

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

T.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Phoenix, AZ, Employer**

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**Docket No. 17-1989
Issued: June 5, 2018**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 25, 2017 appellant filed a timely appeal from a September 6, 2017 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 appellant received an overpayment of compensation in the amount of \$2,405.30 for the period December 12, 2015 through June 25, 2016 because OWCP failed to deduct health benefit and life insurance premiums, for which appellant was not at fault; (2) whether OWCP abused its discretion by denying waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$150.00 every 28 days from appellant's continuing compensation.

¹ 5 U.S.C. § 8101 *et seq.*

On appeal appellant does not contest the fact or amount of the overpayment. Rather, he contends that he should not be obligated to pay interest as OWCP unreasonably delayed payment of his compensation benefits for six months, which created significant financial hardship.

FACTUAL HISTORY

On October 28, 2015 appellant, then a 52-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that he was involved in a work-related motor vehicle accident when his delivery vehicle was struck by a car on October 27, 2015, causing multiple injuries. He stopped work on October 27, 2015.

OWCP accepted the claim, assigned OWCP File No. xxxxxx648, for bilateral rotator cuff tears,² and fractures of the C5 and C6 vertebrae.³ It placed appellant's case on the periodic rolls effective June 26, 2016.

Appellant had a prior claim accepted under OWCP File No. xxxxxx606 for a lumbar sprain, displacement of lumbar disc, and lumbosacral disc degeneration sustained on December 16, 2008. In a July 5, 2016 letter, the employing establishment noted that prior to OWCP's acceptance of appellant's claim under File No. xxxxxx648, appellant was paid wage-loss compensation on the periodic compensation rolls under File No. xxxxxx606 for two hours a day. Appellant would be paid the remaining six hours a day of compensation under File No. xxxxxx648. He had used leave from December 26, 2015 through February 5, 2016.

In a July 14, 2016 initial payment memorandum, OWCP noted that the employing establishment confirmed that as of February 23, 2016, appellant earned \$60,520.00 a year, or \$1,163.85 a week. Appellant was enrolled in a federal employee health benefits (HB) plan, basic life insurance (BLI), and optional life insurance (OLI).

On August 3, 2016 OWCP administratively combined OWCP File Nos. xxxxxx606 and xxxxxx648, with File No. xxxxxx606 serving as the master file. Appellant remained off work.

In an August 8, 2016 telephone memorandum (Form CA-110), OWCP confirmed that HB, BLI, and OLI deductions had been stopped on December 11, 2015.

In an August 8, 2016 file memorandum, OWCP calculated that from December 12, 2015 through June 25, 2016, it had paid appellant \$4,874.23 in wage-loss compensation under OWCP File No. xxxxxx606. However, failed to deduct HB premiums in the amount of \$1,887.68, and BLI and OLI premiums in the amount of \$517.62 for the period December 12, 2015 to June 25, 2016, totaling \$2,405.30.

By notice dated November 2, 2016, OWCP advised appellant of its preliminary determination that he had received an overpayment of compensation in the amount of \$2,405.30

² On July 5, 2015 appellant underwent authorized left rotator cuff repair. On April 7, 2016 he underwent a C5-6 anterior discectomy and fusion. Appellant underwent authorized right rotator cuff repair on February 24, 2017.

³ OWCP initially denied the claim by decision dated December 23, 2015 as fact of injury was not established. Following additional development, it accepted the claim on June 23, 2016.

because failed to deduct health or life insurance premiums for the period December 12, 2015 to June 25, 2016. It provided a calculation of the overpayment, noting that appellant was without fault in its creation. OWCP requested that appellant provide information regarding his income, assets, and expenses on an enclosed Overpayment Recovery Questionnaire (Form OWCP-20) within 30 days, or indicate if he contested that an overpayment occurred.

Appellant responded by an overpayment action request dated November 28, 2016, postmarked November 29, 2016, in which he requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. He contended that OWCP should waive recovery of the overpayment as OWCP delayed paying his wage-loss compensation until June 2016.

During the hearing, conducted on June 19, 2017, appellant acknowledged the fact and amount of the overpayment and expressed his willingness to repay the debt. In a July 18, 2017 letter, he contended that he was not at fault in creation of the overpayment. Appellant asserted that he was unwilling to divulge the requested information regarding his income, assets, and expenses, as this had "no bearing on the case." He submitted an incomplete Overpayment Recovery Questionnaire (Form OWCP-20). Appellant provided no financial information.

In an August 31, 2017 memorandum, OWCP determined that no compromise of principal was necessary.

