



## **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$289.07 for the period from April 1 through May 27, 2017; and (2) whether OWCP properly found that appellant was at fault in the creation of the overpayment and therefore not entitled to waiver of the recovery of the overpayment.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances as set forth in the prior decision are incorporated herein by reference. The relevant facts are set forth below.

On October 2, 1992 appellant, then a 35-year-old letter sorting machine clerk, filed an occupational disease claim (Form CA-2) alleging an ulnar nerve injury due to factors of her federal employment. On December 8, 1992 OWCP accepted her claim for left ulnar nerve entrapment. Appellant subsequently filed additional claims and on August 23, 1994 OWCP also accepted that she sustained employment-related tendinitis of the right hand.

On November 1, 1998 appellant filed an occupational disease claim alleging that she had developed lateral epicondylitis, noting that she had missed work from October 16 to 21, 1998 due to this condition. She stopped work on June 14, 1999 and did not return. By decision dated August 19, 1999, OWCP accepted appellant's claim for lateral epicondylitis and paid her wage-loss compensation and placed her on the periodic rolls effective March 26, 2000.

On December 31, 2009 OWCP issued an updated letter outlining appellant's entitlement to compensation benefits. It noted that she was entitled to wage-loss compensation every 28 days in the amount of \$123.00.

In a form dated October 21, 2010, appellant enrolled in direct deposit for her compensation payments. OWCP received her enrollment form for direct deposit on the same date.

In a record of a telephone conversation (CA-110) dated September 9, 2016, appellant stated that she was considering selecting retirement benefits from the Office of Personnel Management (OPM) rather than FECA benefits. An OWCP representative noted that he would send her a form for election of benefits.

In a Form CA-1105 dated January 11, 2017, appellant elected to receive Civil Service Retirement System/Federal Employees Retirement System (CSRS/FERS) benefits in preference to benefits to which she may be entitled under FECA for OWCP File No. xxxxxx584, effective April 1, 2017.

On February 23, 2017 OWCP advised OPM that appellant had elected OPM retirement benefits in lieu of wage-loss compensation benefits under FECA for OWCP File No. xxxxxx584. It requested that OPM commence monthly annuity payments, effective April 2, 2017, noting that the date had been adjusted due to the periodic rolls payment ending on April 1, 2017.

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<sup>4</sup> Docket No. 08-1348 (issued July 6, 2009); Docket No. 04-1379 (issued October 29, 2004).

In a letter dated May 5, 2017, an OWCP representative informed appellant that her election of benefits on January 11, 2017 had been received under a different case number, and that OWCP would have to terminate benefits under OWCP File No. xxxxxx004 as well.

By letter dated May 9, 2017, OWCP noted that appellant was entitled to compensation benefits in the amount of \$142.00 for the period from April 2 and 29, 2017. It noted that, while appellant had submitted an election of benefits form under File No. xxxxxx584, OWCP required completion of an election form for each claim under which she was in receipt of wage-loss compensation benefits. OWCP enclosed an election form for appellant to fill out for File No. xxxxxx584.

By letter dated May 18, 2017, OWCP informed the Social Security Administration that, while appellant had four accepted OWCP claims, her sole remaining claim upon which wage-loss compensation was being paid was the present claim, and that an election of benefits form was pending return from appellant.

On May 23, 2017 appellant elected OPM retirement benefits in OWCP File No. xxxxxx004, effective April 1, 2017.

In an overpayment computer worksheet dated June 5, 2017, OWCP noted three compensation payments paid on or subsequent to April 1, 2017, including a payment of \$5.07 on April 1, 2017, for that single day, a payment of \$142.00 on April 29, 2017 for the period from April 2 through 29, 2017, and a payment of \$142.00 on May 27, 2017 for the period from April 30 through May 27, 2017.

