

FACTUAL HISTORY

On October 4, 2017 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 19, 2017 she sustained a left elbow contusion, and left hand, bilateral knee, and right ankle injuries when she fell as she stepped out of her vehicle while in the performance of duty. OWCP accepted the claim for contusions of the left elbow, left hand, right knee, right middle finger, and ligament sprain of the right ankle.

In a leave analysis report dated December 8, 2017, appellant claimed eight hours of leave without pay on November 27, 28, and 29, 2017. She then claimed 8 hours of sick leave on December 1, 2, 4, 5, and 6, 2017, and 6.52 hours of sick leave and 1.48 hours of annual leave on December 7, 2017.

In a leave analysis report dated December 22, 2017, appellant claimed eight hours of leave without pay for each of the following days: December 11 through 16, and December 19 through 22, 2017.

In a leave analysis report dated January 5, 2018, received by OWCP on January 18, 2018, appellant claimed 8 hours of leave without pay for each of the following days: December 23, December 26 through 30, 2017, January 1, 2018, and January 3, through January 5, 2018.

On January 18, 2018 appellant submitted a claim for compensation (Form CA-7) for leave without pay for the period November 27, 2017 through January 5, 2018.

A supplemental rolls payment report dated January 26, 2018 indicates that appellant received \$4,562.72 in compensation from OWCP for the period November 27, 2017 through January 5, 2018, for a total of 40 days of compensation.

In a letter dated February 8, 2018, the employing establishment indicated that appellant received compensation for paid leave on November 25, 2017 and from December 1 through 7, 2017, and also received compensation from OWCP for temporary total disability (TTD) for November 27, 2017 through January 5, 2018. It questioned whether appellant had received dual compensation for these dates. The employing establishment also informed OWCP that appellant's rate of pay, effective October 6, 2017, was \$61,201.00 annually.

On August 22, 2018 OWCP advised appellant of its preliminary determination that she had received an \$882.71 overpayment of compensation because she received TTD compensation for the period November 27, 2017 through January 5, 2018, and also used sick and annual leave during that same period. It explained that she had received \$5,044.03 in gross compensation during the 40-day period in question, which included 7 days of gross wage-loss compensation in the amount of \$882.71 during the period December 1 through 8, 2017. OWCP further found that appellant was without fault in the creation of the overpayment, advised her that she could request waiver of recovery of the overpayment, and provided an overpayment recovery questionnaire (Form OWCP-20) for her completion. It afforded her 30 days to respond and submit supporting financial documentation.

On September 11, 2018 OWCP received appellant's completed Form OWCP-20. Appellant indicated a total monthly income of \$3,934.00 and total monthly expenses of \$4,679.28, and reported assets of \$20.00 in her checking account. She further argued that she would suffer

severe financial hardship in trying to repay the debt, and requested waiver of recovery of the overpayment.

By decision dated October 30, 2018, OWCP finalized the overpayment determination, finding that an overpayment of compensation in the amount of \$882.71 had been created for the period November 27, 2017 through January 5, 2018. Specifically, it indicated that appellant received dual compensation for both sick and annual leave, and TTD, for the period December 1 through 7, 2017. OWCP found that she was not at fault in the creation of the overpayment, but the evidence received was insufficient to require waiver of recovery because appellant was receiving income from multiple sources including TTD compensation payments, and income earned by her spouse. It directed appellant to forward payment for the full amount of \$882.71 within 30 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA³ 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.⁴ 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.⁵

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.⁶ The Board has determined that if an employee receives sick leave from the employing establishment at the same time she is being paid compensation, this will cause an overpayment.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant received FECA wage-loss compensation on dates in December 2017 during which she had already been paid sick leave by the employing establishment. Therefore fact of overpayment is established.

The Board further finds, however, that this case is not in posture for decision with regard to the period and amount of overpayment. The evidence of record reflects that leave analysis records pertaining to the relevant time period document that appellant received 48 hours of sick leave for 6 days during the period December 1 through 7, 2017, and also received TTD compensation for those dates. However, the employing establishment has indicated that appellant

³ *Supra* note 1.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8129(a).

⁶ *Id.* at § 8116(a).

⁷ *T.R.*, Docket No. 15-1374 (issued September 16, 2016).

received 56 hours of sick and annual leave for seven days during this time period. OWCP calculated the amount of the overpayment based upon appellant's receipt of 56 hours of sick and annual leave compensation during this time period. This discrepancy was not resolved prior to calculation of the amount of the overpayment.

Furthermore, the Board notes that OWCP calculated the amount of overpayment based upon gross compensation. An overpayment of compensation based upon dual receipt of sick leave and FECA benefits is based upon net, rather than gross compensation.⁸

This case therefore must be remanded for OWCP to determine whether appellant received six or seven days of pay for leave during the period November 27, 2017 through January 5, 2018. OWCP should thereafter recalculate the amount of the overpayment of compensation based upon the net wage-loss compensation it paid during this time period. After such further development as necessary, OWCP shall issue a *de novo* decision.⁹

⁸ *Id.*

⁹ In light of the disposition of Issue 1, the issue of waiver of recovery of overpayment, Issue 2, is moot.

CONCLUSION

The Board finds that appellant received an overpayment of compensation, but that the case is not in posture for decision regarding the period and amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 12, 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