

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

R.Q., Appellant)	
)	
and)	Docket No. 18-0964
)	Issued: October 8, 2019
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, Butner, NC, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 9, 2018 appellant filed a timely appeal from a March 9, 2018 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.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$1,622.85 for the period January 22 through February 3, 2018; and (2) whether OWCP abused its discretion in denying waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On August 29, 2017 appellant, then a 47-year-old correctional officer, sustained injuries to his right upper extremity and left lower extremity while navigating an obstacle course during employment-related training. He stopped work on August 29, 2017 and received continuation of pay (COP). OWCP accepted appellant's traumatic injury claim (Form CA-1) for right upper arm spontaneous rupture of other tendons, left knee spontaneous disruption of anterior cruciate ligament, left knee derangement of anterior horn of lateral meniscus, and left knee derangement of posterior horn of medial meniscus. On September 13, 2017 appellant underwent OWCP-approved right shoulder surgery, and on November 20, 2017 he underwent a left knee arthroscopic procedure, which OWCP similarly authorized. OWCP paid him wage-loss compensation for temporary total disability on the supplemental rolls from October 16 through November 11, 2017 and placed him on the periodic rolls beginning November 12, 2017.

On November 9, 2017 OWCP acknowledged receipt of appellant's direct deposit sign-up form dated October 11, 2017.

On January 22, 2018 the employing establishment offered appellant a full-time, limited-duty assignment in conformance with work restrictions established by his physician on January 16, 2018. Appellant accepted the position and returned to work on January 22, 2018 with no loss in pay.

In a compensation termination worksheet dated January 22, 2018, OWCP indicated that appellant had been placed on the periodic rolls as a result of having surgery. Appellant returned to work full-time, limited duty on January 22, 2018. Using direct deposit, OWCP paid him the net amount of \$1,622.85 in compensation for total disability from January 22 through February 3, 2018.

On February 6, 2018 OWCP notified appellant of its preliminary determination that he received an overpayment of compensation in the amount of \$1,622.85 for the period January 22 through February 3, 2018 because he continued to receive compensation for total disability following his return to full-time work on January 22, 2018. It noted that when the employing establishment advised that he had returned to work with no wage loss on January 22, 2018, it was too late to stop the payment issued by electronic funds transfer (EFT) on February 2, 2018. Thus the overpayment was created. Further, OWCP found that appellant was without fault in the creation of the overpayment because he did not know, nor could he have been reasonably expected to know, that his compensation was paid incorrectly. It indicated that because the payment that created this debt was only issued a few days before, it was reasonable to assume that he had not reviewed his bank statement. OWCP further informed appellant that he 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 a February 20, 2018 statement, appellant indicated that the overpayment occurred through no fault of his own and he requested waiver of recovery. He indicated that he was informed by the employing establishment that all paperwork was sent out on January 19, 2018. Appellant made further inquiries of the safety department on January 22, 2018, and asked whether

there was anything he needed to submit and he was told the paperwork was complete. He asserted that, if the paperwork was submitted on January 19, 2018, there was ample time for OWCP to revise the payment.

Appellant submitted an overpayment recovery questionnaire (Form OWCP-20) on February 20, 2018. The form indicated that his monthly income totaled zero and expenses totaled \$5,000.00.

By decision dated March 9, 2018, OWCP finalized its preliminary determination that appellant received an overpayment of compensation in the amount of \$1,622.85 for the period January 22 through February 3, 2018 based on his receipt of compensation for disability after his return to full-time work. It further found that he was without fault in the creation of the overpayment, because he was not, nor could he have been, aware that he was not entitled to the payments received. OWCP noted that appellant had not submitted financial information justifying waiver of recovery of the overpayment. It requested that he forward payment in the amount of \$100.00 each month commencing April 1, 2018.³

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.⁴

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.⁵ Section 10.500 of OWCP's regulations provides 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$1,622.85 for the period January 22 through February 3, 2018. Appellant resumed work on January 22, 2018 with no loss in pay. However, OWCP continued to pay him wage-loss compensation for temporary total disability following his return to work. As noted above, a

³ With respect to recovery of the overpayment, the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA. As appellant is no longer receiving wage-loss compensation, the Board does not have jurisdiction with respect to recovery of the overpayment under the Debt Collection Act. *See E.F.*, Docket No. 18-1320 (issued March 13, 2019).

⁴ 5 U.S.C. § 8102.

⁵ *Id.* at § 8116(a); *see also C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

⁶ 20 C.F.R. § 10.500.

claimant is not entitled to receive compensation for total disability during a period in which he/she had actual earnings.⁷ Therefore, an overpayment of compensation was created in this case.⁸ OWCP documented that it paid appellant, *via* direct deposit, \$1,622.85 for the period January 22 through February 3, 2018. Thus, the Board finds that appellant received an overpayment of compensation in the amount of \$1,622.85 during the above-noted period.⁹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that 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.”¹⁰

Section 10.438 of OWCP’s regulations provide 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 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.¹¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$1,622.85 overpayment of compensation.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹² Appellant, however, had the responsibility to provide the appropriate financial information to OWCP.¹³

In its preliminary overpayment determination dated February 6, 2018 OWCP requested that appellant provide a completed overpayment recovery questionnaire and supporting financial information. It advised him that waiver of recovery would be denied if he failed to furnish the requested financial information within 30 days. Although appellant returned the overpayment recovery questionnaire, he neglected to report his monthly income, and failed to substantiate his reported monthly expenses of \$5,000.00. As a result, OWCP did not have the necessary financial information to properly determine whether recovery of the overpayment would defeat the purpose

⁷ *L.W.*, Docket No. 17-0356 (issued June 22, 2017).

⁸ *See K.E.*, Docket No. 18-0687 (issued October 25, 2018).

⁹ *Id.*

¹⁰ 5 U.S.C. § 8129(a)-(b); *see D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹¹ 20 C.F.R. § 10.438.

¹² *Id.*; *see also O.B.*, Docket No. 19-0034 (issued April 22, 2019).

¹³ *Id.*; *see also S.M.*, Docket No. 17-1802 (issued August 20, 2018).

of FECA or if recovery would be against equity and good conscience. Consequently, as appellant did not submit the financial information required under section 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation in the amount of \$1,622.85.¹⁴

CONCLUSION

The Board finds that OWCP properly found an overpayment of compensation in the amount of \$1,622.85 for the period January 22 through February 3, 2018. The Board also finds that OWCP did not abuse its discretion in denying waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ *E.K.*, Docket No. 18-0587 (issued October 1, 2018).