

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 8, 2023 appellant, then a 29-year-old mail clerk, filed a traumatic injury claim (Form CA-1), alleging that, on August 31, 2023, he pinched his right knee when he turned to throw a sack into a container while in the performance of duty. He stopped work on September 1, 2023. OWCP accepted the claim for right lower leg muscle and tendon strain. It paid appellant wage-loss compensation on the periodic rolls. In a letter dated November 3, 2023, OWCP advised appellant that he would receive a net compensation payment of \$1,982.34 for the period October 16 through November 4, 2023, and a net compensation payment of \$2,775.27 or every 28-day period effective November 5, 2023. An attached Form EN-1049 instructed that, if appellant worked during any portion of the covered period and compensation payments were received by paper check he was to return the payment to OWCP even if he had already advised OWCP that he was working. OWCP noted that each payment would show the period for which payment was made.

Appellant returned to full-time work on October 18, 2024.

The record indicates that paper compensation checks were issued to appellant by OWCP on November 2, 2024, for the period October 6 through November 2, 2024, in the net amount of \$2,757.13, and on November 30, 2024, for the period November 3 through 30, 2024, in the net amount of \$2,757.13. The record contains a copy of the checks which are endorsed on the back by appellant.

OWCP completed a manual adjustment form on December 19, 2024, and found that appellant had received an overpayment in the amount of \$4,332.63, for the period October 18 through November 30, 2024, of which \$1,575.50 was the prorated net amount he received for the period October 18 through November 2, 2024, and \$2,757.13 was the net amount for the 28-day period from November 3 through 30, 2024.

On February 13, 2025, OWCP issued a preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$4,332.63, for the period October 18 through November 30, 2024, because he continued to receive wage-loss compensation for total disability following his return to full-time work. It further notified him of its preliminary finding that he was at fault in the creation of the overpayment, as he had accepted payments that he knew or reasonably should have known to be incorrect. Additionally, OWCP provided an overpayment action request form and informed appellant that, within 30 days, he could request a final decision based on the written evidence or a prerecoupment hearing. It requested that he complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. No response was received.

By decision dated April 29, 2025, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$4,332.63 for the period October 18 through November 30, 2024, because he continued to receive wage-loss compensation for total disability following his return to full-time work. It determined that he was at fault in the creation of the overpayment and required recovery of the overpayment by payment in full.

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 duty.² 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.³

A claimant is not entitled to receive temporary total disability benefits and actual earnings for the same time period.⁴ OWCP regulations provide 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.⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$4,332.63, for the period October 18 through November 30, 2024, because he continued to receive wage-loss compensation for total disability following his return to full-time work.

Appellant returned to full-time work on October 18, 2024. However, he continued to receive wage-loss compensation for total disability through November 30, 2024. As noted, a claimant is not entitled to receive total disability benefits and actual earnings for the same time period.⁶ Accordingly, the Board finds that appellant received an overpayment of compensation.⁷

OWCP calculated appellant's net compensation as \$4,332.63 for the period October 18 through November 30, 2024. It explained that appellant received the prorated amount of \$1,575.50 for the period October 18 through November 2, 2024, and the net amount of \$2,757.13 for the 28-day period from November 3 through 30, 2024. The Board has reviewed OWCP's calculations and finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,332.63, for the period October 18 through November 30, 2024.

² *Id.* at § 8102(a).

³ *Id.* at § 8129(a).

⁴ See *K.A.*, Docket No. 25-0127 (issued December 11, 2024); *T.L.*, Docket No. 23-0424 (issued December 28, 2023); *S.S.*, Docket No. 20-0776 (issued March 15, 2021); *C.H.*, Docket No. 19-1470 (issued January 24, 2020); *L.S.*, 59 ECAB 350 (2008).

⁵ *K.A.*, *id.*; *T.L.*, *id.*; *S.S.*, *id.*; *C.H.*, *id.*; Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1a (September 2020).

⁶ See *supra* note 4.

⁷ See *K.A.*, *supra* note 4; *T.H.*, Docket No. 23-0194 (issued July 17, 2023); *A.C.*, Docket No. 22-0118 (issued December 15, 2022).

