



## **FACTUAL HISTORY**

On May 11, 2017 appellant, then a 54-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that she injured her right shoulder on May 2, 2017, when she reached out to slow a swinging forklift battery weighing 2,600 pounds while in the performance of duty. OWCP accepted her claim for right shoulder girdle strain and superior glenoid labrum lesion of the right shoulder. Appellant underwent an authorized right shoulder arthroscopy with rotator cuff repair and distal clavicle debridement on October 18, 2017. She stopped work on October 18, 2017. OWCP paid wage-loss compensation for temporary total disability on the supplemental rolls commencing October 18, 2017.

By letter dated May 26, 2017, OWCP notified appellant that, in order to avoid an overpayment of compensation, she must immediately notify their office of her return to work or if she obtained new employment. It also advised her that she was required to return any wage-loss compensation check(s) to OWCP which compensated her during the period which she worked. OWCP explained that as appellant received her compensation payments by Electronic Funds Transfer (EFT), she was expected to monitor her EFT deposits carefully. If she worked “for any portion of the period for which a deposit was made,” she was instructed to “advise OWCP immediately so that the overpayment can be collected.” OWCP reiterated these instructions in a letter dated December 5, 2017.

OWCP paid appellant wage-loss compensation on the periodic rolls beginning November 12, 2017.

On December 26, 2017 appellant filed a claim for compensation (Form CA-7) for the period December 9 to 21, 2017.

A medical management nurse report and employing establishment job offer confirmed that appellant returned to full-time employment with modified duties on December 22, 2017. The employing establishment notified OWCP on January 3, 2018 that appellant had returned to duty.

On January 6, 2018 OWCP paid appellant wage-loss compensation for temporary total disability for the period December 10, 2017 through January 6, 2018.

In a January 4, 2018 manual adjustment form, OWCP determined that appellant returned to full-time employment on December 22, 2017, with no loss of earnings, but did not inform it of her return to work and continued to receive compensation through January 6, 2018. Appellant was entitled to have been paid compensation for the period December 10 to 21, 2017, a period of 12 days. The compensation paid for the remaining 16-day period from December 22, 2017 through January 6, 2018 represented an overpayment of compensation. OWCP made calculations showing that appellant should have been paid the amount of \$1,348.30 for the period December 10 to 21, 2017, equal to a net payment of \$109.70 a day for 12 days. It calculated that the difference between the amount paid for the entire 28-day period and the amount to which appellant was entitled for 12 days, which resulted in a total overpayment of \$1,755.23. ( $\$3,103.53 - \$1,348.30 = \$1,755.23$ ).

On January 12, 2018 OWCP notified appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$1,755.23 for the period December 22, 2017 through January 6, 2018 because she received compensation for total disability after she

returned to work on December 22, 2017. Further, it found that she was not at fault in the creation of the overpayment because she was not aware or should have reasonably been aware that the compensation would be paid in error. OWCP further informed appellant that she had 30 days to request a telephone conference, a final decision based on the written evidence, or a precoupment hearing on the issues of fault and a possible waiver.

In response, appellant submitted additional medical evidence, but did not provide the financial information requested.

By decision dated March 27, 2018, OWCP finalized its preliminary determination that appellant received an overpayment of compensation in the amount of \$1,755.23 for the period December 22, 2017 through January 6, 2018 based on her receipt of compensation for disability after her return to work. It further found that she was not at fault in the creation of the overpayment, as she could not have stopped the erroneous payment in time to avoid the overpayment. OWCP found that appellant was without fault in creation of the overpayment, but denied waiver of recovery as appellant failed to submit the financial information requested. It directed recovery through monthly payments in the amount of \$175.52.

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

Section 8102 of FECA<sup>2</sup> 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.<sup>3</sup>

Section 8116 of FECA defines the limitations on the right to receive compensation benefits. 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.<sup>4</sup> OWCP's regulations provide that compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.<sup>5</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,755.23.

The record supports that appellant continued to receive compensation from the date that she returned to full-time employment on December 22, 2017 through January 6, 2018 in the amount of \$ 1,755.23. When an employee returns to work and ceases to have any loss of wages,

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Id.* at § 8102.

<sup>4</sup> *Id.* at § 8116(a).

<sup>5</sup> 20 C.F.R. § 10.500(a).

he or she is no longer entitled to compensation for wage loss.<sup>6</sup> OWCP properly calculated the amount of the overpayment in question. Appellant has not disputed this finding. As she was not entitled to compensation after her return to work, OWCP properly found an overpayment of compensation in the amount of \$ 1,755.23.<sup>7</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Under section 8129 of FECA and its implementing regulations, an overpayment must be recovered unless 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.<sup>8</sup> Section 10.433 of the implementing regulations provides that OWCP may consider waiving recovery of an overpayment if the individual to whom it was made was not at fault in accepting or creating the overpayment.<sup>9</sup> A finding that appellant was without fault in the creation of the overpayment does not automatically result in waiver of the overpayment. OWCP must exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>10</sup>

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her income (including compensation benefits) to meet current ordinary and necessary living expenses, and also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.<sup>11</sup>

Section 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>12</sup>

Section 10.438 of OWCP's regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an

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<sup>6</sup> See *Kenneth E. Rush*, 51 ECAB 116 (1999).

<sup>7</sup> *L.W.*, Docket No. 17-0356 (issued June 22, 2018).

<sup>8</sup> 20 C.F.R. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

<sup>9</sup> *Id.* at § 10.433(a).

<sup>10</sup> See *Wade Baker*, 54 ECAB 198 (2002).

<sup>11</sup> 20 C.F.R. § 10.436. OWCP's procedures provide that assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a)(1)(b) (June 2009).

<sup>12</sup> 20 C.F.R. § 10.437.

overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

While appellant accepted the payment *via* EFT into her account on January 6, 2018, she did not know that she would receive an incorrect payment on that day. Unlike the situation in which a claimant receives a physical check and is aware of the amount of the payment before depositing it into his account, appellant was not on notice of the amount of the payment until after it was deposited electronically into her account.<sup>14</sup>

Although appellant was found without fault in the creation of the \$1,755.23 overpayment, she bears responsibility for providing the financial information necessary to support a request for waiver of the recovery. OWCP requested that she provide financial information and submit any request for waiver within 30 days of the preliminary overpayment determination. As appellant did not provide financial information, the Board finds that OWCP properly denied waiver of recovery of the overpayment pursuant to 20 C.F.R. § 10.438(b).<sup>15</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that that appellant received an overpayment of compensation in the amount of \$1,755.23 during the period December 22, 2017 through January 6, 2018. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

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<sup>13</sup> *Id.* at 10.438.

<sup>14</sup> *W.P.*, 59 ECAB 514 (2008); *see also L.W.*, *supra* note 7.

<sup>15</sup> *See Madelyn Y. Grant*, 57 ECAB 533 (2006). *See also D.R.*, Docket No. 09-1537 (issued April 15, 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 27, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 16, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy 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