

November 5 to 9, 2018 causally related to her accepted bilateral carpal tunnel syndrome; (2) whether appellant received an overpayment of compensation in the amount of \$1,605.36 for the period January 8 through February 3, 2018, following her return to work; and (3) whether OWCP properly found that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

FACTUAL HISTORY

On March 17, 2017 appellant, then a 50-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained hand and forearm injuries due to factors of her federal employment. OWCP accepted the claim for bilateral carpal tunnel syndrome. It subsequently approved right carpal tunnel release surgery on July 7, 2017 and left carpal tunnel release surgery on September 29, 2017.³ Effective July 23, 2017, OWCP paid appellant wage-loss compensation on the periodic rolls every 28 days by direct deposit into her checking account.

In a June 2, 2017 letter, OWCP outlined appellant's entitlement to compensation benefits and her responsibility to return to work. It notified her that she was to immediately inform OWCP of a return to work to avoid an overpayment of compensation. OWCP also noted that, if appellant worked during a period covered by a compensation payment, then she had to return the payment to OWCP.

Appellant returned to full-time, full-duty work on January 8, 2018. OWCP continued to pay her wage-loss compensation through February 3, 2018. The record reflects that appellant was paid \$2,008.04 for the period January 8 through February 3, 2018.

Subsequently, in a duty status report (Form CA-17) dated January 25, 2018, Dr. Kathleen A. Robertson, a Board-certified orthopedic hand surgeon, advised that appellant was only capable of working part time for four hours per day. She also determined that appellant had reached maximum medical improvement (MMI).

The employing establishment accommodated appellant's updated medical restrictions and offered her a limited, modified-duty position on a temporary basis effective January 25, 2018.

On February 8, 2018 Dr. Robertson released appellant to full-time, full-duty work, effective February 12, 2018.

On August 28, 2018 OWCP issued a preliminary determination finding that appellant received a \$2,008.04 overpayment of compensation because she returned to full-time work on January 8, 2018, but continued to receive compensation for total disability for the period January 8 through February 3, 2018. It further found that she was at fault in the creation of the overpayment because she knew or should have known that she was not entitled to wage-loss compensation

³ By decision dated August 9, 2018, OWCP granted appellant a schedule award for two percent permanent impairment of the left upper extremity and two percent permanent impairment of the right upper extremity. Appellant requested reconsideration of OWCP's schedule award decision on August 27, 2018 and, by decision dated September 4, 2018, OWCP denied modification of its prior decision.

following her return to work. OWCP provided appellant with an overpayment recovery questionnaire OWCP-20 form for her completion, along with appeal rights.

In response, appellant asserted that she was not at fault in the creation of the claimed overpayment of compensation. On September 19, 2018 OWCP received a financial information questionnaire in which she indicated that she had \$5,200.00 in monthly income, \$4,850.00 in monthly expenses, and \$50.00 in assets.

On November 9, 2018 appellant filed a wage-loss compensation claim (Form CA-7) for the period November 2 to 9, 2018.

In support of her disability claim, appellant submitted a work capacity evaluation (Form OWCP-5c) dated November 8, 2018 from Dr. Robertson who advised that appellant received steroid injections on October 26 and November 2, 2018 due to pain and that she could return to full-duty work on November 13, 2018.

On October 4, 2018 Dr. Robertson reported that appellant had undergone bilateral open carpal tunnel releases and then returned to full-duty work. Thereafter, appellant experienced tingling in all of her finger tips and worried that her carpal tunnel syndrome was returning. She related that her job duties required using two hands to punch holes, stamp, sort, lift, push, and pull at work. Dr. Robertson kept appellant on a full-duty schedule at that time.

In a November 8, 2018 report, Dr. Robertson noted that appellant's job required slotting mail or carrying big cases all day and she alternated the hands she used. Appellant underwent a carpal tunnel injection on October 25, 2018 and stated that her fingertips were numb for many days thereafter. On November 2, 2018 she received an injection for trigger finger, which caused extreme pain in her hands. Dr. Robertson indicated that appellant needed automatic stamping and hole punching equipment because manual use of this equipment may be causing repetitive stress pain to her forearm. She took appellant off of work to allow sufficient time to recover from the injection pain.

In a November 13, 2018 development letter, OWCP advised appellant of the deficiencies of her claim. It requested that she submit a narrative report from a physician which included a history of the injury and a thorough explanation, with objective findings, as to how her conditions had worsened such that she was no longer able to perform the duties of her position when she stopped work on November 2, 2018. OWCP noted that a medical slip or an OWCP-5 form would be insufficient without the necessary explanation and objective findings. It afforded appellant 30 days to submit the requested evidence.

In response, appellant submitted two procedure notes dated October 26 and November 2, 2018 from Dr. Robertson indicating that she had received steroid injections for carpal tunnel syndrome of the left wrist and left index trigger.

By decision dated December 17, 2018, OWCP denied the claim finding that the medical evidence of record was insufficient to establish that appellant was disabled from work for four hours on November 2, 2018 and totally disabled from work for the period November 5 to 9, 2018 causally related to her accepted employment injuries.