By decision dated September 6, 2017, OWCP's hearing representative finalized that appellant had received a \$2,405.30 overpayment of compensation for the period December 12, 2015 to June 25, 2016 as OWCP failed to deduct health and life insurance premiums. Appellant was not at fault in creation of the overpayment. However, he failed to provide the requested financial information. The hearing representative found that as appellant was paid \$3,103.28 in compensation every 28 days, he was able to repay the overpaid compensation at the rate of \$150.00 a month from his continuing compensation payments, and that this rate of recovery would not defeat the purpose of FECA or be against equity and good conscience.

LEGAL PRECEDENT -- ISSUE 1

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.⁴ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁵

An employee entitled to disability compensation may continue his or her health benefits under the Federal Employees Health Benefits program. The regulation of OPM, which administers the Federal Employees Health Benefits program, provides guidelines for the registration,

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8129(a).

enrollment, and continuation of enrollment for federal employees. In this connection, 5 C.F.R. § 890.502(a)(1) provides:

“An employee or annuitant is responsible for payment of the employee’s share of the cost of enrollment for every pay period during which the enrollment continues. In each pay period for which health benefits withholdings or direct premium payments are not made, but during which the enrollment of an employee or annuitant continues, he or she incurs an indebtedness to the United States in the amount of the proper employee withholding required for that pay period.”⁶

In addition, 5 C.F.R. § 890.502(c) provides:

“An establishment that withholds less than or none of the proper health benefits contributions for an individual’s pay, annuity or compensation must submit an amount equal to the sum of the uncollected deductions and any applicable establishment contributions required under section 8906 of the title, 5 United States Code, to OPM for deposit in the Employee’s Health Benefits Fund.”⁷

Under applicable OPM regulations, the employee or annuitant is responsible for payment of the employee’s share of the cost of enrollment.⁸ An establishment that withholds less than the proper health benefits contribution must submit an amount equal to the sum of the uncollected deductions.⁹ The Board has recognized that, when an underwithholding of health insurance premiums is discovered, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM when the error is discovered.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$2,405.30 for the period December 12, 2015 through June 25, 2016 because OWCP failed to deduct health benefit and life insurance premiums.

The record establishes that OWCP failed to withhold appellant’s HB, BLI, and OLI insurance premiums for the period December 12, 2015 to June 25, 2016. As previously stated, an overpayment of compensation occurs when an underwithholding of health insurance and life insurance premiums is discovered.¹¹ A fiscal worksheet demonstrated that from December 12, 2015 to June 25, 2016 OWCP failed to deduct a total of \$2,405.30 from appellant’s compensation payments, \$1,887.68 for HB premiums and \$517.62 for BLI and OLI premiums. Accordingly,

⁶ *Id.* at § 890.502(a)(1).

⁷ *Id.* at § 890.502(c).

⁸ *Id.* at § 890.502(b)(1).

⁹ *Id.* at § 890.502(d).

¹⁰ *James Lloyd Otte*, 48 ECAB 334 (1997).

¹¹ *Id.*

OWCP calculated that appellant owed a total of \$2,405.30 in health and life insurance premiums due to the under deduction.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received an overpayment of compensation in the amount of \$2,405.30 for the time 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.¹² 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.¹³ 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.

Section 10.436 of the implementing regulations¹⁴ provide that recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current or ordinary and necessary living expenses; and (b) the beneficiary's assets do not exceed a specified amount as determined by OWCP from data furnished by the Bureau of Labor Statistics.¹⁵ An individual is deemed to need substantially all of his or her income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁶

Section 10.437 provides that 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.¹⁷

¹² See *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹³ 5 U.S.C. § 8129(b).

¹⁴ 20 C.F.R. § 10.436.

¹⁵ OWCP's procedures provide that the 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (June 2009).

¹⁶ *Id.*; see also *Sherry A. Hunt*, 49 ECAB 467, 473 (1998).

¹⁷ 20 C.F.R. § 10.437.

Section 10.438 of the 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 on an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP did not abuse its discretion by denying waiver of recovery of the overpayment.

OWCP found appellant to be without fault in the creation of the overpayment. The issue is whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. In the November 2, 2016 preliminary determination of overpayment, OWCP requested that he submit information regarding his assets, income, and expenses on an enclosed Form OWCP-20. Appellant was notified of the provisions of 20 C.F.R. § 10.438.

On July 18, 2017 appellant submitted an overpayment recovery questionnaire without providing information regarding his income, assets, and expenses. He asserted that he was unwilling to provide the requested financial information as it had “no bearing on the case.”

