

ISSUE

The issue is whether OWCP properly required recovery of appellant's August 13, 2018 overpayment by deducting \$200.00 from his continuing compensation benefits, every 28 days.

FACTUAL HISTORY

On May 8, 2012 appellant, then a 27-year-old aircraft pneudraulic systems mechanic, filed a traumatic injury claim (Form CA-1) alleging that he misplaced his footing when descending from a stand and rolled his left ankle while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that he stopped work on May 8, 2012. OWCP accepted the conditions of left ankle dislocation, fracture, synovitis and tenosynovitis, deltoid ligament sprain, left foot enthesopathy and acquired deformities, left ankle/foot rupture of other tendons, and left leg peroneal tendinitis. On June 6, 2012 appellant returned to full-time modified-duty work. OWCP paid him intermittent wage-loss compensation on the supplemental rolls commencing March 4, 2013.

On September 21, 2017 appellant underwent left ankle surgery performed by Dr. Florian Nickisch, a Board-certified orthopedic surgeon, who placed appellant on temporary total disability. OWCP paid compensation on the supplemental rolls from September 21 through October 13, 2017 and on the periodic rolls from October 15 through December 9, 2017. Appellant returned to modified-duty work on November 7, 2017.

In a preliminary determination notice dated June 26, 2018, OWCP informed appellant that he received an overpayment of compensation in the amount of \$2,304.97 for the period November 7 through December 9, 2017 because he returned to work on November 7, 2017 and received compensation for total disability through December 9, 2017. It explained that it had computed the overpayment by subtracting his actual entitlement of \$3,876.75 from the \$6,181.72 compensation paid. OWCP found that appellant was at fault in the creation of the overpayment because he accepted compensation payments that he knew or reasonably should have known were incorrect. Additionally, it informed him that within 30 days that he could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Appellant did not respond.

By decision dated August 13, 2018, OWCP finalized the preliminary determination finding an overpayment of compensation in the amount of \$2,304.97 for the period November 7 through December 9, 2017. It determined that appellant was at fault in the creation of the overpayment because he accepted compensation payments which he knew or should have known were incorrect. OWCP requested payment for the full amount of \$2,304.97 within 30 days, and it instructed that he should contact OWCP within 30 days if he was unable to refund the entire payment immediately so that appropriate arrangements for recovery could be made.

On September 10, 2018 OWCP received appellant's overpayment recovery questionnaire (Form OWCP-20). Appellant indicated that he had no monthly income and supported a two-year-old daughter. His monthly expenses included \$475.00 for rent or mortgage and \$150.00 for food. Appellant related that he did not own any valuable property or real estate and his funds included a

\$10.00 balance in a checking account and a \$5.00 balance in a savings account. He contended that he was not at fault for the creation of the overpayment because he submitted all the required paperwork, and he also contended that paying back the overpayment would cause him hardship.

In an October 30, 2018 letter, OWCP advised appellant that an August 13, 2018 overpayment decision had been issued, and no payment had been received. It further advised that if it did not receive payment or some indication that he intended to cooperate within 30 days, interest or administrative charges may be added. OWCP informed appellant that it may also refer overpayment debt to the Department of the Treasury for collection.

On November 6, 2018 OWCP referred appellant's overpayment debt to the Department of the Treasury.

On February 7, 2019 appellant underwent ankle and leg surgery. He began receiving temporary total disability benefits, first on the supplemental rolls commencing February 7, 2019, and then on the periodic rolls commencing March 3, 2019.

By decision dated April 10, 2019, OWCP found that it had not received any payment from appellant or any indication that he intended to cooperate in the matter. It noted that he was in receipt of compensation benefits due to a recent change in his medical status, and it determined that it would recover appellant's overpayment by deducting \$200.00 from his periodic rolls payments beginning April 28, 2019.

LEGAL PRECEDENT

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.³ Section 10.441(a) of OWCP regulations provides:

"When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship."⁴

ANALYSIS

The Board finds that OWCP improperly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

³ 20 C.F.R. § 10.441(a).

⁴ *Id.*

Section 8124(a) of FECA provides: OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.⁵ Its regulations at section 10.126 of Title 20 of the Code of Federal Regulations provide: “The decision [of the Director of OWCP] shall contain findings of fact and a statement of reasons.”⁶ Moreover, the Federal (FECA) Procedure Manual provides that the claims examiner’s “evaluation of the evidence should be clear and detailed so that the reader understands the reason for the disallowance of the benefit and the evidence necessary to overcome the defect of the claim.”⁷

OWCP failed to provide any discussion or explanation for how it calculated \$200.00 as the amount to be deducted from appellant’s continuing compensation benefits every 28 days. The Board finds that OWCP failed to make findings relative to the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship, as required by OWCP’s regulations stated above.⁸ Therefore, the Board further finds that in its April 10, 2019 decision OWCP did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision.⁹

Accordingly, the Board remands the case for OWCP to make findings of fact and provide reasons for its decision regarding its calculation of the amount to be deducted from appellant’s continuing compensation payments every 28 days, pursuant to the standards set forth in section 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.126. After such further development as OWCP deems necessary, it shall issue an appropriate decision on this aspect of appellant’s claim.

CONCLUSION

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

⁵ 5 U.S.C. § 8124(a); *see J.J.*, Docket No. 19-0448 (issued December 30, 2019); *see Hubert Jones, Jr.*, 57 ECAB 467 (2006).

⁶ 20 C.F.R. § 10.126.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5c(3)(e) (February 2013).

⁸ *See supra* note 3.

⁹ *See J.M.*, Docket No. 18-0729 (issued October 17, 2019); *J.J.*, Docket No. 11-1958 (issued June 27, 2012).

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2019 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: May 19, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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