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of FECA provides as follows 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.⁸ No waiver of recovery of an overpayment is possible if the claimant is at fault in the creation of the overpayment.⁹

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.¹⁰

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.¹¹

Even if OWCP may have been negligent in making incorrect payments, this does not excuse a claimant from accepting payments he or she knew or should have known to be incorrect.¹²

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant was at fault in the creation of the overpayment of compensation in the amount of \$4,332.63, for the period October 18 through November 30, 2024, thereby precluding waiver of recovery of the overpayment.¹³

As noted above, an overpaid individual is found at fault if they accepted a payment which the individual knew, or should have been expected to know, was incorrect.¹⁴ The Board has

⁸ 5 U.S.C. § 8129(b).

⁹ See *K.A.*, *supra* note 4; *S.R.*, Docket No. 24-0338 (issued May 10, 2024); *T.L.*, *supra* note 4; *S.S.*, *supra* note 4; *B.W.*, Docket No. 19-0239 (issued September 18, 2020); *R.G.*, Docket No. 18-1251 (issued November 26, 2019); *C.L.*, Docket No. 19-0242 (issued August 5, 2019).

¹⁰ 20 C.F.R. § 10.433(s).

¹¹ *Id.* at § 10.433(b); see also *K.A.*, *supra* note 4; *T.L.*, *supra* note 4; *R.G.*, *supra* note 9; *D.M.*, Docket No. 17-0983 (issued August 3, 2018).

¹² See *L.G.*, Docket No. 20-1342 (issued September 3, 2021); *C.G.*, Docket No. 15-0701 (issued December 9, 2015).

¹³ See *M.R.*, Docket No. 24-0200 (issued March 28, 2024); *S.R.*, Docket No. 23-1050 (issued October 16, 2023); *K.P.*, Docket No. 19-1151 (issued March 8, 2020); *D.W.*, Docket No. 15-0229 (issued April 17, 2014).

¹⁴ 20 C.F.R. § 10.433(a).

explained that when a claimant returns to work and subsequently receives a compensation check in the mail covering a period of employment, if he or she knows or should have known that they were not entitled to such compensation, but decides nonetheless to cash or deposit the check, the cashing or depositing of the check establishes fault.¹⁵

The case record establishes that in a November 3, 2023 letter, OWCP advised appellant that, to avoid an overpayment of compensation, he must immediately notify OWCP of his return to work. It also advised him that, if he continued to receive wage-loss compensation, but had worked during the covered period, he had to return the check, even if he had reported his return to work to OWCP. Appellant returned to work on October 18, 2024, but continued to receive wage-loss compensation *via* paper checks through November 30, 2024. As OWCP had previously warned appellant to return any checks received following a return to work, appellant should have known that the FECA compensation checks he received following his October 18, 2024 return to work were incorrect.

The record contains images of the checks that were issued to appellant as compensation payments during the relevant time period. The images reveal that appellant endorsed the back of each check for deposit. As such, the Board finds that appellant was aware that he was receiving compensation payments that he knew or should have known he was not entitled to receive because he had returned to work.

Although OWCP may have been negligent in making incorrect payments, this does not excuse a claimant from accepting payments he or she knew or should have known to be incorrect.¹⁶ The Board therefore finds that OWCP properly determined that appellant was at fault in the creation of the overpayment of compensation in the amount of \$4,332.63 for the period October 18 through November 30, 2024. Appellant is thereby precluded from waiver of recovery of the overpayment.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$4,332.63, during the period October 18 through November 30, 2024, because he continued to receive wage-loss compensation for total disability following his return to full-time work. The Board further finds that OWCP properly determined that he was at fault in the creation of the overpayment of compensation, thereby precluding waiver of recovery of the overpayment.

¹⁵ *K.A.*, *supra* note 4; *W.E.*, Docket No. 22-1284 (issued November 14, 2024); *J.H.*, *id.*; *William F. Salmonson*, 54 ECAB 152 (2002).

¹⁶ *K.A.*, *supra* note 4; *P.B.*, Docket No. 19-0329 (issued December 31, 2019); *C.G.*, *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2025
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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