

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

M.O., Appellant

and

**U.S. POSTAL SERVICE, NORTH SHEPHERD
STATION, Houston, TX, Employer**

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**Docket No. 11-259
Issued: August 19, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 9, 2010 appellant filed a timely appeal from a July 19, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for compensation.¹ She also appeals an August 16, 2010 merit decision finding that she received an overpayment of compensation for which she was at fault and an October 8, 2010 nonmerit decision denying her request for a prerecoupment hearing. Pursuant to the Federal Employees' Compensation Act (FECA)² and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ The July 19, 2010 letter from OWCP to appellant does not contain appeal rights. However, as OWCP provided factual and legal findings by indicating that it had considered the medical evidence and determined that she did not establish disability from June 24 to July 16, 2010, the Board finds that the July 19, 2010 correspondence constitutes a decision under 20 C.F.R. § 10.126. *See C.E.*, Docket No. 08-2133 (issued May 20, 2009).

² 5 U.S.C. § 8101 *et seq.*

³ In a decision dated September 16, 2010, OWCP denied appellant's request for a schedule award. Appellant has not appealed this decision and thus it is not before the Board at this time. *See* 20 C.F.R. § 501.2(c).

ISSUES

The issues are: (1) whether OWCP properly adjudicated appellant's claim for compensation from June 24 to July 16, 2010; (2) whether appellant received an overpayment of \$1,155.65 because she received compensation for total disability after she returned to work; (3) whether she was at fault in creating the overpayment; and (4) whether OWCP properly denied appellant's request for a prerecoupment hearing as it was made after the final overpayment decision.

FACTUAL HISTORY

On September 3, 2008 appellant, then a 49-year-old letter carrier, filed a claim alleging that she sustained an injury to her lower back on August 29, 2008 in the performance of duty. OWCP accepted the claim for a lumbar sprain and lumbar radiculitis. It paid appellant compensation for totally disability using electronic funds transfer beginning October 22, 2008.

In a June 21, 2010 telephone message, appellant advised OWCP that she was returning to full-time modified work on June 22, 2010. On June 25, 2010 she notified it that she had stopped work on June 24, 2010 on the advice of her physician. On July 15, 2010 appellant filed a claim for compensation beginning June 24, 2010. The employing establishment indicated that she took leave without pay from June 25 to July 16, 2010.

On July 14, 2010 OWCP advised appellant of its preliminary determination that she received an overpayment of \$1,155.65 because she returned to limited duty on June 22, 2010 but received compensation through July 3, 2010. It further informed her of its preliminary finding that she was at fault in creating the overpayment. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, it notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence or a prerecoupment hearing.

In a July 19, 2010 decision, OWCP determined that the medical evidence was insufficient to show that appellant was disabled from employment. It denied appellant's claim for compensation from June 24 to July 16, 2010 after finding that the medical evidence did not establish that she was disabled due to her August 29, 2008 work injury.⁴

By decision dated August 16, 2010, OWCP found that appellant received an overpayment of \$1,155.65 because she received compensation after returning to work for eight hours. It further determined that she was at fault in creation of the overpayment and requested that she forward a check in the amount of the overpayment as repayment.

⁴ On July 29, 2010 OWCP informed appellant that the position of city carrier was suitable and provided her 30 days to accept the position or provide reasons for her refusal.

On August 27, 2010 appellant requested a prerecoupment hearing. She completed an overpayment recovery questionnaire.⁵ By decision dated October 8, 2010, OWCP denied her prerecoupment hearing request as it was submitted after the final overpayment decision.

On appeal, appellant asserts that the position that she returned to work on June 22, 2010 violated her medical restrictions. She also contends that she is unable to repay the overpayment.

