

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

_____)	
J.L., Appellant)	
)	
and)	Docket No. 18-0212
)	Issued: June 8, 2018
)	
U.S. POSTAL SERVICE, MANAGER)	
COLUMBUS PROCESSING & DISTRIBUTION)	
CENTER, Columbus, OH, Employer)	
_____)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 7, 2017 appellant filed a timely appeal from an October 16, 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.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,374.50 for the period August 21, 2016 through January 7, 2017; (2) whether OWCP properly determined that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment; and (3) whether

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted new evidence on appeal. The Board's jurisdiction is limited to the evidence which was before OWCP at the time it issued its final decision. Thus, the Board is precluded from considering this new evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

OWCP properly required recovery of the overpayment by deducting \$200.00 every 28 days from appellant's continuing compensation payments.

On appeal appellant contends that he was not aware of the overpayment, that it was OWCP who made the mistake, and that OWCP should therefore be held liable for it. He further contends that repayment of the overpayment would cause financial hardship as he has a fixed income, owes back taxes, and his wife is unemployed. Appellant claims that he has to pay household expenses and his wife's bills.

FACTUAL HISTORY

This case has previously been before the Board with respect to a prior overpayment of compensation.³ The facts of the case as presented in the prior Board decision are incorporated herein by reference. The relevant facts are set forth below.

On May 31, 2012 appellant, then a 55-year-old processing clerk, filed an occupational disease claim (Form CA-2) under OWCP File No. xxxxxx201 alleging that he sustained bilateral carpal tunnel syndrome in the performance of his federal employment duties. He stopped work on May 25, 2012 and returned to work on June 4, 2012. On September 5, 2012 OWCP accepted the claim for bilateral carpal tunnel syndrome.

Appellant underwent left carpal tunnel release on February 15, 2013 and right carpal tunnel release on August 2, 2013. Both surgeries were authorized by OWCP. On December 10, 2013 appellant returned to full-time, limited-duty work.⁴

On January 20, 2015 appellant filed a notice of a recurrence (Form CA-2a) alleging that he sustained a recurrence of disability on January 8, 2015 causally related to his accepted employment injury. On February 19, 2015 OWCP informed appellant that it had administratively converted this claim for a recurrence to a claim for a new occupational disease as he described a new injury as a result of performing his regular work duties. The new claim was opened under OWCP File No. xxxxxx781.

By decision dated April 1, 2015, OWCP denied appellant's occupational disease claim, finding that the medical evidence was insufficient to establish a medical condition causally related to the accepted employment factors. By decision dated July 16, 2015, it vacated its April 1, 2015

³ Docket No. 15-0530 (issued July 29, 2015).

⁴ By decision dated December 29, 2014, OWCP found that appellant received an overpayment of compensation in the amount of \$3,156.49 because he had returned to full-time, limited-duty work on December 10, 2013, but received wage-loss compensation for total disability through January 11, 2014. It also found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as his monthly income of \$5,200.00 exceeded his monthly expenses of \$4,775.00 by \$425.00. OWCP directed repayment of the overpayment in the amount of \$150.00 a month. On January 20, 2015 appellant filed a timely appeal of OWCP's December 29, 2014 decision to the Board. By decision dated July 29, 2015, the Board affirmed the December 29, 2014 OWCP overpayment decision. Docket No. 15-0530 (issued July 29, 2015).

decision and accepted the claim for bilateral carpal tunnel syndrome and bilateral ulnar nerve lesion.⁵

OWCP, by letter dated March 6, 2016, expanded the acceptance of appellant's claim to include cubital tunnel syndrome of the right and left upper limbs. It authorized carpal tunnel release of the left upper extremity and ulnar nerve decompression at the left elbow with medial epicondylectomy performed on March 24, 2016. OWCP paid appellant compensation for temporary total disability commencing March 6, 2016 on the periodic rolls.

By letter dated March 17, 2016, OWCP advised appellant of his regular 28-day payment, which reflected his gross earnings of \$3,622.56, less deductions for health benefits totaling \$274.12, less deductions for basic life insurance (BLI) totaling \$17.70, and less deductions for optional life insurance (OLI) totaling \$128.80, for a regular net compensation payment of \$3,201.94, which he received on various dates through August 20, 2016.

