

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

_____)	
T.W., Appellant)	
)	
and)	Docket No. 21-0130
)	Issued: October 22, 2021
DEPARTMENT OF VETERANS AFFAIRS,)	
ATLANTA VA MEDICAL CENTER,)	
Decatur, GA, 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 November 6, 2020 appellant filed a timely appeal from a May 29, 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 \$3,107.06, for the period March 9 to 28, 2020, for which she was without fault, because

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, appellant submitted additional evidence on appeal. 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 evidence for the first time on appeal. *Id.*

she continued to receive wage-loss compensation after she returned to work; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On February 15, 2019 appellant, then a 35-year-old registered nurse, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right knee injury on February 14, 2019 when she assisted in repositioning a surgical bed while in the performance of duty. By decision dated March 26, 2019, OWCP accepted the claim for right knee contusion. On May 24, 2019 it expanded the acceptance of the claim to include right knee sprain. OWCP paid appellant wage-loss compensation on the supplemental rolls as of May 6, 2019 and on the periodic rolls as of May 26 2019.

On November 11, 2019 Dr. John G. Keating, a Board-certified orthopedic surgeon and second opinion physician, examined appellant, provided findings, and opined that she could return to her regular full-duty work as an operating room nurse.

In a March 27, 2020 letter, appellant notified OWCP that she had returned to work on March 9, 2020.³

On April 3, 2020 OWCP notified appellant that a preliminary determination was made that she had received an overpayment of compensation in the amount of \$3,107.06 for the period March 9 through 28, 2020, because she continued to receive wage-loss compensation for total disability after she was released to return to full-duty work, effective March 9, 2020. It further found that she was without fault in the creation of the overpayment because she was not aware, nor could she reasonably have been expected to be aware, that OWCP had paid compensation incorrectly.

An attached OWCP memorandum and fiscal worksheet noted that appellant was on the periodic rolls and received gross compensation every 28 days. OWCP explained that, since she was released to return to work by the second opinion physician and returned to work on March 9, 2020, she had been overpaid compensation from that date through March 28, 2020. It noted that appellant had received gross compensation from March 1 to 28, 2020 in the amount of \$4,833.00, out of which deductions had been made for health benefits of \$430.02, basic life insurance of \$25.20, and optional life insurance of \$27.90, resulting in a net compensation payment of \$4,349.88. However, appellant was only entitled to receive compensation for the period March 1 to 8, 2020 in the gross amount of \$1,380.85, out of which deductions should have been made for health benefit of \$122.86, basic life insurance of \$7.20, and optional life insurance of \$7.97, resulting in a net entitlement of wage-loss compensation in the amount of \$1,242.82. OWCP explained that since she received net compensation in the amount of \$4,349.88, instead of her actual entitlement of \$1,242.82, she had received an overpayment of \$3,107.06, for the period March 9 to 28, 2020. It informed appellant of her appeal rights and instructed her to complete an enclosed overpayment recovery questionnaire form (Form OWCP-20) and submit supporting documentation within 30 days. No response was received.

³ In her letter, appellant listed the date as March 9, 2019, however, this appears to be a typographical error.

By decision dated May 29, 2020, OWCP finalized its preliminary determination that appellant received an overpayment of compensation in the amount of \$3,107.06, for the period March 9 through 28, 2020, based upon her receipt of compensation for disability after she had returned to full-duty work on March 9, 2020. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, as she had not responded to the April 3, 2020 preliminary overpayment determination. OWCP required recovery of the overpayment by directing appellant to submit repayment for the full amount of \$3,107.06 within 30 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA⁴ 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.⁵

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.⁶ OWCP's procedures provide that an overpayment in compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$3,107.06, for the period March 9 to 28, 2020, because she returned to full-time work on March 9, 2020, but continued to receive wage-loss compensation through March 28, 2020.

The Board finds that the evidence of record establishes that appellant returned to full-time work for the employing establishment effective March 9, 2020, but continued to receive wage-loss compensation through March 28, 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.⁸ Therefore, an overpayment of compensation was created in this case.

With regard to the amount of overpayment, the Board finds that OWCP properly calculated the wage-loss compensation paid to appellant for the period March 9 through 28, 2020. Thus, the

⁴ 5 U.S.C. § 8102.

⁵ *Id.*

⁶ *Id.* at § 8116(a).

⁷ See *C.S.*, Docket No. 18-0450 (issued July 31, 2020); *C.A.*, Docket No. 18-0092 (issued April 2, 2018); *Danny E. Haley*, 56 ECAB 393 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Action*, Chapter 6.200.2(a) (May 2004).

⁸ 20 C.F.R. § 10.500(a); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1(a) (September 2018); see *V.J.*, Docket No. 20-1335 (issued March 11, 2021).

Board finds that appellant received an overpayment of compensation in the amount of \$3,107.06 for the period March 9 to 28, 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.”⁹

Section 10.438 of OWCP’s regulations provides that an individual who receives an 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 the overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the information within 30 days of the request shall result in denial of waiver.¹⁰

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$3,107.06 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.¹¹ For consideration of waiver, appellant had the responsibility to provide the appropriate financial information to OWCP.¹²

In its preliminary overpayment determination dated April 3, 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 be against equity and good conscience.

As appellant did not submit the financial information required under section 10.438 of OWCP’s regulations,¹³ which was necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the \$3,107.06 overpayment of compensation.¹⁴

⁹ 5 U.S.C. § 8129(b).

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

¹¹ *Id.*; *see also O.B.*, Docket No. 19-0034 (issued April 22, 2019).

¹² *Id.*; *see also S.M.*, Docket No. 17-1802 (issued August 20, 2018).

¹³ 20 C.F.R. § 10.438.

¹⁴ *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$3,107.06 for the period March 9 to 28, 2020 for which she was without fault, because she continued to receive wage-loss compensation after she returned to full-time work. The Board also finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 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