



properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On August 22, 2017 appellant, then a 54-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 11, 2017 she sustained finger, knee, and back injuries when she tripped and fell while in the performance of duty. She did not initially stop work. On September 19, 2017 OWCP accepted the claim for fracture of unspecified phalanx, unspecified sprain of left thumb, fracture of unspecified carpal bone in left wrist, right knee abrasion, and strain of muscle, fascia, and tendon of lower back. On July 17, 2018 it authorized carpal tunnel surgery.

On July 23, 2018 appellant underwent left carpal tunnel surgery. In a work capacity evaluation (Form OWCP-5c) dated August 6, 2018, her attending physician, Dr. Richard Harrison, a Board-certified orthopedic surgeon, indicated that she could not return to her job without restrictions. Appellant returned to full-time modified work on August 7, 2018.

On August 13, 2018 appellant submitted a claim for compensation (Form CA-7) for leave without pay (LWOP) for total disability for the period July 23 through August 3, 2018. Beginning August 30, 2018 she submitted Form CA-7s for intermittent LWOP for the period August 4 through October 26, 2018, with supporting time analysis forms (Form CA-7a) listing dates and hours of work claimed for medical appointments and therapy.

In a letter dated September 12, 2018, OWCP outlined appellant's entitlement to compensation benefits. An attached Form EN1049 instructed that, if appellant worked during any portion of the covered period, and compensation payments were received *via* either paper check or for payments sent by electronic funds transfer (EFT), she was to return the payment to OWCP even if she had already advised OWCP that she was working. It noted that she was expected to monitor her EFT deposits carefully, at least every two weeks.

By letter dated October 31, 2018, OWCP advised appellant of its preliminary determination that she had received an \$8,471.78 overpayment of compensation because she received total disability compensation for the period August 7 through October 13, 2018 after she had returned to full-time modified work. It also made a preliminary finding that she was at fault in the creation of the overpayment because she had accepted payments that she knew, or reasonably should have known, to be incorrect. OWCP noted that during the period July 24 through August 18, 2018 appellant received a net amount of \$3,250.82, which equated to \$1,500.38 for the period August 7 through 18, 2018; during the period August 19 through September 15, 2018 appellant received a net amount of \$3,485.70; and during the period September 16 through October 13, 2018 appellant again received a net amount of \$3,485.70. Therefore, because appellant had returned to full-time modified-duty employment she was overpaid in the amount of \$8,471.78. OWCP advised appellant that she could submit evidence challenging the fact, amount, or finding of fault, and request waiver of recovery of the overpayment. Additionally, it informed her that, within 30 days, she could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing. OWCP requested that she complete the overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. It afforded appellant 30 days for a response.

On December 4, 2018 OWCP received appellant's Form OWCP-20. Appellant indicated that her monthly income was \$1,779.48, and listed her monthly expenses including \$1,200.00 for her mortgage, \$350.00 for food, \$20.00 for clothing, \$150.00 for utilities, \$300.00 for miscellaneous expenses, and \$985.00 for two creditors resulting in total monthly expenses of \$3,005.00. She reported a checking account balance of \$156.31 and a savings account balance of \$252.91, for a total of \$409.22 in assets. Appellant asserted that she submitted correct Form CA-7s for intermittent LWOP for the periods of overpayment, and therefore she was not at fault in the creation of the overpayment. She noted that she thought the excess payments were "catch-up" payments and requested waiver of recovery of the overpayment as repayment would result in great financial hardship.

By decision dated December 4, 2018, OWCP finalized the overpayment determination, finding that an overpayment of compensation in the amount of \$8,471.78 occurred for the period August 7 through October 13, 2018. It found that appellant was at fault in the creation of the overpayment as she had accepted compensation payments she knew were incorrect. OWCP directed her to repay the overpayment through monthly payments of \$100.00.

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

Section 8102(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 performance of his or her duty.<sup>3</sup> Section 8129(a) of FECA provides, in pertinent part, that when an overpayment has been made to an individual under this subchapter 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 an individual is entitled.<sup>4</sup>

Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.<sup>5</sup> OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.<sup>6</sup>

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

The Board finds that this case is not in posture for decision.

The evidence of record established that appellant returned to full-time modified work for the employing establishment on August 7, 2018, but continued to receive full wage-loss

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8129(a).

<sup>5</sup> *Id.* at § 8116(a).

<sup>6</sup> *J.L., id.; K.E., id.; B.H.*, Docket No. 09-0292 (issued September 1, 2009); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2(a) (May 2004).

compensation through October 13, 2018. 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. Therefore, an overpayment of compensation was created in this case.<sup>7</sup>

With regard to the amount of overpayment OWCP found an overpayment of compensation in the amount of \$8,471.78 for the period August 7 through October 13, 2018.

The Board finds however, with regard to the amount of the overpayment, that the record reflects that appellant had filed several claims for compensation (Form CA-7) and accompanying time analysis forms (Form CA-7a) following her return to work on August 7, 2018. The record does not reflect that OWCP has developed the issue of appellant's entitlement to intermittent wage-loss compensation after her return to work on August 7, 2018 by requesting information from the employing establishment regarding appellant's time lost from work as set forth on her claims for compensation prior to the calculation of the overpayment. OWCP's October 31, 2018 preliminary notice and December 4, 2018 final overpayment decision did not address appellant's claimed or actual wage-loss compensation during the period in question. Due to these omissions, the Board is unable to adequately review this aspect of the case to determine the amount of overpayment of compensation, if any. A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.<sup>8</sup> The Board finds that the overpayment decision in this case does not provide such an explanation. Therefore, the amount of overpayment has not been established.

On remand OWCP shall determine whether appellant was entitled to additional wage-loss compensation during the period August 7 to October 13, 2018. It shall then determine the exact amount of the overpayment in compensation which occurred during the relevant period. OWCP should thereafter issue a new preliminary overpayment determination, with an appropriate overpayment action request form, an overpayment recovery questionnaire, and instructions for her to provide supporting financial information. After it has further developed the case record, a *de novo* decision shall be issued.<sup>9</sup>

### CONCLUSION

The Board finds that OWCP correctly determined the fact of the overpayment for the period August 7 through October 13, 2018. The Board further finds, however, that the amount of the overpayment is not in posture for a decision.<sup>10</sup>

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<sup>7</sup> See *supra* note 6.

<sup>8</sup> C.G., Docket No. 18-1655 (issued June 14, 2019).

<sup>9</sup> Docket No. 13-1619 (issued February 24, 2014).

<sup>10</sup> In light of the Board's disposition as to Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 4, 2018 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further action consistent with this decision of the Board.

Issued: August 23, 2019  
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