By letter dated February 3, 2017, OWCP notified appellant of its preliminary determination that he received a \$2,374.50 overpayment of compensation under File No. xxxxxx201 as it failed to properly deduct health insurance premiums and premiums for BLI and OLI code Y5, from August 21, 2016 through January 7, 2017, following a pay rate conversion between appellant's accepted claims. It determined that it should have deducted \$1,642.00 for health insurance benefits, \$88.50 for BLI, and \$644.00 for OLI code Y5, for the above period. OWCP also informed appellant of its preliminary determination that he was at fault in the creation of the overpayment as he accepted payments which he knew or should have reasonably known were incorrect. It advised him that he could submit evidence challenging the fact, amount, or fault finding and request waiver of recovery of the overpayment. Additionally, OWCP informed appellant that, within 30 days, he could request a telephone conference, a final decision based on the written evidence, or a prerecoumment hearing. It requested that he complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents.⁶

In an overpayment action request signed February 27, 2017, appellant requested a prerecoumment hearing by teleconference. He submitted a completed Form OWCP-20 also dated February 27, 2017. Appellant contended that he was not at fault in creating the overpayment as he was not responsible for processing or making any changes to his account when he received his compensation by direct deposit. He asserted that he just glanced at the amount deposited into his account and carried on with his daily business. Appellant maintained that OWCP was responsible for any changes to his account. He claimed that dealing with all of the forms he had to complete was complicated enough. On the Form OWCP-20, appellant reported total monthly income of \$4,988.00, which included \$3,100.00 in FECA benefits, and \$1,888.00 in Veterans Affairs (VA) benefits. He also reported monthly expenses, which included \$1,388.82 for rent or mortgage

⁵ OWCP administratively combined OWCP File Nos. xxxxxx201 and xxxxxx781, with File No. xxxxxx201 serving as the master File No.

⁶ The record reflects that, while appellant received net compensation in the amount of \$3,201.94 every 28 days prior to August 21, 2016, after August 21, 2016 he received net compensation in the amount of \$3,522.56 every 28 days.

including property tax, \$400.00 for food, \$200.00 for clothing, \$790.00 for utilities, \$200.00 for other expenses, and \$701.00 and \$381.00 for debts with the Kemba Financial Credit Union. Appellant indicated the following assets: \$200.00 in a checking account; and \$5,000.00 for other personal property and other funds for a total of \$5,200.00 in assets. On a separate sheet, he listed additional monthly expenses, which included \$59.00 for Lowes, \$27.00 for BestBuy, \$47.00 for creditor with an illegible name, \$237.00 for T-Mobile, \$147.19 for ATT U-Verse television service, \$20.00 for a Dell computer, \$297.00 for Visa, \$70.00 for gas, \$60.00 for telephone, \$100.00 for dental, \$80.00 for water, \$300.00 for fuel, \$200.00 for automotive expenses, and \$200.00 for personal necessities.

During the prerecoupment hearing held on August 15, 2017, appellant restated his prior contention that the overpayment occurred through no fault of his own. Rather it was OWCP's fault as it was their responsibility to make the correct payments. Appellant explained that he had mistakenly listed monthly expenses of \$790.00 for utilities and then separately listed the amount for these same expenses. He indicated that the \$701.00 and \$381.00 payments to Kemba Credit Union were car payments for two vehicles. Appellant related that \$200.00 a month for automotive expenses was for the upkeep of the vehicles including brakes, oil changes, and other items. He noted that personal necessities were for clothes and things he had to buy to live. Appellant's credit card payments were minimum payments. He advised that his wife earned \$1,300.00 a month.

Following the prerecoupment hearing, appellant, by letter dated September 11, 2017, informed OWCP that, effective November 1, 2017, his wife would be unemployed. He contended that her unemployment would greatly compromise his ability to repay the overpayment as his funds on hand were needed to pay household expenses and other debt incurred by his spouse. Appellant submitted various financial documents.

By decision dated October 16, 2017, an OWCP hearing representative finalized the preliminary determination, finding that appellant received a \$2,374.50 overpayment of compensation for the period August 21, 2016 through January 7, 2017. He also found that appellant was at fault in the creation of the overpayment because he should have reasonably known that his compensation payments were incorrect and, thus, he was not entitled to waiver of recovery of the overpayment. The hearing representative noted appellant's reported monthly expenses, totaling \$5,864.61.⁷ He further noted that during the prerecoupment hearing, appellant indicated that he had made a mistake by listing \$790.00 in utilities expenses and also separately listing the amount for these utilities. The hearing representative subtracted \$790.00 from \$5,074.61 to calculate monthly expenses in the amount of \$4,284.61. He directed repayment of the overpayment by deducting \$200.00 from appellant's continuing compensation.

