



## **FACTUAL HISTORY**

This case has previously been before the Board. In a decision issued January 13, 2006,<sup>2</sup> the Board found that appellant did not establish that she was totally disabled for work from November 9 to 19, 2002 due to accepted bilateral carpal and cubital tunnel syndromes. The history of the case as set forth in the Board's prior decision is incorporated herein by reference.

By decision dated August 30, 2007, OWCP granted appellant a schedule award for a 10 percent permanent impairment of the left upper extremity.<sup>3</sup> On November 18, 2008 it accepted a recurrence of disability beginning December 6, 2007.<sup>4</sup> Following a return to light-duty work, appellant stopped work on March 13, 2009. She received wage-loss compensation on the supplemental rolls beginning March 27, 2009 and on the periodic rolls beginning August 1, 2009.

In an August 19, 2009 letter, OWCP advised appellant that, when she returned to work, she must return any payment to OWCP if she worked for any portion of the payment period.

Appellant accepted a November 20, 2012 job offer for a light-duty position with no loss of wages. In a December 11, 2002 letter, the employing establishment confirmed that she returned to work as of December 1, 2012.

OWCP calculated that, for the period November 18 to December 15, 2012, appellant was paid \$2,977.68 in net wage-loss compensation. From November 18 to 29, 2012, appellant received \$1,169.90. For the period November 30 to December 15, 2012 after she returned to work, she received \$1,807.88. OWCP found that the amount of \$1,807.88 constituted an overpayment of compensation as she received wage-loss compensation for total disability while working with no loss of wages.

By notice dated March 14, 2013, OWCP advised appellant of its preliminary determination that she was overpaid \$1,807.88 in compensation from November 29 to December 15, 2012. It found that she was at fault in creating the overpayment. OWCP afforded appellant 30 days to submit financial information and to request a prerecoupment hearing. Appellant responded by March 20, 2013 letter, asserting that she reported for duty at 9:00 p.m. on November 30, 2012, whereas OWCP found that she returned to work on November 29, 2012. She explained that she supported her adult daughter and four grandchildren, supported her aged father and paid burial expenses for two indigent relatives. Appellant listed \$30.00 in assets, \$2,906.00 in monthly household income and \$2,930.00 in monthly expenses. She provided supporting documentation.<sup>5</sup>

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<sup>2</sup> Docket No. 05-1822 (issued January 13, 2006).

<sup>3</sup> OWCP initially denied the schedule award by decision issued February 22, 2006, vacated on May 4, 2007.

<sup>4</sup> OWCP initially denied the recurrence claim on March 20, 2008, reversed by decision issued October 24, 2008.

<sup>5</sup> Appellant requested a telephonic hearing but sent her request to an incorrect address.

By decision dated and finalized June 21, 2013, OWCP finalized the fact and amount of the overpayment and the finding of fault. It directed recovery by submitting a check for the full amount of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of FECA<sup>6</sup> 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 his or her duty.<sup>7</sup> 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.”<sup>8</sup>

FECA places limitations on the right to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay or remuneration of any type from the United States, with certain exceptions.<sup>9</sup> It is well established that an employee is not entitled to compensation for temporary total disability after returning to work at full salary.<sup>10</sup>

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

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome in the performance of duty. Appellant received compensation for total disability on the periodic rolls beginning on August 1, 2009. She returned to work with no wage loss on November 30, 2012. However, appellant received \$1,807.88 in wage-loss compensation for the period November 30 to December 15, 2012, after she had returned to work. As she was not entitled to receive compensation while working, the \$1,807.88 constitutes an overpayment of compensation. The Board finds that OWCP’s calculations are accurate. Therefore, the June 21, 2013 decision properly determined the fact and amount of overpayment.

On appeal, appellant did not contest the fact of overpayment. However, she asserted that the period and amount of the overpayment were incorrect, as OWCP found she returned to work on November 29, 2012 but she did not report for duty until November 30, 2012. In its calculations, OWCP properly determined November 30, 2012 as the start date in computing the \$1,807.88 overpayment. In its preliminary notice of overpayment and final decision, it incorrectly stated that it used November 29, 2012 as the first day of the overpayment period. The amount of the overpayment remained the same. Therefore, OWCP’s use of the November 29, 2012 date in the preliminary and final notices of overpayment was a harmless clerical error.

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<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Id.* at § 8102(a).

<sup>8</sup> *Id.* at § 8129(a).

<sup>9</sup> *Id.* at § 8116(a).

<sup>10</sup> *J.S.*, Docket No. 13-909 (issued August 7, 2013).

## LEGAL PRECEDENT -- ISSUE 2

An individual who is found at fault in either accepting or creating an overpayment is not eligible for a waiver of recovery of overpayment.<sup>11</sup> A benefits recipient will be at fault if the individual: (1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) failed to provide information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have known to be incorrect.<sup>12</sup> No waiver of an overpayment is possible if the claimant is at fault in creating the overpayment.<sup>13</sup>

With respect to whether an individual is without fault, section 10.433(b) of OWCP's regulations provide that whether or not OWCP determines that an individual was at fault with respect to 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.<sup>14</sup>

Section 10.430(a) of OWCP's regulations advise that OWCP includes on each periodic check a clear indication of the period for which payment is being made. A form is sent to the recipient with each supplemental check which states the period for which payment is being made. Section 10.430(b) notes that, by these means, OWCP puts the recipient on notice that a payment was made and the amount of the payment.<sup>15</sup>

## ANALYSIS -- ISSUE 2

OWCP applied the third standard in this case, finding that appellant accepted a compensation payment on December 15, 2013 that she knew or should have known was incorrect. Appellant accepted a compensation payment for the period November 18 to December 15, 2012, encompassing the period November 30 to December 15, 2012 after she returned to work with no wage loss.

OWCP advised appellant by August 19, 2009 letter of her obligation to return any compensation payments that covered a period after she returned to work. This establishes that she knew or should have known that she was not entitled to accepted compensation for total disability after she returned to full-time work at her regular salary. As appellant did not return the December 15, 2012 payment as instructed, OWCP properly found her at fault in creation of

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<sup>11</sup> 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.423(a) and 10.434.

<sup>12</sup> 20 C.F.R. § 10.433(a).

<sup>13</sup> *Gregg B. Manston*, 45 ECAB 344 (1994).

<sup>14</sup> 20 C.F.R. § 10.433(b).

<sup>15</sup> *R. W.*, Docket No. 13-1285 (issued November 13, 2013); 20 C.F.R. § 10.430.

the overpayment. As she was at fault under the third fault standard as set forth above, recovery of the \$1,807.88 overpayment of compensation may not be waived.<sup>16</sup> On appeal, appellant asserted that she could not repay the overpayment due to severe financial hardship, but she is not entitled to a waiver of recovery.

**CONCLUSION**

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$1,807.88 for the period November 30 to December 15, 2012. The Board further finds that it correctly determined that appellant was at fault in creation of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 21, 2013 is affirmed.

Issued: January 15, 2014  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>16</sup> As OWCP did not direct recovery of the overpayment from continuing compensation, the Board has no jurisdiction to review the issue of recovery. *See Albert Pineiro*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).