

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

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C.C., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Houston, TX, Employer

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**Docket No. 13-2002  
Issued: April 23, 2014**

*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  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 29, 2013 appellant timely appealed the July 3, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which found an overpayment of benefits. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUES**

The issues are: (1) whether appellant received an overpayment of \$27,295.68 for the period July 31, 2011 to April 6, 2013; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

**FACTUAL HISTORY**

Appellant, a 64-year-old mail handler, injured her right hip and right wrist in the performance of duty on February 22, 2008.<sup>2</sup> OWCP accepted her claim for closed fracture right

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<sup>1</sup> 5 U.S.C. §§ 8101-8193 (2006).

<sup>2</sup> Appellant was hit by a tow motor and knocked to the ground.

carpal bone and closed fracture right neck of femur.<sup>3</sup> It paid wage-loss compensation and placed appellant on the periodic compensation rolls effective April 13, 2008. In a decision dated July 21, 2011, OWCP terminated her wage-loss compensation and medical benefits based on her accepted conditions having resolved effective July 31, 2011.<sup>4</sup> However, it neglected to remove appellant from the periodic rolls, and thus, she continued to receive wage-loss compensation through April 6, 2013. The total compensation paid during the 20-month post-termination period was \$27,295.68.

On May 1, 2013 OWCP issued a preliminary determination that appellant was overpaid \$27,295.68 from July 31, 2011 to April 6, 2013. It made a preliminary finding that she was without fault in the creation of the overpayment.

Following the preliminary determination, there was telephone contact (CA-110) between appellant and the senior claims examiner. Appellant telephoned OWCP on May 6, 2013 her call was returned on May 8, 2013. The claims examiner described appellant as an elderly lady who clearly did not understand why her compensation was stopped or why there was an overpayment. She attempted to explain to appellant why and how the overpayment occurred. The claims examiner also encouraged appellant to exercise her appeal rights and submit a completed overpayment questionnaire. She advised appellant to obtain someone to assist her in reviewing the preliminary determination so she could have a better understanding of her appeal rights.

On May 13, 2013 appellant requested a telephone conference regarding the May 1, 2013 preliminary determination. She also submitted an overpayment recovery questionnaire (Form OWCP-20), together with billing statements for various utilities. OWCP received appellant's request and accompanying financial information on May 24, 2013.

Appellant made a follow-up call on May 28, 2013. On May 29, 2013 the senior claims examiner acknowledged receipt of appellant's overpayment questionnaire and attached documentation and she was advised that the information would be reviewed.

Appellant called OWCP again on June 26, 2013. The senior claims examiner reiterated that OWCP received the questionnaire. Appellant was told that she was "still responsible for the overpayment," and advised to appeal the final overpayment decision once it was issued. The senior claims examiner noted that appellant should consider having someone act as her representative to assist with her workers' compensation claim and appeal.

On July 3, 2013 OWCP issued a final decision finding an overpayment in the amount of \$27,295.68. Appellant was found to be without fault. OWCP also denied waiver of recovery of the \$27,295.68 overpayment. The decision noted that appellant requested a telephone conference and that the senior claims examiner called her on May 8 and June 26, 2013 and "discussed repayment of the overpayment and further collection efforts." Appellant's OWCP-20

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<sup>3</sup> On February 26, 2008 appellant underwent surgery to repair her right femoral neck fracture. She also had a follow-up procedure on April 27, 2009 to remove hardware from her right hip.

<sup>4</sup> OWCP relied on the August 4, 2010 report of Dr. Frank L. Barnes, a Board-certified orthopedic surgeon and impartial medical examiner, who found that appellant's accepted fractures had all healed and that she returned to her preinjury status. Appellant was capable of resuming her date-of-injury position without restriction and she required no further medical treatment.

revealed no assets or current monthly income. The only income she previously had was what OWCP paid her. The July 3, 2013 decision also noted that appellant had monthly expenses of \$1,067.88. OWCP indicated that the information appellant provided was insufficient to support waiver of recovery. The decision further indicated that the overpayment would be deducted from future compensation payments.

