

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

C.S., Appellant)

and)

DEPARTMENT OF THE TREASURY,)
INTERNAL REVENUE SERVICE,)
Richmond, VA, Employer)

Docket No. 10-2389
Issued: June 22, 2011

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 27, 2010 appellant filed a timely appeal from the June 7, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) concerning an overpayment of compensation. Pursuant to 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 a \$2,890.00 overpayment of compensation; and (2) whether OWCP abused its discretion by refusing to waive recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

In a March 24, 2009 notice, OWCP advised appellant of its preliminary determination that she received a \$2,890.00 overpayment of compensation for the period January 18 to March 14, 2009.² OWCP stated that the overpayment occurred because appellant was paid compensation for the period January 18 to March 14, 2009 for temporary total disability despite the issuance of a January 16, 2009 wage-earning capacity decision reducing her compensation effective January 18, 2009.³ OWCP also made a preliminary determination that appellant was not at fault in the creation of the overpayment. It advised appellant that she could submit evidence challenging the fact or amount and request waiver of the overpayment. OWCP requested that she complete and return an enclosed financial information questionnaire within 30 days even if she was not requesting waiver of the overpayment.

In an April 29, 2009 decision, OWCP determined that appellant received a \$2,890.00 overpayment of compensation and found that she was not at fault in the creation of the overpayment but that the overpayment was not subject to waiver. It stated, “No response has been received to the preliminary decision. The claimant has not contested the finding and it should be finalized as correct for the reasons set forth in the preliminary decision. Since the claimant has not shown that recovery would defeat the purpose of [OWCP] or be against equity and good conscience, the entire overpayment will be collected....”

Appellant appealed the April 29, 2009 OWCP decision to the Board. In a May 24, 2010 order, the Board set aside the April 29, 2009 decision and remanded the case to OWCP for further development.⁴ The Board found that OWCP did not review evidence received prior to the issuance of its April 29, 2009 decision, *i.e.*, a financial information questionnaire (Form OWCP-20), completed by appellant on April 23, 2009, which contained information about income and expenses as well as arguments regarding why she felt that the amount of the overpayment was incorrect and why the overpayment should be waived.⁵ The Board remanded the case to OWCP for it to fully consider the evidence that was properly submitted by appellant prior to the issuance of the April 29, 2009 decision. Following such further consideration and after such further development as it deemed necessary, OWCP was directed to issue an appropriate decision regarding its overpayment determination.

On remand, OWCP issued a June 7, 2010 decision finding that appellant received a \$2,890.00 overpayment of compensation and that, given the circumstances of her case, waiver of recovery of the overpayment was not warranted. It indicated that the March 24, 2009

² OWCP accepted that on March 11, 2004 appellant, then a 41-year-old clerk/machinist, sustained a left brachial plexus injury due to performing her work duties. In a January 16, 2009 decision, it reduced appellant’s compensation effective January 5, 2009 due to its determination that the constructed position of receptionist represented her wage-earning capacity.

³ OWCP noted that appellant received \$2,995.48 in compensation for the period January 18 to March 14, 2009 but was only entitled to receive \$105.48 for this period.

⁴ Docket No. 09-2070 (issued May 24, 2010).

⁵ Appellant reported monthly income of \$56.00, monthly expenses of \$1,125.00 and no assets.

preliminary determination was incorporated by reference into its June 7, 2010 decision and noted that she was not at fault in the creation of the overpayment. OWCP indicated that it was considering the information submitted by appellant as directed by the Board and stated:

“The financial information questionnaire provided your expenses and assets. However, you did not provide any documentation to support the information provided. Also, your argument that the overpayment was not your fault would not preclude collection. Since supporting financial documentation was not provided, a waiver is not granted. The information provided was insufficient to justify waiving recovery of the overpayment.

“The claimant has not provided justification for [OWCP] to waive recovery of the overpayment.

“Furthermore, you noted ‘there is no set-off for the increase due pursuant to the letter from Wm Ernst dated February 19, 2009.’ In that letter, you were advised you should have been paid at the 75 percent compensation rate instead of 66 2/3 percent due to your dependent son for the period May 16, 2004 to January 17, 2009. This payment processed on or about May 4, 2009. It is important to note in a letter dated May 5, 2009 you were advised you were entitled to approximately \$11,000[.00] due to the difference in compensation rates. You were also advised that the outstanding overpayment in the amount of \$2,890[.00] was deducted from the compensation due.

“Thus, the overpayment of compensation previously identified in your case in the amount of \$2,890[.00] has been repaid in full. Your overpayment account has thus been fully liquidated and closed.”

LEGAL PRECEDENT

FECA provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as OWCP considers necessary with respect to the claim.⁶ OWCP procedure provides the financial information questionnaire (Form OWCP-20) is designed to obtain information on income, expenses and assets. If adequate documentation is not supplied, OWCP examiner should conference the case and request that additional documentation be submitted.⁷

ANALYSIS

The Board finds that after it directed OWCP to adequately consider evidence submitted by appellant (including financial information on a Form OWCP-20), it issued a June 7, 2010

⁶ 5 U.S.C. § 8124(a)(2).

⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200a(4) (October 2004).

decision which did not contain adequate facts and findings regarding the fact and amount of the claimed overpayment. The Board set aside OWCP's prior overpayment determination and, in its June 7, 2010 decision, OWCP concluded that appellant received a \$2,890.00 overpayment of compensation. However, OWCP did not provide a sufficient explanation of how it made this determination. It also rejected the financial information appellant provided in her Form OWCP-20 completed on April 23, 2009 by indicating that the figures were not adequately documented. OWCP procedure provides that in such a situation OWCP's examiner should conference the case and request that additional documentation be submitted.⁸ Therefore, it was premature for OWCP to determine that waiver of the overpayment was not warranted.

For these reasons, the June 7, 2010 OWCP decision is set aside and the case remanded to OWCP for further consideration of the issues of fact, amount and waiver of the claimed overpayment. After such development it deems necessary, OWCP shall issue an appropriate decision on these matters.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant received a \$2,890.00 overpayment of compensation and whether OWCP abused its discretion by refusing to waive recovery of the overpayment. The case is remanded to OWCP for further development.

⁸ See *id.*

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: June 22, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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