

July 15, 2015 through June 20, 2016 because she received compensation for disability while either working and or in a paid leave status; and (2) whether it properly determined that appellant was at fault in the creation of the overpayment of compensation, thereby precluding waiver of recovery of the overpayment.

FACTUAL HISTORY

On December 23, 2015 appellant, then a 41-year-old service representative, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition due to factors of her federal employment including harassment and discrimination by a supervisor, as well as injuries to her hands due to typing on a computer. She stopped work on July 15, 2015.³ On June 10, 2016 OWCP accepted appellant's claim for recurrent major depressive disorder (moderate). In a letter of even date, it advised appellant that she was to immediately inform OWCP upon her return to work to avoid an overpayment of compensation and that, if she worked during any period covered by a compensation payment, she was required to return the payment to OWCP.

On June 10, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for disability during the period July 15 through November 20, 2015. On July 13, 2016 she filed a Form CA-7 for the period November 23, 2015 through June 20, 2016.

OWCP paid appellant wage-loss compensation for total disability for the periods July 15 through November 20, 2015, November 23, 2015 through March 31, 2016, and April 1 through July 23, 2016.

In a memorandum of a telephone call (Form CA-110) dated September 25, 2017, an employing establishment official informed an OWCP representative that appellant had worked and was paid leave subsequent to July 14, 2015. The official advised that appellant's first day of leave without pay was September 1, 2015, but that she used leave again after that date.

In a letter dated November 28, 2017, OWCP requested that the employing establishment provide a leave analysis in order to determine if there had been an overpayment for the period July 15, 2015 through June 20, 2016. It noted that, based on the CA-7 forms that were provided, it appeared there might be an overpayment of compensation, as the employing establishment indicated that appellant had been paid leave during this period while in receipt of compensation payments. OWCP noted that a claimant cannot receive paid leave and wage-loss compensation for total disability concurrently.

On December 6, 2017 OWCP received documents from the employing establishment, which showed the days or partial days between July 2015 and June 2016 that appellant was on paid sick or annual leave, or received wages for actual work.

On January 11, 2018 OWCP issued a preliminary overpayment determination that an overpayment of compensation in the amount of \$11,383.39 had been created. It explained that the overpayment occurred because appellant received total wage-loss compensation for the period

³ The case record contains evidence showing that appellant was terminated by the employing establishment on June 27, 2016.

July 15, 2015 through June 20, 2016, but was also intermittently on paid leave and received wages for work from the employing establishment during this period. OWCP found that appellant was not entitled to compensation for the periods July 15 through August 30, 2015, November 19, 2015, March 6 through June 5, and June 11 through 13, and 18 through 20, 2016. It also made a preliminary determination that appellant was at fault in the creation of the overpayment as she knowingly accepted a payment to which she was not entitled. OWCP requested that appellant complete and submit an overpayment questionnaire (Form OWCP-20) and advised her of various actions she could take with respect to the overpayment. It afforded her 30 days to respond. No response was received.

By decision dated April 25, 2018, OWCP finalized its preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$11,383.39. It further found that she was at fault in the creation of the overpayment, because she knowingly accepted a payment to which she was not entitled, thereby precluding waiver of recovery of the overpayment. OWCP requested repayment 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 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, 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 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.⁷ A claimant is not entitled to receive temporary total disability benefits along with actual earnings or paid leave for the same time period.⁸

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8129(a).

⁶ *Id.* at § 8102(a).

⁷ 20 C.F.R. § 10.500(a).

⁸ *Id.* at 10.401(a); *K.K.*, Docket No. 19-0978 (issued October 21, 2019); *M.S.*, Docket No. 16-0289 (issued April 21, 2016); *E.V.*, Docket No. 10-1284 (issued February 3, 2011); *L.S.*, 59 ECAB 350, 352-53 (2008).

OWCP's procedures provide that, once an overpayment is identified, it is responsible for determining whether the claimant was with fault or without fault, issuing a preliminary finding, and unless a hearing is requested, OWCP is responsible for issuing a final decision.⁹ These procedures note that, if the claimant is determined to be at fault, preliminary overpayment determination must be released along with a Form OWCP-20 within 30 days of the date the overpayment is identified. Both the reason that the overpayment occurred and the reason for the finding of whether appellant was at fault in its creation must be clearly stated. A preliminary overpayment determination informs the claimant of the right to submit evidence and the right to a precoupment hearing on the issues of: (a) fact and amount of overpayment; and (b) waiver of recovery of the overpayment. Along with the preliminary overpayment determination, OWCP should provide a clearly written statement explaining how the overpayment was created.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$11,383.39 during the period July 15, 2015 through June 20, 2016.

As noted, OWCP's procedures provide that an overpayment of compensation is created when a claimant receives paid leave or wages for work, but continues to receive wage-loss compensation for temporary total disability.¹¹ On December 6, 2017 OWCP received documentation from the employing establishment, which showed the days or partial days between July 2015 and June 2016 that appellant was on paid sick or annual leave, or received wages for actual work, but continued to receive temporary total disability during this period. It was not until January 11, 2018, however, that OWCP issued a preliminary determination, finding an overpayment in the amount of \$11,383.39 had been created during the period July 15, 2015 through June 20, 2016 because appellant received compensation for total disability to which she was not entitled. By decision dated April 25, 2018, OWCP finalized the preliminary overpayment determination, finding that appellant was at fault in the receipt of an overpayment of compensation in the amount of \$11,383.39 and was, thereby, precluded from waiver of recovery of the overpayment. It required recovery by payment of \$11,383.39 within 30 days.

The Board finds that OWCP failed to follow its procedures in issuing the April 25, 2018 overpayment decision. As noted, OWCP's procedures provide that a preliminary overpayment determination must be released along with a Form OWCP-20 within 30 days of the date the overpayment is identified.¹² In this case, OWCP first identified the overpayment of compensation

⁹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(a)(1) (May 2004).

¹⁰ *Id.*; see also *L.P.*, Docket No. 18-0095 (issued March 12, 2020); *T.M.*, Docket No. 18-1763 (issued October 10, 2019).

¹¹ *Id.*

¹² See *supra* note 8.

on December 6, 2017, but it did not, however, issue a preliminary overpayment determination until January 11, 2018, more than 30 days later.

The Board, thus, finds that OWCP failed to follow its established procedures in determining that appellant received an overpayment of compensation in the amount of \$11,383.39 during the period July 15, 2015 through June 20, 2016.¹³

CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$11,383.39 during the period July 15, 2015 through June 20, 2016.

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2018 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 24, 2021
Washington, DC

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

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

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

¹³ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.