### **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.<sup>5</sup> Section 8105(a) of FECA provides that if the disability is total, the United States shall pay the employee monthly monetary compensation during the disability.<sup>6</sup> Section 8129(a) of FECA provides authority for recovery of an overpayment made to an individual “because of an error of fact or law....”<sup>7</sup> An overpayment arises where OWCP has issued a final decision terminating benefits, but subsequently fails to stop payment of wage-loss compensation in accordance with the terms of the decision.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

In July 2011 OWCP issued a decision terminating appellant’s compensation benefits effective July 31, 2011.<sup>9</sup> Despite the decision terminating benefits, it failed to remove her from the periodic compensation rolls. During the period July 31, 2011 to April 6, 2013, appellant had received \$27,295.68 in disability compensation. Having previously terminated all benefits, effective July 31, 2011, OWCP properly found that she received an overpayment of compensation. It determined that appellant was without fault in the creation of the overpayment. The Board will affirm the fact and amount of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 2**

An individual who is without fault in creating or accepting an overpayment is nonetheless subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>10</sup> Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a current or former beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Id.* at § 8105(a).

<sup>7</sup> *Id.* at § 8129(a). *See also D.R.*, 59 ECAB 148 (2007).

<sup>8</sup> The fact that OWCP may have erred in making the overpayment does not, by itself, relieve the individual who received the overpayment from liability for repayment. *See* 20 C.F.R. § 10.435(a).

<sup>9</sup> The propriety of OWCP’s July 21, 2011 decision terminating benefits is not before the Board. That decision predated the current appeal by more than 180 days, and thus, it falls outside the Board’s jurisdiction. *See* 20 C.F.R. § 501.3(e). Moreover, since terminating benefits more than two and one-half years ago, OWCP has not specifically addressed whether appellant has demonstrated continuing employment-related disability on or after July 31, 2011.

<sup>10</sup> 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436 and 10.437.

necessary living expenses and the beneficiary's assets do not exceed a specified amount as determined by OWCP.<sup>11</sup> Additionally, recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when any individual, in reliance on such payment or on notice that such payments would be made, relinquished a valuable right or changed his or her position for the worse.<sup>12</sup>

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP.<sup>13</sup> This information is necessary for determining whether a waiver of recovery of the overpayment is warranted.<sup>14</sup> The information is also used to determine an appropriate repayment schedule, if necessary.<sup>15</sup> Failure to submit the requested information within 30 days of the request shall result in denial of waiver<sup>16</sup> and further request for waiver shall be considered until the requested information is furnished.<sup>17</sup>

### ANALYSIS -- ISSUE 2

OWCP found appellant to be without fault in the creation of the overpayment. The issue of whether she is entitled to waiver of recovery is not in posture for decision. OWCP denied waiver without providing a clear explanation for its determination.<sup>18</sup> The July 3, 2013 decision noted that the information appellant provided was insufficient to support waiver of recovery. The overpayment recovery questionnaire listed no current income and no assets. Appellant's FECA benefits had been her only source of income according to the OWCP-20 she submitted. An April 15, 2013 financial disclosure statement (CA-1032) also showed no other source of income. Without any assets or current source of income, it is unclear how appellant meets her reported monthly expenses of \$1,067.88, as well as repay \$27,295.68. Further, the July 3, 2013 decision stated that the overpayment would be deducted "from future compensation payments." As noted, appellant was no longer in receipt of FECA benefits that were terminated effective July 31, 2011.

The Board cannot readily discern from either the record why OWCP found the information appellant provided insufficient to support waiving recovery of the overpayment. Absent an appropriate statement of reasons, the Board finds the issue of waiver not in posture for

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<sup>11</sup> 20 C.F.R. § 10.436(a), (b). For an individual with no eligible dependents the asset base is \$4,800.00. The base increases to \$8,000.00 for an individual with a spouse or one dependent, plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(b) (June 2009).

<sup>12</sup> 20 C.F.R. § 10.437(a), (b).

<sup>13</sup> *Id.* at § 10.438(a).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at § 10.438(b).

<sup>17</sup> *Id.*

<sup>18</sup> An OWCP decision shall contain findings of fact and a statement of reasons. 20 C.F.R. § 10.126.

decision.<sup>19</sup> The case will be remanded for further consideration of appellant's request for waiver of recovery.

**CONCLUSION**

Appellant received an overpayment of \$27,295.68 for the period July 31, 2011 to April 6, 2013. The question of whether she is entitled to waiver of recovery is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 3, 2013 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further action consistent with this decision.

Issued: April 23, 2014  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>19</sup> *Id.*