LEGAL PRECEDENT -- ISSUE 1

Under FECA the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁶ Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁷ Generally, it can meet this burden by showing that the employee returned to work, even if that work is light duty rather than the date-of-injury position, if thereafter the employee earns no less than he or she had before the employment injury.⁸ A short-lived and unsuccessful attempt to return to duty, however, does not automatically discharge OWCP's burden to justify termination of compensation.⁹

OWCP is required by its statute and regulations to make findings of fact. 5 U.S.C. § 8124(a) provides: "[OWCP] shall determine and make a finding of facts and make an award for or against payment of compensation." Its regulations provide that a decision "shall contain findings of fact and a statement of reasons."¹⁰

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for lumbar sprain and lumbar radiculitis. It paid her compensation for disability beginning October 22, 2008. Appellant returned to modified employment full time on June 22, 2010 but stopped work on June 24, 2010 and filed a claim for compensation. On July 19, 2010 OWCP found that the medical evidence did not show that she was entitled to compensation beginning June 24, 2010. As noted, the July 19, 2010 correspondence constitutes a decision as OWCP weighed the medical evidence and reached a legal conclusion. It did not, however, adequately discuss the factual and medical evidence of record. OWCP is required to make findings of fact and a statement of reasons regarding the

⁵ In a decision dated September 16, 2010, OWCP denied appellant's claim for a schedule award. *See supra* note 3.

⁶ 5 U.S.C. § 8102(a).

⁷ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁸ *See Billy Sinor*, 35 ECAB 419 (1983).

⁹ *See Janice F. Migut*, 50 ECAB 166 (1998) (where the employee returned to work for two days, the burden remained on OWCP to justify terminating her benefits).

¹⁰ 20 C.F.R. § 10.126.

material facts of the case.¹¹ The findings should be sufficiently detailed so that the claimant can understand the reasoning behind the decision.¹²

Additionally, OWCP placed the burden on appellant for establishing disability. As discussed, however, a short-lived return to work does not shift the burden of proof regarding employment-related disability.¹³ The Board has held that a shift in burden is not appropriate when there is a brief return to work and the medical evidence does not establish that the claimant could continue to perform the light-duty job.¹⁴ Appellant returned to work on June 22, 2004 but stopped on June 24, 2004, a period of only two days. It remained OWCP's burden of proof to terminate compensation. As OWCP failed to issue an appropriate decision and placed the burden on appellant to establish total disability, the Board finds that OWCP terminated wage-loss compensation benefits without meeting its burden of proof. The July 19, 2010 decision will be reversed.

LEGAL PRECEDENT -- ISSUE 2

Section 8102 of FECA¹⁵ 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.¹⁶

Section 8116 of FECA defines the limitations on the right to receive compensation benefits. This section provides that, while an employee is receiving compensation, she may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.¹⁷ OWCP's regulations state 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."¹⁸

ANALYSIS -- ISSUE 2

On June 22, 2010 appellant returned to full-time modified work with the employing establishment. She stopped work on June 24, 2010. A claimant is not entitled to receive total

¹¹ *Id.*; *Beverly Dukes*, 46 ECAB 1014 (1995).

¹² *See Paul M. Colosi*, 56 ECAB 294 (2005).

¹³ *See Fred Reese*, 56 ECAB 568 (2005); *Cheryl A. Weaver*, 51 ECAB 308 (2000).

¹⁴ *Id.*

¹⁵ 5 U.S.C. § 8101 *et seq.*

¹⁶ *Id.* at § 8102.

¹⁷ *Id.* at § 8116(a).

¹⁸ 20 C.F.R. § 10.500.

disability compensation and actual earnings for the same period.¹⁹ Accordingly, appellant received an overpayment of compensation.

The Board finds, however, that the case is not in posture for decision regarding the amount of the overpayment. OWCP determined that appellant received an overpayment of compensation from June 22 to July 3, 2010. As discussed, it did not meet its burden of proof to establish that she was not entitled to compensation after she stopped work on June 24, 2010. Consequently, the case is not in posture for decision regarding the amount and period of the overpayment.²⁰

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to establish that appellant was not entitled to compensation from June 24 to July 16, 2010. The Board further finds that appellant received an overpayment of compensation but the case is not in posture for determination regarding the amount and period of the overpayment.

¹⁹ *L.S.*, 59 ECAB 350 (2008); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2(a) (September 2010).

²⁰ In view of the Board's determination regarding the amount and period of the overpayment, it is premature to address the issue of whether appellant was at fault in creating the overpayment and whether OWCP properly denied her request for a prereducement hearing.

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2010 decision of the Office of Workers' Compensation Programs is reversed, the August 16, 2010 decision is affirmed in part and set aside in part and the October 8, 2010 decision is set aside. The case is remanded for further proceedings consistent with this opinion of the Board.

Issued: August 19, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board