that appellant received an overpayment of compensation in the amount of $1,152.59 for the period May 29 to June 25, 2016; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

On appeal appellant disagrees with OWCP's overpayment determination, contending that he did not receive all the money owed to him.

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[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 15, 2015 appellant, then a 52-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that he sustained left shoulder, left elbow, and left hand injuries on that day at work. He claimed that he was moving a full general purpose mail container (rom a loading area when he was hit in the left arm by two general purpose mail containers. Appellant stopped work on the date of injury. On December 7, 2015 OWCP accepted the claim for unspecified sprain of the left shoulder joint, initial encounter and paid temporary total disability compensation as of December 5, 2015.

Appellant returned to part-time, limited-duty work on January 28, 2016. He received supplemental rolls payments for partial disability from January 23 to April 30, 2016. Appellant's physician placed appellant off of work from May 1 through 31, 2016. OWCP began paying him compensation for total disability on the supplemental rolls.

On June 20, 2016 OWCP placed appellant on the periodic rolls and paid him retroactively temporary total disability compensation in the amount of $3,019.26 for the period May 29 to June 25, 2016 as the employing establishment had verified that no work hours were available.

The employing establishment, on June 24, 2016, informed OWCP that appellant had returned to full-time, limited-duty work (including overtime) on June 16, 2016.

On July 13, 2016 OWCP accepted appellant's claim for unspecified sprain of the left shoulder joint, subsequent encounter; injury of the brachial plexus, subsequent encounter; and impingement of the left shoulder.

By letter dated April 10, 2017, OWCP advised appellant of its preliminary determination that he received a $1,152.59 overpayment of compensation for the period May 29 to June 25, 2016 because he continued to receive total disability compensation after his return to full-time limited-duty work on June 16 through 25, 2016.[2] It also made a preliminary finding that he was not at fault in creating the overpayment because he was not aware nor could he have been reasonably expected to know that it had incorrectly paid compensation. OWCP advised appellant that he could submit evidence challenging the fact, amount, or finding of fault and request waiver of recovery of the overpayment. Additionally, it informed him that, within 30 days, he could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents. Appellant did not respond.[3]

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[2] OWCP explained that appellant received a net compensation payment of $3,019.26 from May 29 to June 25, 2016, but should have only received a net payment of $1,866.67. The difference between the two amounts was $1,152.59, the amount of the overpayment. The record also contains an OWCP worksheet and payment records documenting the payment at issue.

[3] On April 4, 2017 OWCP denied appellant's claim for disability compensation beginning December 29, 2016. Appellant appealed this decision to the Board on April 13, 2017. This issue was addressed by the Board under Docket No. 17-1048 (issued October 27, 2017).

In a May 15, 2017 decision, OWCP finalized its preliminary determination that an overpayment of compensation was created in the amount of $1,152.59 for the period May 29 through June 25, 2016. It also denied waiver of recovery of the overpayment, noting that appellant did not submit the requested financial information.

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.[4] 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.[5] A claimant is only entitled to receive wage-loss compensation due to disability for those periods during which his or her work-related medical condition prevents him or her from earning the wages earned before the work-related injury.[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 $1,152.59 for the period May 29 through June 25, 2016.

In the present case, appellant began receiving wage-loss compensation for total disability as of December 5, 2015. Following his return to part-time, limited-duty work, OWCP paid him wage-loss benefits for partial disability on the supplemental payment rolls from January 23 to April 30, 2016. After appellant's physician took him off work, it paid him wage-loss compensation for total disability. OWCP subsequently placed him on the periodic compensation rolls and paid retroactive wage-loss compensation payment for the period May 29 to June 25, 2016. The record indicates, however, that appellant had returned to full-time, limited-duty work including overtime on June 16, 2016. Appellant does not contest that he returned to full-time 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.[8] Therefore, an overpayment of compensation was created in this case.

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[4] 5 U.S.C. § 8102.

[5] *Id.* at § 8116(a).

[6] 20 C.F.R. § 10.500.

[7] *Danny E. Haley,* 56 ECAB 393 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Action*, Chapter 6.200.2(a) (May 2004).

[8] *Supra* note 6.

The amount of the overpayment was calculated to be $1,152.59. OWCP explained that appellant received net compensation of $3,019.26 from May 29 to June 25, 2016, but should have only received a net payment of $1,866.67 due to his return to full-time work on June 16, 2016. The difference between the two net amounts was $1,152.59, the amount of the overpayment. No contrary evidence was submitted. The Board accordingly finds that OWCP properly found an overpayment of compensation in the amount of $1,152.59 was created during the period May 29 to June 25, 2016.

On appeal appellant disagrees with OWCP's overpayment decision, contending that he did not receive all the money owed to him. However, he has not submitted any evidence to establish his contention that he received less than the amount to which he claims he was entitled during the period at issue.

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 provides: "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] If OWCP finds a claimant to be without fault in the matter of an 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.

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her income (including compensation benefits) to meet current ordinary and necessary living expenses and also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.[11] According to 20 C.F.R. § 10.437, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.[12] To establish that a valuable right has been relinquished it must be shown that the

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

[10] 5 U.S.C. § 8129(b).

[11] 20 C.F.R. § 10.436. An individual is deemed to need substantially all of her monthly income to meet current and ordinary living expenses if monthly income does not exceed monthly expenses by more than $50.00. *Desiderio Martinez,* 55 ECAB 245 (2004). OWCP procedures provide that assets must not exceed a resource base of $4,800.00 for an individual or $8,000.00 for an individual with a spouse or dependent plus $960.00 for each additional dependent. *Supra* note 7 at Chapter 6.200.6(a) (June 2009).

[12] *Id.* at § 10.437(a), (b).

right was in fact valuable, that it cannot be regained, and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.[13]

Section 10.438 of OWCP 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.[14]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation.[15]

As appellant was found to be without fault in the creation of the overpayment in compensation, waiver must therefore be considered. Repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

In its preliminary notice of overpayment dated April 10, 2017, OWCP requested that appellant provide a completed OWCP-20 form overpayment recovery questionnaire and supporting financial information. Appellant failed to submit the completed overpayment recovery questionnaire with supporting financial information. Further, he made no argument that he gave up a valuable right or changed his position for the worse in reliance on the overpaid compensation prior to the issuance of OWCP's May 15, 2017 decision. Thus, the evidence before OWCP was insufficient to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity or good conscience.[16] Accordingly, as required by section 10.438 of its regulations, appellant was not entitled to a waiver.[17] The Board finds therefore that OWCP properly denied waiver of recovery of the $1,152.59 overpayment of compensation.[18]

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[13] *Id.* at § 10.437(b)(1).

[14] *Id.* at § 10.438.

[15] *R.H.,* Docket No. 15-0392 (issued February 3, 2016).

[16] 20 C.F.R. § 10.438(a) (in requesting waiver, the overpaid individual has the responsibility for providing financial information).

[17] *J.V.,* Docket No. 15-0140 (issued November 25, 2015).

[18] *B.T.,* Docket No. 14-1669 (issued December 28, 2015); *M.S.,* Docket No. 11-0096 (issued August 17, 2011).

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of $1,152.59 for the period May 29 to June 25, 2016. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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