The Board finds that the hearing representative properly denied waiver of recovery of the overpayment. As appellant submitted no financial information, OWCP did not abuse its discretion in finding that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.¹⁹ Appellant has the responsibility to submit the necessary evidence. Pursuant to 20 C.F.R. § 10.438, OWCP must deny waiver of the overpayment if financial information is not received.²⁰ For this reason, it properly denied waiver in conformance with the implementing federal regulations.

LEGAL PRECEDENT -- ISSUE 3

The Board’s jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.²¹ Section 10.441(a) of the regulations provide:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account

¹⁸ *Id.* at § 10.438.

¹⁹ *See also D.I.*, Docket No. 13-0469 (issued July 1, 2013). *See N.R.*, Docket No. 12-1853 (issued June 10, 2013).

²⁰ *Id.*

²¹ *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship....”²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment through deduction of \$150.00 from appellant’s continuing compensation payments.

The hearing representative found that appellant received FECA compensation benefits on the periodic rolls in the amount of \$3,103.28 every 28 days. Appellant provided no information regarding his income, assets, or expenses. Therefore, OWCP’s hearing representative found that appellant could repay the overpayment at a rate of \$150.00 per month. Based on the evidence, OWCP gave due regard to the relevant factors noted above and did not abuse its discretion in setting the rate of recovery.²³ The Board finds that it properly required recovery of the overpayment by deducting \$150.00 from appellant’s continuing compensation payments.

On appeal appellant acknowledges the fact and amount of the overpayment. He contends that OWCP unreasonably delayed payment of his compensation benefits for six months, creating significant financial hardship that should negate his obligation to pay interest on the overpayment.

OWCP’s procedures provide that interest may be waived or compromised. Regarding waiver of interest, the FECA procedure manual provides:

“Waiver of Interest and Other Charges. There are only three circumstances where charges may be waived. Waiver is mandatory under subparagraphs a. and c. below; it is discretionary under subparagraph b.

a. *If the principal is repaid in full within 30 days* of notification that charges are applicable, then charges are waived. This may be extended for one additional 30-day period (for a total of 60 days) on a case-by-case basis for good cause shown.

b. *If the full amount of the principal is paid after charges have accrued*, and the additional cost of recovering the charges is greater than the amount of the accrued charges, then OWCP may, at its discretion, waive the charges.

c. *Where the debtor is without fault in the creation of the debt* and a repayment agreement has been established, *charges are waived if:*

(1) the monthly payment is so small that it does not cover the interest, or

²² 20 C.F.R. § 10.441(a).

²³ See *M.D.*, Docket No. 11-1751 (issued May 7, 2012).

(2) there is so little left after interest that the debt will not be paid off within the lifetime of the debtor as determined by actuarial tables.”²⁴

Appellant’s argument that OWCP delayed the payment of his compensation does not require waiver of interest pursuant to OWCP’s procedures.

The Board also notes OWCP’s procedures, the compromise of all or part of the overpayment and any charges may be made depending upon the claimant’s financial circumstances in order to set a repayment schedule. Compromise of the principal of the overpayment can be considered if application of the interest charges would extend the period of repayment more than 35 percent. Such a determination is made at the time the repayment schedule is established.²⁵ OWCP considered compromise in its August 31, 2017 memorandum and denied compromise. Compromise is a matter which rests in the discretion of OWCP²⁶ and a compromise order is not subject to review by the Board.²⁷

The Board, therefore, finds that OWCP properly determined appellant’s repayment schedule.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$2,405.30 and that he was not at fault in its creation. The Board further finds that OWCP did not abuse its discretion by denying waiver of recovery of the overpayment. The Board also finds that OWCP properly required recovery of the overpayment by deducting \$150.00 every 28 days from appellant’s continuing compensation.

²⁴ See Federal (FECA) Procedure Manual, *supra* note 15 at Chapter 6.300.4 (May 2004).

²⁵ See Federal (FECA) Procedure Manual, *supra* note 15 at Chapter 6.300.5 (May 2004); see *Jorge E. Diaz*, 53 ECAB 403 (2002).

²⁶ *D.C.*, Docket No. 10-1046 (issued January 19, 2011); *Linda D. Lane*, 46 ECAB 727 (1995).

²⁷ See *R.G.*, Docket No. 15-0144 (issued July 27, 2014). Federal (FECA) Procedure Manual, *supra* note 15 at Chapter 6.300.5 (May 2004).

ORDER

IT IS HEREBY ORDERED THAT the September 6, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 2018
Washington, DC

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

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

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