

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

E.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Antonio, TX, Employer**

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**Docket No. 19-1365
Issued: December 23, 2019**

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 June 7, 2019 appellant filed a timely appeal from a May 22, 2019 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 OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,027.99 for the period January 4 through February 2, 2019; and (2) whether it properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 30, 2018 appellant, then a 32-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 26, 2018 he broke his ankle when he stepped off the edge of a driveway while in the performance of duty. On September 11, 2018 OWCP accepted the claim for sprain of the deltoid ligament of the right ankle, initial encounter, and displaced fracture of the lateral malleolus of the right fibula, initial encounter for a closed fracture. It paid appellant compensation for total disability compensation on the supplemental rolls effective September 10, 2018 and on the periodic rolls effective November 11, 2018.

Appellant returned to full-time modified-duty work on January 4, 2019.

On February 22, 2019 OWCP determined that appellant had received an overpayment of compensation in the amount of \$1,906.50 because he received total disability compensation for the period February 2, 2019 after he returned to full-time modified-duty work. A worksheet prepared on February 22, 2019 revealed that from January 4 through 5, 2019 appellant received temporary total disability compensation in the net amount of \$120.79 and from January 6 through February 2, 2019 he received temporary total disability compensation in the net amount of \$1,785.71, when he was not entitled to receive wage-loss compensation after his return to full-time work on January 4, 2019. This yielded a total overpayment in the amount of \$1,906.50.

In a letter dated April 18, 2019, OWCP advised appellant of its preliminary determination that he had received an overpayment in the amount of \$2,027.99 because he received total disability compensation for the period January 4 through February 2, 2019 after he returned to full-time modified-duty work. It also made a preliminary determination that he was at fault in the creation of the overpayment because he had accepted a compensation payment which he knew, or reasonably should have known, to be incorrect. OWCP advised appellant of his appeal rights and requested that he complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation.

OWCP calculated the total amount of overpayment as follows: It found that appellant received a net amount of \$1,937.52 in temporary total disability compensation for the period December 9, 2018 through January 5, 2019. OWCP divided \$1,937.52 by a 28-day OWCP pay cycle and multiplied by two days (January 4 to 5, 2019), which yielded \$138.39. It also found that from January 6 through February 2, 2019 appellant received temporary total disability compensation in the net amount of \$1,889.60. OWCP added \$138.39 and \$1,889.60, which yielded a total overpayment of compensation in the amount of \$2,027.99 for the period January 4 through February 2, 2019.

OWCP did not receive a completed Form OWCP-20 or additional documents regarding appellant's alleged overpayment.

By decision dated May 22, 2019, OWCP finalized the preliminary determination that appellant received an overpayment of compensation in the amount of \$2,027.99 for the period January 4 through February 2, 2019 because he returned to full-time modified-duty work on January 4, 2019, but continued to receive wage-loss compensation for total disability through February 2, 2019. It further found that he was at fault in the creation of the overpayment as he had

accepted a compensation payment which he knew, or reasonably should have known, to be incorrect. OWCP required repayment of the overpayment in full.

LEGAL PRECEDENT -- ISSUE 1

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.²

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.³ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁴

ANALYSIS -- ISSUE 1

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

The Board finds that the evidence of record establishes that appellant returned to full-time modified work for the employing establishment on January 4, 2019, but continued to receive full wage-loss compensation through February 2, 2019. 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.⁵

The Board further finds, however, that this case is not in posture for decision with regard to the amount of overpayment. The record contains conflicting calculations on the amount of the overpayment. The February 22, 2019 worksheet computed the overpayment for the period in question as \$1,906.50 while OWCP, in the April 18, 2019 preliminary notice, determined the overpayment to be \$2,027.99.

OWCP did not adequately address the basis for the amount of the overpayment in this case due to the differing calculations provided by it regarding the overpayment. A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.⁶ As OWCP used

² *Id.* at § 8102.

³ *Id.* at § 8116(a).

⁴ *See J.L.*, Docket No. 18-1266 (issued February 15, 2019); *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *B.H.*, Docket No. 09-0292 (issued September 1, 2009); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.1(a) (September 2018).

⁵ *Id.*

⁶ *See M.M.*, Docket No. 17-0560 (issued August 23, 2017); *R.H.*, Docket No. 08-2025 (issued July 20, 2009); *see also O.R.*, 59 ECAB 432 (2008).

differing amounts for the overpayment without a clear explanation of the discrepancies, the Board finds that OWCP has not established the amount of the overpayment in question. Therefore, the case will be remanded to OWCP for such further development as deemed necessary to be followed by a *de novo* decision regarding the overpayment.

CONCLUSION

The Board finds that appellant received an overpayment of compensation for the period January 4 through February 2, 2019. The Board further finds, however, that the case is not in posture for decision regarding the amount of the overpayment.⁷

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further action consistent with this decision of the Board.

Issued: December 23, 2019
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

⁷ In light of the Board's findings regarding the amount of overpayment, it is premature to address the issue of fault in the creation of the overpayment of compensation.