



through October 13, 2018; and (2) whether it properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On May 2, 2018 appellant, then a 32-year-old physician assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 19, 2018 she was sexually assaulted while in the performance of duty. She stopped work on April 19, 2018. OWCP accepted the claim for other specified anxiety disorders, panic disorder without agoraphobia, and unspecified insomnia. It paid appellant wage-loss compensation for total disability on the supplemental rolls retroactive to March 20, 2018.

On August 23, 2018 OWCP notified appellant that, in order to avoid an overpayment of compensation, she must immediately notify their office of her return to work or 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, at least every two weeks. If she worked for a portion of the period for which a deposit was made, she was instructed to advise OWCP immediately so that the overpayment could be collected.

Appellant returned to work in a full-duty capacity on September 19, 2018. She stopped work on September 26, 2018.

In a September 30, 2018 progress report, OWCP's field nurse related that appellant had been off work since September 26, 2018 due to panic attacks.

Appellant received compensation for total disability through October 13, 2018. For the period September 16 through October 13, 2018, appellant was paid \$5,964.53.

In a development letter dated November 7, 2018, OWCP indicated that it had received a "notice of recurrence of disability (Form CA-2a)" alleging a worsening of appellant's accepted conditions as of September 26, 2018.<sup>3</sup> Appellant was advised regarding the medical evidence necessary to establish her recurrence claim and was afforded 30 days to submit the necessary evidence.<sup>4</sup>

In a memorandum regarding the overpayment, OWCP indicated that appellant received a total of \$5,325.47 in wage-loss compensation benefits for the period September 19 through October 13, 2018. It noted that she was paid a daily rate of \$203.02 (75 percent compensation rate at \$1,999.51 weekly) with an effective pay rate date of March 19, 2018). OWCP found that the 28-day cycle of \$5,964.53 (net) divided by 28 days (\$213.02) multiplied by 25 days for the stated period equaled \$5,325.47.

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<sup>3</sup> This Form CA-2a is not of record.

<sup>4</sup> No decision had been issued on the claimed recurrence.

On November 16, 2018 OWCP notified appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$5,325.27 for the period September 19 through October 13, 2018 because she received compensation for total disability after she returned to work on September 19, 2018. It explained that for the 25-calendar days, during the period September 19 through October 13, 2018, she was overpaid a total of \$5,325.47. A copy of OWCP's calculations were provided. OWCP further found that she was not at fault in the creation of the overpayment because she was not aware nor should she have reasonably been aware that the compensation would be paid in error. It explained that less than 30 days had elapsed since the EFT deposit was made, which did not allow her ample time to receive and review a statement from her financial institution which showed the details of the improper payment. It 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.

Appellant did not respond to OWCP's preliminary determination or provide financial information.

By decision dated December 17, 2018, OWCP finalized its preliminary determination that appellant received an overpayment of compensation in the amount of \$5,325.47 for the period September 19 through "October 31, 2018" based on her receipt of compensation for disability after her return to work.<sup>5</sup> However, it revised its finding that she was at fault in the creation of the overpayment as more than 30 days had elapsed since the EFT deposit was made, which allowed her ample time to receive and review a statement from her financial institution which showed the details of the improper payment. OWCP directed recovery of the full amount of the overpayment within 30 days.

### **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.<sup>6</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>7</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>8</sup>

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<sup>5</sup> The period of the overpayment was properly noted in the preliminary notice to be September 19 through October 13, 2018.

<sup>6</sup> *Supra* note 1 at § 8102.

<sup>7</sup> *Id.* at § 8116(a).

<sup>8</sup> 20 C.F.R. § 10.500(a).

A claimant is not entitled to receive temporary total disability benefits and actual earnings for the same time period.<sup>9</sup> OWCP procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.<sup>10</sup>

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

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

The evidence of record establishes that appellant returned to full-time work on September 19, 2018, but continued to receive full wage-loss compensation through October 13, 2018. 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.<sup>11</sup> Therefore, an overpayment of compensation was created in this case.<sup>12</sup>

With regard to the amount of overpayment, OWCP found an overpayment of compensation in the amount of \$5,325.27 for the period September 19 through October 13, 2018.

The Board finds, however, with regard to the amount of the overpayment, that appellant again stopped work on September 26, 2018. It appears that OWCP began developing appellant's work stoppage as a recurrence of disability due to a material change/worsening of her accepted employment-related conditions.<sup>13</sup> The record does not reflect that OWCP has developed the issue of appellant's entitlement to intermittent wage-loss compensation after her return to work on September 19, 2018 by requesting information from the employing establishment regarding appellant's lost time from work prior to the calculation of the overpayment.<sup>14</sup> OWCP's November 16, 2018 preliminary notice and December 17, 2018 final overpayment decision did not address appellant's actual wage-loss compensation during the period in question. Due to this omission, the Board is unable to adequately review this aspect of the case to determine the amount of overpayment compensation, if any. A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.<sup>15</sup> The Board finds that the overpayment decision

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<sup>9</sup> See *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *M.S.*, Docket No. 16-0289 (issued April 21, 2016); *L.S.*, 59 ECAB 350, 352-53 (2008).

<sup>10</sup> See *J.L.*, Docket No. 18-1266 (issued February 15, 2019); *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).

<sup>11</sup> See *supra* notes 7 and 8.

<sup>12</sup> See *supra* note 8.

<sup>13</sup> The record is devoid of which forms, if any, appellant filed.

<sup>14</sup> *S.H.*, Docket No. 19-0509 (issued August 23, 2019).

<sup>15</sup> *C.G.*, Docket No. 18-1655 (issued June 14, 2019).

in this case does not provide such an explanation. Therefore, the amount of overpayment has not been established.<sup>16</sup>

On remand OWCP shall determine whether appellant was entitled to additional wage-loss compensation during the period September 26 through October 13, 2018. It shall then determine the exact amount of overpayment in compensation which occurred during the relevant period. OWCP should thereafter issue a new preliminary overpayment determination, with an appropriate overpayment action request form, an overpayment recovery questionnaire, and instructions for her to provide supporting financial information. After it has further developed the case record, a *de novo* decision shall be issued.<sup>17</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined the fact of overpayment. The Board further finds, however, that the amount of overpayment is not in posture for a decision.<sup>18</sup>

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<sup>16</sup> *Supra* note 14.

<sup>17</sup> *See B.T.*, Docket No. 13-1619 (issued February 24, 2014).

<sup>18</sup> In light of the Board's disposition as to Issue 1, Issue 2 is rendered moot.

**ORDER**

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

Issued: September 19, 2019  
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board