

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

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<b>W.M., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 21-0316</b>
	)	<b>Issued: July 23, 2021</b>
<b>U.S. POSTAL SERVICE, VEHICLE</b>	)	
<b>MAINTENANCE FACILITY, Pittsburgh, PA,</b>	)	
<b>Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On January 1, 2021 appellant filed a timely appeal from a December 10, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$3,087.71 for the period June 22 through July 18, 2020 because OWCP paid him wage-loss compensation for total disability after he had returned to full-time employment; and (2) whether OWCP properly determined that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On May 7, 2019 appellant, then a 60-year-old body and fender repairman, filed a traumatic injury claim (Form CA-1) alleging that on May 6, 2019 he injured his left shoulder when installing rear brake springs on a vehicle while in the performance of duty. He stopped work on May 6, 2019. OWCP accepted the claim for a rotator cuff tear or rupture of the left shoulder and impingement syndrome of the left shoulder. On December 3, 2019 appellant underwent an OWCP-authorized left shoulder subacromial decompression and debridement of a partial rotator cuff tear. OWCP paid him wage-loss compensation for total disability on the supplemental rolls beginning June 21, 2019.

By letter dated June 8, 2020, OWCP advised appellant that it had placed him on the periodic rolls. It notified him of his responsibility to return to work if he was no longer totally disabled from employment in connection with the accepted employment injury and of the need to immediately notified OWCP if he returned to work to avoid an overpayment of compensation.

OWCP paid appellant on the periodic rolls until July 18, 2020.

On August 26, 2020 the employing establishment advised OWCP that appellant had returned to modified-duty work on June 22, 2020 with no wage loss after that date.

In a worksheet dated August 26, 2020, OWCP calculated that it had paid appellant net wage-loss compensation from June 22 through July 18, 2020 in the amount of \$3,087.71.

On August 26, 2020 OWCP notified appellant of its preliminary overpayment determination that he had received an overpayment of compensation in the amount of \$3,087.71 for the period June 22 through July 18, 2020 because he received compensation for total disability after he had returned to full-time work on June 22, 2020. It further advised him of its preliminary determination that he was at fault in the creation of the overpayment because he accepted a payment that he either knew or reasonably should have known to be incorrect. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents. Additionally, it provided an overpayment action request form and notified him that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

On September 18, 2020 OWCP received appellant's request for a decision based on the written evidence relative to the issues of fault and possible waiver of recovery of the overpayment, together with his completed Form OWCP-20. Appellant advised that he had received a letter from OWCP indicating that he would be paid at the end of each four-week period, and that he had believed that he was entitled to the payment he received during the period of the overpayment. He maintained that repayment of the overpayment would result in financial hardship.

By decision dated December 10, 2020, OWCP finalized its determination that appellant received an overpayment of compensation in the amount of \$3,087.71 for the period June 22 through July 18, 2020 because he continued to receive FECA wage-loss compensation after his return to full-time employment on June 22, 2020. It found that he was at fault in the creation of the overpayment and, thus, not entitled to waiver of recovery of the overpayment. OWCP

indicated that appellant had not responded to the preliminary overpayment determination and did not contest the fault finding. It found that he should forward payment of \$3,087.71 to repay the overpayment of wage-loss compensation.

### **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(a) 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 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> An overpayment is created when a claimant returns to work, but continues to receive wage-loss compensation.<sup>6</sup>

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

The Board finds that appellant received an overpayment of compensation in the amount of \$3,087.71 for the period June 22 through July 18, 2020 because OWCP paid him wage-loss compensation for total disability after he had returned to full-time employment.

The evidence establishes that appellant returned to full-time employment in a modified position with no wage loss on June 22, 2020. OWCP, however, continued to pay him compensation for total disability through July 18, 2020. 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. Consequently, appellant received an overpayment of compensation.<sup>7</sup>

With regard to the amount of overpayment, the Board finds that OWCP properly calculated appellant's net compensation for the period June 22 through July 18, 2020. Thus, the Board finds

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at § 8102.

<sup>4</sup> *Id.* at § 8116(a).

<sup>5</sup> 20 C.F.R. § 10.500(a).

<sup>6</sup> *See C.W.*, Docket No. 19-1743 (issued March 23, 2021); *Danny E. Haley*, 56 ECAB 393 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1(a) (September 2020).

<sup>7</sup> *Id.* *See also S.S.*, Docket No. 20-0776 (issued March 15, 2021).

that he received an overpayment of compensation in the amount of \$3,087.71 for the period June 22 through July 18, 2020.<sup>8</sup>

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

Section 8129(b) of FECA provides that adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.<sup>9</sup> No waiver of recovery of an overpayment is possible if the claimant is at fault in the creation of the overpayment.<sup>10</sup>

On the issue of fault, 20 C.F.R. § 10.433(a) provides that an individual is with fault in the creation of an overpayment who: (1) made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; (2) failed to furnish information which the individual knew or should have known to be material; or (3) with respect to the overpaid individual only, accepted a payment, which the individual knew or should have been expected to know was incorrect.<sup>11</sup>

With respect to whether an individual is without fault, section 10.433(b) of OWCP regulations provides that whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.<sup>12</sup>

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

The Board finds that the case is not in posture for decision regarding whether appellant was at fault in the creation of the overpayment.

In the case of *William A. Couch*,<sup>13</sup> the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

In its December 10, 2020 decision, OWCP found that appellant had not responded to its preliminary overpayment determination or contested the finding of fault. However, the record reflects that on September 18, 2020 it received his overpayment action request form challenging the fault finding and a completed Form OWCP-20. OWCP failed to review the information

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<sup>8</sup> See *V.J.*, Docket No. 20-1335 (issued March 11, 2021).

<sup>9</sup> 5 U.S.C. § 8129(b).

<sup>10</sup> *B.W.*, Docket No. 19-0239 (issued September 18, 2020); *C.L.*, Docket No. 19-0242 (issued August 5, 2019).

<sup>11</sup> 20 C.F.R. § 10.433(a).

<sup>12</sup> *Id.* at § 10.433(b).

<sup>13</sup> 41 ECAB 548 (1990). See also *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

submitted by appellant in support of his request for waiver of recovery of the overpayment, and, thus, failed to follow its procedures by properly discussing all of the relevant evidence of record received prior to issuing the final overpayment decision on December 10, 2020.<sup>14</sup>

On remand OWCP shall review all evidence of record and, following any further development as it deems necessary, it shall issue a *de novo* decision.<sup>15</sup>

### CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$3,087.71 for the period June 22 through July 18, 2020 because OWCP paid him wage-loss compensation for total disability after he had returned to full-time employment. The Board further finds that the case is not in posture for decision regarding whether OWCP properly determined that appellant was at fault in the creation of the overpayment.

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<sup>14</sup> All evidence submitted should be reviewed and discussed in the decision. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012); *see P.H., (K.H.)*, Docket No. 19-1130 (issued November 19, 2020); *M.R.*, Docket No. 19-1626 (issued August 19, 2020).

<sup>15</sup> *See E.T.*, Docket No. 19-1977 (issued February 22, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 10, 2020 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: July 23, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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