By decision dated February 14, 2019, an OWCP hearing representative finalized the determination that appellant had received an overpayment of compensation because she returned to full-time work on January 8, 2018, but received disability compensation for the period January 8 through February 3, 2018. OWCP's hearing representative found, however, that OWCP's preliminary finding had not considered the 30 intermittent hours that she worked part time beginning January 25, 2018. The hearing representative recalculated the overpayment of compensation and reduced the amount by appellant's entitlement to the 30 hours claimed, which equated to \$1,605.36 (\$2,008.04 minus \$402.68⁴). Thus, the final overpayment amount was reduced by OWCP's hearing representative to \$1,605.36 for the period January 8 through February 3, 2018. The hearing representative further found that appellant was at fault in the creation of the overpayment because she had accepted a payment that she knew or should have known was incorrect or not entitled to and that she was, therefore, not entitled to waiver of recovery of the overpayment. Finally, as appellant's monthly income exceeded her expenses by \$350.00, it was determined that she could reasonably make monthly repayments in the amount of \$150.00 until the overpayment debt was fully satisfied.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁵ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁶ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁷

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁸ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁹ An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.¹⁰ However, when the medical evidence establishes that the residuals or sequelae of an

⁴ Based on the weekly pay rate of \$715.87, divided by 40 hours for an hourly rate of \$17.90; times the 30 hours equaling \$536.90; and times the compensation rate of 3/4, which totaled \$402.68.

⁵ *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

⁶ *Id.*

⁷ 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁸ *Id.*

⁹ *T.O.*, Docket No. 17-1177 (issued November 2, 2018); *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

¹⁰ *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *Merle J. Marceau*, 53 ECAB 197 (2001).

employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for her loss of wages.

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish disability from work for four hours on November 2, 2018 and total disability from work for the period November 5 to 9, 2018 causally related to her accepted bilateral carpal tunnel syndrome.

In support of her disability claim, appellant submitted a work capacity evaluation (Form OWCP-5c) dated November 8, 2018 from Dr. Robertson who advised that appellant received a steroid injection on October 26 and November 2, 2018 due to pain and could not return to full duty until November 13, 2018.¹² In its development letter dated November 13, 2018, OWCP advised appellant that a Form OWCP-5 would be insufficient without the necessary explanation and objective findings. Appellant subsequently submitted two procedure notes confirming that she had received steroid injections for carpal tunnel syndrome of the left wrist and finger trigger, left index finger on October 26 and November 2, 2018, respectively. She also submitted narrative reports dated October 4 and November 8, 2018 from Dr. Robertson. In these reports, Dr. Robertson opined that appellant was to remain off work on total disability. She did not, however, provide an explanation or refer to objective examination findings to support her opinion that appellant was totally disabled. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.¹³ Dr. Robertson's opinion is, therefore, of limited probative value and is insufficient to establish appellant's claim.¹⁴

Appellant has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence, a causal relationship between her claimed disability from work for that period and the accepted conditions. The Board finds that the medical evidence of record is insufficient to establish employment-related disability for the period claimed due to her accepted injury.¹⁵

¹¹ *C.J.*, Docket No. 18-1181 (issued May 20, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹² The Board notes that Dr. Robertson had taken appellant off work due to a painful injection she received on November 2, 2018, however, this injection was for a trigger finger condition that had not been accepted by OWCP.

¹³ *D.L.*, Docket No. 19-0900 (issued October 28, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

¹⁴ *M.M.*, Docket No. 18-0817 (issued May 17, 2019).

¹⁵ *L.G.*, Docket No. 18-0140 (issued August 6, 2019).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

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.¹⁶

Section 8116 of FECA defines the limitations on the right to receive compensation benefits.¹⁷ 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.¹⁸ OWCP's regulations provide in pertinent part that compensation for wage loss due to disability is available only for periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.¹⁹ A claimant is not entitled to receive temporary total disability and actual earnings for the same period.²⁰ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.²¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,605.36 for the period January 8 through February 3, 2018.

OWCP placed appellant on the periodic rolls on July 23, 2017. Appellant continued to receive wage-loss compensation for total disability every 28 days, through February 3, 2018. The record indicates, however, that she had returned to full-time, full-duty work on January 8, 2018. Appellant does not contest these facts and they are supported by the record in this case. She was subsequently placed back on restrictions limiting her work to four hours per day as of January 25, 2018, before being released back to full-duty work as of February 12, 2018. A claimant is not entitled to receive compensation for disability during a period in which he or she had actual

¹⁶ 5 U.S.C. § 8102.

¹⁷ *Id.* at § 8116(a).

¹⁸ *Id.*

¹⁹ 20 C.F.R. § 10.500.

²⁰ *J.H.*, Docket No. 17-0592 (issued May 1, 2018).

²¹ *Id.*; Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.2(a) (September 2018).

earnings.²² Therefore, the Board finds that an overpayment of compensation was created in this case.

