

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

V.J., Appellant)	
)	
and)	Docket No. 20-1335
)	Issued: March 11, 2021
U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On June 25, 2020 appellant filed a timely appeal from a March 31, 2020 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 \$1,389.20 for the period February 13 through 29, 2020 because she had returned to full-time work on February 13, 2020, but continued to receive wage-loss compensation through

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the March 31, 2020 decision, OWCP received additional evidence. 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.*

February 29, 2020; and (2) whether OWCP abused its discretion in denying waiver of recovery of the overpayment.

FACTUAL HISTORY

On October 4, 2018 appellant, then a 34-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on October 2, 2018 she sustained a right shoulder injury when she reached to close a truck door that stalled after unloading a package while in the performance of duty. She stopped work on October 2, 2018. OWCP accepted the claim for strain of the muscles and tendons of the right rotator cuff, and right shoulder impingement syndrome. It paid appellant wage-loss compensation for disability from November 17, 2018 through October 1, 2019, when she returned to full-time limited-duty work.

On November 12, 2019 appellant underwent authorized right rotator cuff repair and subacromial decompression. OWCP paid her compensation on the supplemental rolls for the period November 10, 2019 through February 1, 2020 and on the periodic rolls from February 2 through 29, 2020.

On February 5, 2020 OWCP outlined appellant's entitlement to compensation benefits. An attached Form EN1049 instructed that, if she worked during any portion of the covered period from January 4 through February 29, 2020, and compensation payments were received *via* either paper check or for payments sent by electronic funds transfer (EFT), she was to return the payment to OWCP even if she had already advised OWCP that she was working. OWCP noted that appellant was expected to monitor her deposits carefully, at least every two weeks.

The employing establishment, in a return to work form (Form CA-3) dated February 25, 2020, advised OWCP that appellant had returned to full-time, modified-duty work on February 13, 2020.

In a February 26, 2020 worksheet, OWCP calculated that appellant received a \$1,389.20 overpayment in compensation for the period February 13 through 29, 2020.

By letter dated February 26, 2020, OWCP advised appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$1,389.20 because she received wage-loss compensation for temporary total disability (TTD) for the period February 13 through 29, 2020 after she had returned to full-time work. It also made a preliminary finding that she was without fault in the creation of the overpayment as she did not have knowledge of the erroneous payment. OWCP advised appellant that she could submit evidence challenging the fact, amount, or finding of fault, and request waiver of recovery of the overpayment. It requested that she complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, OWCP notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written record, or a precoupment hearing. No response was received.

On February 29, 2020 the EFT for the period February 2 through 29, 2020 was deposited into appellant's bank account.

By decision dated March 31, 2020, OWCP finalized the preliminary overpayment determination, indicating that appellant had received an overpayment of compensation in the amount of \$1,389.20 for the period February 13 through 29, 2020. It further found that she was not at fault in the creation of the overpayment because she was not, or could not have been aware, that she was not entitled to the payment received. OWCP noted that appellant had not submitted financial information justifying waiver of recovery of the overpayment. It therefore found that she was not entitled to waiver of recovery of the overpayment. OWCP ordered that appellant should repay the overpayment in its entirety.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) 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 his or her duty.³ Section 8129(a) of FECA provides, in pertinent part, that 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.⁴

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.⁵ Section 10.500 of OWCP's regulations provides 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.⁶ A claimant is not entitled to receive TTD benefits and actual earnings for the same time period.⁷ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation for TTD.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$1,389.20 for the period February 13 through 29, 2020 because she had returned to full-time

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8129(a).

⁵ *Id.* at § 8116(a).

⁶ 20 C.F.R. § 10.500(a).

⁷ See *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *C.H.*, Docket No. 19-1470 (issued January 24, 2020); *L.S.*, 59 ECAB 350, 352-53 (2008).

⁸ *L.T., id.*; *C.H., id.*; Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1(a) (September 2018).

modified-duty work on February 13, 2020, but continued to receive wage-loss compensation through February 29, 2020.

The Board finds that the evidence of record establishes that appellant returned to full-time, modified-duty work for the employing establishment, effective February 13, 2020, but continued to receive full wage-loss compensation through February 29, 2020. As noted above, a claimant is not entitled to receive wage-loss compensation benefits for TTD and actual earnings for the same time period.⁹ Therefore, an overpayment of compensation was created in this case.

With regard to the amount of overpayment, the Board finds that OWCP properly calculated appellant's compensation paid for the period February 13 through 29, 2020. Thus, the Board finds that appellant received an overpayment of compensation in the amount of \$1,389.20 for the period February 13 through 29, 2020.

LEGAL PRECEDENT -- ISSUE 2

5 U.S.C. § 8129(b) provides: "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 FECA or would be against equity and good conscience."¹⁰

Section 10.438 of OWCP's regulations provides 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 \$1,389.20 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 For consideration of waiver, appellant had the responsibility to provide the appropriate financial information to OWCP.¹³

⁹ See *supra* notes 6-8.

¹⁰ 5 U.S.C. § 8129(b).

¹¹ 20 C.F.R. § 10.438; *R.Q.*, Docket No. 18-0964 (issued October 8, 2019).

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).

In its preliminary overpayment determination dated February 26, 2020, OWCP requested that appellant provide a completed overpayment recovery questionnaire and supporting financial information. It advised her that waiver of recovery would be denied if she failed to furnish the requested financial information within 30 days. No response was received. As a result, OWCP did not have the necessary financial information to properly determine whether recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

As appellant did not submit the financial information required under section 10.438 of OWCP's regulations,¹⁴ which was necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the \$1,389.20 overpayment of compensation.¹⁵

On appeal appellant contends that OWCP should have waived recovery of the overpayment as she was not at fault in its creation and as recovery would cause financial hardship. As explained above, appellant did not submit the financial information necessary for OWCP to consider waiver of recovery of the overpayment.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,389.20 for the period February 13 through 29, 2020 because she had returned to full-time regular-duty work on February 13, 2020, but continued to receive wage-loss compensation for TTD through February 29, 2020. The Board further finds that OWCP properly denied waiver of recovery of the \$1,389.20 overpayment of compensation.

¹⁴ 20 C.F.R. § 10.438.

¹⁵ *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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