

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

S.B., Appellant

and

**U.S. POSTAL SERVICE, IRVING PARK ROAD
PROCESSING & DELIVERY CENTER,
Chicago, IL, Employer**

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**Docket No. 12-1675
Issued: March 20, 2013**

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
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On August 7, 2012 appellant filed a timely appeal from an August 2, 2012 overpayment 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 OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,171.72; and (2) whether appellant was at fault in creating the overpayment of compensation, thereby precluding waiver of the recovery.

On appeal, appellant contends that she was not aware that she was overpaid, that the money was deposited directly into her checking account and that she was not at fault in the creation of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 2, 2010 appellant, then a 39-year-old mail handler, filed a claim for compensation alleging that, as a result of twisting closures on bags, her hands became numb, tingling and painful. She alleged that, as a result of this and other job duties, she developed carpal tunnel syndrome. On November 10, 2010 OWCP accepted appellant's claim for bilateral carpal tunnel syndrome. Appellant underwent a right carpal tunnel release on November 17, 2011 and a left carpal tunnel release on January 26, 2012. Effective December 31, 2011 she was placed on the periodic rolls. Appellant was totally disabled from work for the period November 17, 2011 through March 25, 2012. She returned to full-time limited-duty work on March 26, 2012.

On May 24, 2012 OWCP made a preliminary determination that appellant was overpaid compensation for the period March 26 through April 7, 2012 in the amount of \$1,171.72. It determined that this overpayment occurred because she returned to full-time work on March 26, 2012, but continued to receive compensation for total disability. OWCP noted that appellant was paid compensation benefits for the period March 11 to April 7, 2012 in the amount of \$2,523.71; that she was entitled to compensation for \$1,351.99, and that this resulted in an overpayment of compensation in the amount of \$1,171.72.² It informed appellant that she had 30 days to request a conference, a final decision based on the written evidence, or a precoupment hearing on the issues of fault and possible waiver. OWCP also sent her financial forms to complete. Appellant did not file a timely response.

On August 2, 2012 OWCP finalized the overpayment of \$1,171.72. It also determined that appellant was at fault in the creation of the overpayment as she received compensation to which she knew she was not entitled.

LEGAL PRECEDENT – ISSUE 1

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ Monetary compensation for total or partial disability due to an employment injury is paid as a percentage of pay,⁴ meaning pay at the time of injury or pay at the time disability begins or pay at the time compensable disability recurs if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States whichever is greater.⁵

² OWCP noted that for the period March 11 through April 7, 2012, for which there were 28-calendar days, OWCP determined that appellant received \$90.1325 per day. However, as she returned to work on March 26, 2012, OWCP noted that appellant should have been paid for only 15 days. OWCP multiplied 15 by \$90.1325 and determined that appellant should have been paid \$1,351.99 for this period. Accordingly, it determined that appellant received an overpayment in the amount of \$1,171.72 (\$2,523.71 minus \$1,351.99 equals \$1,171.72).

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at §§ 8105, 8106.

⁵ *Id.* at § 8101(4); *John D. Williamson*, 40 ECAB 1179 (1989).

Section 8116 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 A claimant is not entitled to receive total disability compensation and actual earnings for the same period. OWCP's 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.⁷

ANALYSIS

The Board finds that this case is not in posture for decision regarding the amount of the overpayment appellant received. OWCP determined that appellant received an overpayment in the amount of \$1,171.72 because she received compensation after she returned to full-time work. It calculated how it made its determination as to the amount of the overpayment. However, the record does not contain any official indication that appellant was paid compensation after she returned to work. There is no Supplemental Roll Payment sheet in the record detailing a payment made to appellant that covered the time period after she returned to work on March 26, 2012. Accordingly, there is no proof of payment in the record supporting the finding of an overpayment. In view of this fact, OWCP's overpayment worksheets are insufficient to establish the amount of wage-loss compensation paid for the period March 26 through April 7, 2012. Accordingly, the Board does not have the information that it needs to properly evaluate the amount of the overpayment.⁸ On remand, OWCP must set forth the appropriate supporting documentation to support the overpayment finding.

CONCLUSION

The Board finds that this case is not in posture for decision.

⁶ *Id.* at § 8116(a).

⁷ 20 C.F.R. § 10.500(a).

⁸ *See W.L.*, Docket No. 12-320 (issued November 26, 2012).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 2, 2012 is set aside, and the case is remanded for further action consistent with this action of the Board.

Issued: March 20, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board