



## **ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$2,651.85 because she received an improper payment of compensation benefits for the period February 3 to March 2, 2019; and (2) whether OWCP properly found appellant at fault in the creation of the overpayment and thus not entitled to waiver of recovery of the overpayment.

## **FACTUAL HISTORY**

On December 14, 2016 appellant, then a 58-year-old medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 8, 2016 her right foot slipped as she was entering a tramway, her head and right arm hit a wall, and her right knee hit the floor while in the performance of duty. OWCP accepted the claim for contusion of the right knee, displaced fracture of lateral end of right clavicle for closed fracture, and sprain of unspecified site of the right knee. Appellant received continuation of pay and thereafter received intermittent wage-loss compensation on the supplemental rolls from September 29, 2017 until May 29, 2018.

On September 29, 2017 appellant underwent a revision of the right collar bone. She returned to full-time regular work on November 13, 2017.

By decision dated December 4, 2018, OWCP granted appellant a schedule award for 12 percent permanent impairment of the right upper extremity. The period of the award ran for 37.44 weeks, from May 30, 2018 to February 16, 2019. Appellant was advised that she would receive a lump sum of \$15,602.40 for accrued compensation for the period May 30 to November 10, 2018 and thereafter each week her continuing payment would be \$2,647.68 until February 16, 2019.

The record reflects that appellant received schedule award compensation through February 16, 2019. However, the record also reflects that on March 2, 2019 appellant received another payment in the amount of \$2,651.85 purportedly for schedule award compensation from February 3 until March 2, 2019.

By notice dated May 16, 2019, OWCP advised appellant that it made a preliminary finding that she had received a \$2,651.85 overpayment of compensation because she received improper compensation after her schedule award ceased on February 16, 2019. It also found that she was at fault in the creation of the overpayment because she accepted a payment that she knew or should have known was in error.<sup>4</sup>

By decision dated July 16, 2019, OWCP found that appellant had received an overpayment of compensation in the amount of \$2,651.85 due to the improper payment following her schedule award. It further found that she was at fault in the creation of the overpayment and was therefore

---

<sup>4</sup> On June 27, 2019 OWCP received a completed Form OWCP-20 overpayment recovery questionnaire. Appellant completed an overpayment action request form and requested that OWCP make a decision based on the written evidence on the issues of fault and possible waiver of recovery of the overpayment. She indicated that she was told that she would receive three payments, which she received. As a result, appellant believed that the payments were due to her. She indicated that she had monthly income of \$4,200.00, and monthly expenses of \$5,374.00. Appellant did not provide evidence documenting the expenses.

precluded from waiver of recovery of the overpayment. Appellant was instructed to remit a check in the amount of \$2,651.85 within 30 days.

**LEGAL PRECEDENT -- ISSUE 1**

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 his or her duty.<sup>5</sup> When an overpayment has been made to an individual 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 the individual is entitled.<sup>6</sup>

OWCP procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.<sup>7</sup>

**ANALYSIS -- ISSUE 1**

The Board finds that appellant received an overpayment of compensation in the amount \$2,651.85 because she received an improper payment of compensation benefits for the period February 3 to March 2, 2019.

The record reflects that appellant properly received schedule award payments for the period May 30, 2018 through February 16, 2019 pursuant to OWCP's December 4, 2018 schedule award decision. However on March 2, 2019 appellant received an improper payment in the amount of \$2,651.85, purportedly for the period February 3 through March 2, 2019. The Board finds that appellant was not entitled to this March 2, 2019 payment as she had already been fully compensated for the schedule award.<sup>8</sup> Further, appellant has not contested the fact or amount of the overpayment. The record thus establishes that an overpayment of compensation in the amount of \$2,651.85.

**LEGAL PRECEDENT -- ISSUE 2**

5 U.S.C. § 8129(b) provides: "Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience."<sup>9</sup> A claimant who is at fault in the creation of the overpayment is not entitled to waiver.<sup>10</sup> On the issue of fault 20 C.F.R. § 10.433(a) provides that an individual will be found at

---

<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Id.* at § 8129(a).

<sup>7</sup> *C.P.*, Docket No. 19-1985 (issued July 1, 2020); *R.J.*, Docket No. 17-1974 (issued March 23, 2018); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2(c) (May 2004).

<sup>8</sup> *Id.*

<sup>9</sup> 5 U.S.C. § 8129(b).

<sup>10</sup> *See K.P.*, Docket No. 19-1151 (issued March 18, 2020); *R.G.*, Docket No. 18-1251 (issued November 26, 2019); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

fault if he or she has done any of the following: (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 was incorrect.<sup>11</sup>

Section 10.433(b) of OWCP's regulations provides that whether or not an individual was at fault with respect to the 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>12</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant was not at fault in the creation of the overpayment.

In cases where a claimant receives compensation through direct deposit, the Board has held that OWCP must establish that, at the time a claimant received the direct deposit in question, he or she should have known that the payment was incorrect.<sup>13</sup> The Board has held that an employee who receives payments from OWCP in the form of a direct deposit is not at fault for the first incorrect deposit into his or her account since the acceptance of the overpayment, at the time of receipt of the direct deposit, lacks the requisite knowledge.<sup>14</sup> Because fault is defined by what the claimant knew or should have known at the time of acceptance, one of the consequences of electronic fund transfers is that the claimant lacks the requisite knowledge at the time of the first incorrect payment.<sup>15</sup> Whether or not OWCP determines that an individual is at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment.<sup>16</sup>

The Board finds that the evidence of record establishes that on the date of the first direct deposit of compensation following the termination of her schedule award compensation appellant did not know or have reason to know that she was accepting a direct deposit to which she was not entitled. The record does not contain documentation or other evidence to demonstrate that she had knowledge at the time of the March 2, 2019 direct deposit covering that the payment was incorrect. Therefore, when the improper direct deposit was made, appellant had no knowledge that it was incorrect. Appellant, therefore, cannot be found to be at fault in the acceptance of the March 2, 2019 direct deposit. The case must therefore be remanded for OWCP for a *de novo* decision to determine whether she is entitled to waiver of recovery of the overpayment made on March 2, 2019.

---

<sup>11</sup> 20 C.F.R. § 10.433(a).

<sup>12</sup> *Id.* at § 10.433(b); *see also R.G., supra* note 10; *D.M.*, Docket No. 17-0983 (issued August 3, 2018).

<sup>13</sup> *T.N.*, Docket No. 17-0387 (issued November 28, 2018); *J.K.*, Docket No. 08-1761 (issued January 8, 2009); *Joan Ross*, 57 ECAB 694 (2006); *Desiderio Martinez*, 55 ECAB 245 (2004).

<sup>14</sup> *Id.*; *Tammy Craven*, 57 ECAB 589 (2006).

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

<sup>16</sup> *Id.*

**CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount \$2,651.85 because she received an improper payment of compensation benefits for the period February 3 to March 2, 2019. The Board further finds that OWCP improperly found that she was at fault in the creation of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 16, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part. The case is remanded for further action consistent with this decision of the Board.

Issued: July 29, 2020  
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board