LEGAL PRECEDENT -- ISSUE 1

Section 8129(a) of 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

⁷ The Board notes that appellant incorrectly calculated a total of \$5,074.61 in monthly expenses. Appellant actually reported \$5,864.61 in monthly expenses. OWCP also incorrectly indicated that he reported \$1,348.42 for rent or mortgage as his February 27, 2017 Form OWCP-20 indicated that he reported \$1,388.82 for this expense.

performance of duty.⁸ 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that fact of overpayment has been established and is not contested. The record reflects that OWCP failed to deduct health insurance and life insurance premium amounts for the period August 21, 2016 through January 7, 2017. An overpayment occurred due to the nondeduction of these health and life insurance premiums. OWCP provided a worksheet explaining how the overpayment was calculated for this time period. It calculated that appellant owed deductions in the amount of \$1,642.00 for health insurance premiums, \$88.50 for BLI premiums, and \$644.00 for OLI premiums for a total of \$2,374.50.

The Board finds that an overpayment of compensation was created in the amount of \$2,374.50 due to underwithholding of health insurance and life insurance premiums.¹⁰

LEGAL PRECEDENT -- ISSUE 2

Under OWCP regulations, waiver of the recovery of an overpayment may be considered only if the individual to whom it was made was not at fault in accepting or creating the overpayment.¹¹ The fact that the overpayment was the result of error by OWCP or another government agency does not by itself relieve the individual who received the overpayment of liability for repayment if the individual also was at fault for receiving the overpayment.¹² Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she received from OWCP are proper. The recipient must show good faith and exercise a high degree of care in reporting events that may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment: (1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) failed to provide information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have known to be incorrect (this provision applies only to the overpaid individual).¹³

With respect to whether an individual is without fault, section 10.433(b) of OWCP regulations provides that whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the

⁸ 5 U.S.C. § 8129.

⁹ 20 C.F.R. §§ 10.434-10.437.

¹⁰ See *J.L.*, Docket No. 16-0778 (issued November 2, 2016); *M.N.*, Docket No. 16-0360 (issued July 5, 2016).

¹¹ 20 C.F.R. § 10.433(a).

¹² *Id.* at § 10.435(a).

¹³ *Id.* at § 433(a); see *Kenneth E. Rush*, 51 ECAB 116 (1999).

overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly determined that appellant was at fault in the creation of the overpayment. According to OWCP's procedures, a claimant is found without fault if the overpayment results from the underwithholding of health or life insurance premiums, unless the claimant had actual knowledge of the calculation error.¹⁵

Before OWCP, appellant contended that he had no way of knowing that he was receiving incorrect payments. By the March 17, 2016 letter, OWCP specifically notified appellant that, after deductions for health insurance premiums in the amount of \$274.12, BLI premiums in the amount of \$17.70, and OLI premiums in the amount of \$128.80, his net compensation check totaled \$3,201.94. Appellant received payments in the amount of \$3,201.94 on various dates through August 20, 2016. OWCP found that appellant should have reasonably known that the increased payments he received after August 21, 2016 were incorrect. While the record reflects that payments covering the period August 21, 2016 through January 7, 2017 increased, there is no documentation of record establishing that appellant had actual knowledge that this increase in his compensation payments was due to OWCP's failure to deduct his health and life insurance premiums.

Under the circumstances of this case, the Board finds the evidence of record on appeal insufficient to establish that appellant actually knew or reasonably should have known that he received an overpayment of compensation for the period August 21, 2016 through January 7, 2017. Consequently, the case will be remanded so that OWCP can consider whether he is entitled to waiver of recovery of the overpayment.¹⁶

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,374.50 for the period August 21, 2016 through January 7, 2017. The Board also finds that he was without fault in the creation of the overpayment and that, consequently, the case must be remanded to OWCP to consider waiver of recovery of the overpayment.¹⁷

¹⁴ *Id.* at § 10.433(b).

¹⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.5(b)(1)(c) (June 2009). *See also P.H.*, Docket No. 13-0642 (issued August 12, 2013).

¹⁶ *Id.*, *see also* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.5(b)(1)(c) (June 2009).

¹⁷ In light of the Board's finding that the case must be remanded for OWCP to consider waiver of recovery of the overpayment, it is premature to address Issue 3.

ORDER

IT IS HEREBY ORDERED THAT the October 16, 2017 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 8, 2018
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