A review of appellant's compensation history reveals that OWCP paid appellant \$142.00 on April 1, 2017 for the period from March 5 through April 1, 2017, \$142.00 on April 29, 2017 for the period from April 2 through 29, 2017, and \$142.00 on May 27, 2017 for the period from April 30 through May 27, 2017.

On June 29, 2017 OWCP issued a preliminary determination that an overpayment of compensation was created in the amount of \$289.07 for the period from April 1 through May 27, 2017. It explained that the overpayment occurred because appellant received both FECA benefits and OPM retirement benefits during this period, which resulted in a prohibited dual benefit payment. Appellant was found to be at fault in the creation of the overpayment because she was aware or should have been aware that she was not entitled to FECA compensation subsequent to the effective date of her election of OPM retirement benefits. OWCP provided her an overpayment action request and an overpayment recovery questionnaire (OWCP-20) and afforded her 30 days to respond.

In a completed overpayment action request dated July 20, 2017, appellant contested that an overpayment had occurred, as well as the finding of fault. In an attached letter, she explained that she did not believe the overpayment was her fault, noting that she had submitted her election of benefits and assumed that OWCP would properly administer her benefits. Appellant noted that she had not been aware that she needed to submit a separate election of benefits form for each accepted injury. She further explained that repayment would cause her financial hardship, as she had not yet received retirement benefit payments from OPM.

By decision dated August 23, 2017, OWCP finalized the preliminary overpayment determination finding that appellant was at fault in the receipt of an overpayment of compensation in the amount of \$289.07 and, thus, she was not entitled to waiver of recovery of the overpayment. Repayment was requested in full.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102 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 performance of duty.<sup>5</sup> Section 8116(a) states 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.<sup>6</sup> Section 10.421(a) of OWCP's implementing regulations provides that a beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.<sup>7</sup> The beneficiary must elect the benefit that he or she wishes to receive.<sup>8</sup> OWCP procedures also explain that the employee must make an election between FECA benefits and OPM benefits. The employee has the right to elect the monetary benefit which is the more advantageous. This policy also applies to reemployed annuitants.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation.

OWCP based its overpayment finding on its determination that appellant had received prohibited dual OPM and FECA benefits for the period from April 1 through May 27, 2017. While the record reflects that appellant received FECA benefits for this period, the Board finds that OWCP has not established that she also received OPM benefits for this period.<sup>10</sup>

On May 18, 2017 OWCP notified OPM that appellant's compensation would continue under OWCP File No. xxxxxx004 pending receipt of an election of benefits form from her to receive OPM benefits in lieu of FECA benefits. On May 23, 2017 appellant elected OPM retirement benefits, effective April 1, 2017, for File No. xxxxxx004. However, there is no evidence of record which establishes that she actually received OPM benefits for the period from April 1 through

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Id.* at § 8116(a).

<sup>7</sup> 20 C.F.R. § 10.421(a).

<sup>8</sup> *Id.*

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4.a (January 1997); *see also R.S.*, Docket No. 11-0428 (issued September 27, 2011); *Harold Weisman*, Docket No. 93-1335 (issued March 30, 1994).

<sup>10</sup> *See R.R.*, Docket No. 18-0032 (issued May 3, 2018).

May 27, 2017.<sup>11</sup> The record is also silent as to whether OPM reimbursed OWCP for FECA benefits paid to appellant during the period in question.

The Board thus finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$289.07 for the period from April 1 through May 27, 2017.<sup>12</sup>

**CONCLUSION**

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$289.07 for the period from April 1 through May 27, 2017.<sup>13</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 23, 2017 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 1, 2019  
Washington, DC

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

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

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

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<sup>11</sup> See *J.M.*, Docket No. 15-1604 (issued May 23, 2016).

<sup>12</sup> *G.M.*, Docket No. 17-0784 (issued August 23, 2017); *D.O.*, Docket No. 15-1004 (issued July 28, 2015).

<sup>13</sup> In light of the Board's finding in Issue 1, Issue 2 is moot.