

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

S.M., Appellant)	
)	
and)	Docket No. 23-0991
)	Issued: December 4, 2023
U.S. POSTAL SERVICE, GEORGETOWN, POST OFFICE, Georgetown, OH, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 19, 2023 appellant filed a timely appeal from a January 20, 2023 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.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$1,232.14 for the period August 22 through September 10, 2022, because she continued to receive wage-loss compensation following her return to full-time work; and (2) whether OWCP

¹ 5 U.S.C. § 8101 *et seq.*

properly determined that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

FACTUAL HISTORY

On December 9, 2019 appellant, then a 47-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on December 7, 2019 she strained her lower back when she picked up packages to load the parcel cart while in the performance of duty. She stopped work on December 7, 2019 and has not returned. OWCP initially accepted the claim for a lumbar strain. It subsequently accepted temporary aggravation of preexisting degenerative disc disease at L4-L5 and L5-S1. OWCP paid appellant wage-loss compensation for total disability on the supplemental rolls from January 22, 2020 through May 21, 2021, and on the periodic compensation rolls from May 23, 2021 through September 10, 2022.

In a July 19, 2022 addendum report, Dr. Albert E. Becker, Jr., a Board-certified orthopedic surgeon serving as a second opinion examiner, reviewed a statement of accepted facts and the medical record. He opined that appellant was not capable of returning to her full duties as a rural carrier associate, but could perform light-duty work with temporary restrictions for six months.

On August 9, 2022 Dr. Jennifer Ross, an osteopathic occupational medicine specialist, examined appellant and released her to full-time full-duty work effective August 10, 2021. She noted that she was releasing appellant to return to full-duty work because a special agent had shown her video of appellant driving a car more than 20 miles, pushing a grocery cart, and loading groceries into her car, and because appellant had informed her that she had driven up to 26 miles from her home, while she was on a no driving restriction.

The evidence reflects that appellant reported to full-time full-duty work on August 22, 2022. A memorandum of telephone call (Form CA-110) dated September 9, 2022 indicated that she called OWCP and advised that she had been released to regular duties on August 22, 2022 but the postmaster would not allow her to return to work. OWCP advised that this appeared to be an issue between appellant and the employing establishment, but that appellant remained entitled to medical treatment.

OWCP paid appellant wage-loss compensation on its periodic rolls in the amount of \$1,232.14 for the period August 22 through September 10, 2022.

On October 19, 2022 OWCP notified appellant of its preliminary overpayment determination that she had received an overpayment of compensation in the amount of \$1,232.14 for the period August 22 through September 10, 2022, because she continued to receive wage-loss compensation for total disability following her return to full-time work. It explained that she received 28-day gross compensation of \$1,750.00. Appellant's daily compensation amount of \$61.607 (\$1,750.00 divided by 28 days) multiplied by 20 days for the 20-day period from August 22 through September 10, 2022, equaled \$1,232.14, which resulted in the overpayment amount of \$1,232.14. OWCP found that she was at fault in the creation of the overpayment because she accepted a payment that she knew or reasonably should have known was incorrect. It informed appellant of her appeal rights and afforded her 30 days to complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation.

On November 14, 2022 OWCP received appellant's completed Form OWCP-20. Appellant requested waiver of recovery of the overpayment contending that she did not work as of August 22, 2022 because the postmaster placed her on a 14-day suspension, and then gave her a removal notice. She further indicated that she still has not been returned to work.

OWCP received evidence from the union contesting appellant's emergency placement into an off-duty status. This included a September 12, 2022 detailed statement of disputed facts from the union regarding the employing establishment's emergency placement of appellant into an off-duty status; an August 25, 2022 letter from the postmaster placing appellant in an off-duty status without pay effective August 25, 2022 for "improper conduct" based on facts obtained during an investigation by the employing establishment's Office of Inspector General.

By decision dated January 20, 2023, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$1,232.14 for the period August 22 through September 10, 2022. It determined that she was at fault in the creation of the overpayment. OWCP required that appellant pay the full amount of \$1,232.14 for recovery of the overpayment.

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.²

OWCP's regulations provide in pertinent part: "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."³ A claimant is not entitled to receive temporary total disability benefits and actual earnings for the same period.⁴ OWCP's procedures also provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁵

ANALYSIS

The Board finds that OWCP has not met its burden of proof to establish fact of overpayment.

OWCP paid appellant wage-loss compensation for disability from August 22 through September 10, 2022. As noted above, a claimant is not entitled to receive compensation for

² *Id.* at § 8102(a).

³ 20 C.F.R. § 10.500.

⁴ See *Q.V.*, Docket No. 21-1188 (issued May 26, 2022); *J.L.*, Docket No. 18-1266 (issued February 15, 2019); *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *M.S.*, Docket No. 16-0289 (issued April 21, 2016); *L.S.*, 59 ECAB 350, 352-53 (2008).

⁵ See *Q.V.*, *id.*; *J.S.*, Docket No. 17-0260 (issued December 28, 2017); *B.H.*, Docket No. 09-0292 (issued September 1, 2009); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.1 (September 2018).

disability during a period in which she had actual earnings. While appellant had attempted to return to work on August 22, 2022, the record indicates that the employing establishment did not allow her to work that day, and subsequently placed her into an emergency off-duty status.

The Board therefore finds that the record does not establish that appellant received actual wages from August 22 through September 10, 2022. OWCP therefore did not meet its burden of proof to establish fact of overpayment.⁶

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to establish fact of overpayment.

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 4, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

⁶ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.