The amount of the overpayment was originally calculated to be \$2,008.04 for the period January 8 through February 3, 2018. However, OWCP's hearing representative found that OWCP's preliminary determination had not considered the 30 intermittent hours claimed during the period appellant worked part time beginning January 25, 2018. The hearing representative recalculated the overpayment of compensation and reduced the amount by appellant's entitlement to the 30 hours claimed, which equated to \$1,605.36 (\$2,008.04 minus \$402.68).²³ Thus, the overpayment amount was properly reduced to \$1,605.36 for the period January 8 through February 3, 2018. No contrary evidence was submitted. The Board accordingly finds that OWCP properly found that an overpayment of compensation in the amount of \$1,605.36 was created for the period from January 8 through February 3, 2018.

LEGAL PRECEDENT -- ISSUE 3

5 U.S.C. § 8129(b) provides that adjustment or recovery 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 FECA or would be against equity and good conscience.²⁴ A claimant who is at fault in the creation of the overpayment is not entitled to waiver.²⁵ On the issue of fault, 20 C.F.R. § 10.433(a) provides that an individual will be found at fault if he or she has done any of the following: (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 was incorrect.

The Board has held that an employee who receives payments from OWCP in the form of a direct deposit may not be at fault the first time incorrect funds are deposited into his or her account, as the acceptance of the resulting overpayment lacks the requisite knowledge.²⁶ The Board has also held in cases involving a series of incorrect payments, where the requisite knowledge is established by a letter or telephone call from OWCP, or simply with the passage of time and a greater opportunity for discovery, the claimant will be at fault for accepting the payments subsequently deposited.²⁷ The Board has previously held that receiving one or two

²² *Id.*

²³ *See supra* note 4.

²⁴ 5 U.S.C. § 8129(b).

²⁵ *See B.R.*, Docket No. 18-0339 (issued January 24, 2019); *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *Gregg B. Manston*, 45 ECAB 344, 354 (1994); *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

²⁶ *See Tammy Craven*, 57 ECAB 689 (2006). *See also supra* note at 21 at Chapter 6.300.4(g) (September 2018).

²⁷ *Id.*

erroneous direct deposit payments does not necessarily create the requisite knowledge to find that a claimant was at fault in the creation of the overpayment.²⁸

ANALYSIS -- ISSUE 3

The Board finds that OWCP improperly found that appellant was at fault in the creation of the overpayment.

OWCP paid appellant compensation by direct deposit every 28 days. Appellant returned to work on January 8, 2018 and OWCP improperly paid her compensation from January 8 through February 3, 2018. During the time period in question, she received one direct deposit payment covering the period January 7 through February 3, 2018. There is no documentation or other evidence to demonstrate that appellant had clear knowledge at the time the bank received the direct deposit on February 3, 2018 that the payment was incorrect.²⁹ Although, she accepted the overpayment at the time it was deposited into her account, OWCP has not shown that she knew or should have known at the time of the deposit that the payment was incorrect.³⁰ Appellant had no reason to suspect at the time of the February 3, 2018 deposit that OWCP had issued an incorrect payment since this was the first incorrect payment made. Additionally, she was entitled to some wage-loss compensation for disability during the time period in question and thus the circumstances surrounding the overpayment were more complex than usual.³¹ As such, the Board finds that appellant was not at fault in either the creation or acceptance of the overpayment for the period January 8 through February 3, 2018.³² A finding of no fault does not mean, however, that she may keep the initial payment amount; only that OWCP must consider eligibility for waiver of recovery of the overpayment for this period. Therefore, the case must be remanded for OWCP to determine whether appellant is entitled to waiver of recovery for this overpayment.³³

The Board finds that the case is not in posture for decision regarding the issue of waiver of recovery of the overpayment. The Board will set aside the February 14, 2019 decision regarding the issue of fault for this period and remand the case to OWCP to determine whether appellant is entitled to waiver of recovery of the overpayment covering the periods claimed.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish total disability for four hours on November 2, 2018 and for the period November 5 to 9, 2018 causally related to

²⁸ See *K.K.*, Docket No. 19-0978 (issued October 21, 2019); *D.B.*, Docket No. 16-0258 (issued February 1, 2016); *W.P.*, 59 ECAB 514 (2008).

²⁹ See *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); see also *M.M.*, Docket No. 15-0265 (issued May 27, 2015); *Danny E. Haley*, 56 ECAB 393 (2005); *supra* note 26.

³⁰ *S.N.*, Docket No. 19-1018 (issued November 12, 2019); see also *C.K.*, Docket No. 12-0746 (issued May 1, 2012).

³¹ *S.N.*, *id.*; see *W.B.*, Docket No. 09-1440 (issued April 12, 2010).

³² *J.S.*, Docket No. 17-0260 (issued December 28, 2017).

³³ *Id.*

her accepted bilateral carpal tunnel syndrome. The Board also finds that she received an overpayment of compensation in the amount of \$1,605.36 for the period January 8 through February 3, 2018. The Board further finds that appellant was without fault in the creation of the overpayment and, therefore, the case will be remanded to OWCP to consider waiver of recovery of the overpayment for the period January 8 through February 3, 2018.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2018 decision of the Office of Workers' Compensation Programs is affirmed and the February 14, 2019 decision is affirmed in part and set aside in part. The case is remanded for further action consistent with this decision of the Board.

Issued: December 20, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board