

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

A.H., Appellant)
and) **Docket No. 20-0442**
U.S. POSTAL SERVICE, POST OFFICE,) **Issued: January 26, 2021**
Gastonia, NC, Employer)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On December 18, 2019 appellant filed a timely appeal from a December 4, 2019 merit 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.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received a \$1,600.24 overpayment of compensation for the period March 16 through April 27, 2019 because he continued to receive wage-loss compensation following his return to full-duty work; and

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 4, 2019 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

(2) whether OWCP properly found that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.³ The relevant facts are as follows.

On September 28, 2014 appellant, then a 48-year-old supervisor/letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 27, 2014 he sustained lower back and bilateral leg, knee, and foot injuries when a coworker drove off in a vehicle while appellant was attempting to open the back door and enter the vehicle while in the performance of duty.⁴ He stopped work on the date of injury and returned to work on December 26, 2014.

On January 14, 2015 OWCP accepted the claim for lumbar and neck sprains. The acceptance letter informed appellant that wage-loss compensation for total disability was available only if he was unable to perform the duties of his regular position and that he should notify OWCP if he returned to work, or obtained new employment. Appellant was also advised that, if he worked during a period in which he received compensation, he should notify OWCP in order that the overpayment could be collected.

Appellant stopped work again on February 6, 2015, but returned to light-duty part-time work on July 5, 2016. In an October 3, 2016 *Shadrick* documentation memorandum, OWCP adjusted appellant's compensation based on actual earnings and paid him wage-loss compensation for four hours per day on the periodic rolls. On April 7, 2018 appellant began working six hours per day.

In a report dated March 11, 2019, Dr. Ian D. Archibald, a Board-certified orthopedic surgeon, advised that appellant was capable of working eight hours per day.

In a report of work status (Form CA-3) dated April 11, 2019, the employing establishment informed OWCP that appellant had returned to full-time, regular-duty work on March 16, 2019.

In a letter dated April 24, 2019, OWCP indicated that appellant had returned to work on March 16, 2019. It noted that for the period March 16 through 30, 2019 he had been overpaid compensation in the amount of \$558.21 and from March 31 through April 27, 2019 he had been overpaid compensation in the amount of \$1,042.00. OWCP noted that it had issued appellant a check dated March 30, 2019 covering wage-loss compensation for the period March 16

³ Docket No. 19-1788 (issued March 17, 2020).

⁴ OWCP assigned the present claim OWCP File No. xxxxxx326. Appellant has a prior claim for a November 30, 2005 employment injury. OWCP assigned that claim OWCP File No. xxxxxx269 and accepted it for left upper and lower extremity conditions, neck and thoracic sprains, and a concussion. On January 18, 2018 it administratively combined the present claim with OWCP File No. xxxxxx269, with the latter serving as the master file.

through 30, 2019 and a check dated April 27, 2019 covering wage-loss compensation for the period March 31 to April 27, 2019. It calculated that the overpayment totaled \$1,600.21.

On May 6, 2019 OWCP advised appellant of its preliminary determination that he had received an overpayment of compensation in the amount of \$1,600.21 for the period March 16 through April 27, 2019 because he returned to full-duty work on March 16, 2019, but received wage-loss compensation for partial disability. It found that he was at fault in the creation of the overpayment because he had accepted a payment that he knew or reasonably should have known was incorrect. OWCP informed appellant that he had the right to submit evidence or argument if he disagreed with its finding. It also informed him that he had a right to a prerecoupment hearing before an OWCP hearing representative. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation.

On an overpayment action request form dated May 13, 2019, appellant requested a prerecoupment hearing before OWCP's Branch of Hearings and Review. He asserted that he had not been overpaid and that the checks he had received were for money OWCP owed him. Appellant listed \$3,250.00 in monthly income and \$1,800.00 in other monthly benefits, which totaled \$5,050.00 in monthly income. Monthly expenses included \$350.00 in rent or mortgage, \$650.00 for food, \$150.00 for clothing, \$1,000.00 for utilities, and \$300.00 in other expenses, which resulted in total monthly expenses of \$2,450.00. Other expenses included monthly debt payments of \$333.00 for his life insurance, \$150.00 for his daughter's life insurance, \$27.00 for cancer insurance, \$39.00 for disability insurance. Appellant listed assets of \$105,000.00 in a checking account, \$60,000.00 in a savings account, \$340,000.00 in stocks and bonds, and \$255,000.00 for value of other personal property and other funds, which resulted in total assets of \$760,000.00. No supporting financial documentation accompanied his request for waiver.

Following a hearing, held on September 20, 2019, by decision dated December 4, 2019, OWCP's hearing representative finalized its preliminary determination that an overpayment of compensation in the amount of \$1,600.24 for the period March 16 through April 27, 2019 as he continued to receive wage-loss compensation following his return to full-duty work. She determined that appellant was at fault in the creation of the overpayment because he accepted compensation payments he knew or should have known were incorrect. OWCP's hearing representative found that appellant should forward \$1,600.24 within 30 days to repay the overpayment of compensation.

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.⁵

Section 8116 of FECA defines the limitations on the right to receive compensation benefits. This section 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

⁵ *Supra* note 1 at § 8102(a).

circumstances.⁶ OWCP's procedures provide that an overpayment in compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,600.21 for the period March 16 through April 27, 2019.

The record establishes that appellant returned to work full time at the employing establishment on March 16, 2019. Appellant received wage-loss compensation for partial disability from March 16 through April 27, 2019. As noted above, he is not entitled to receive compensation for partial disability after he has returned to full-duty work.⁸ Thus, an overpayment of compensation was created.

The Board notes that OWCP's hearing representative in the December 4, 2019 decision incorrectly noted that the overpayment amount was \$1,600.24, instead of \$1,600.21. The Board finds that this is a typographic error. OWCP properly calculated in its April 24, 2019 letter and May 6, 2019 preliminary overpayment determination that appellant's net compensation paid for the period March 16 through April 27, 2019 totaled \$1,600.21.

Thus, the Board finds that he received an overpayment of compensation in the modified amount of \$1,600.21 for the period March 16 through April 27, 2019.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of FECA provides as follows that 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 this subchapter or would be against equity and good conscience.⁹ No waiver of an overpayment is possible if the claimant is at fault in creating the overpayment.¹⁰

On the issue of fault, 20 C.F.R. § 10.433(a) provides that an individual is with fault in the creation of an overpayment who: (1) made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or (2) failed to furnish information which the individual knew or should have known to be material; or (3) with respect to the overpaid

⁶ *Id.* at § 8116(a).

⁷ *C.A.*, Docket No. 18-0092 (issued April 2, 2018); *Danny E. Haley*, 56 ECAB 393 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Action*, Chapter 6.200.2(a) (May 2004).

⁸ *L.T.*, Docket No. 19-1389 (issued March 27, 2020).

⁹ *Supra* note 1 at § 8129(b).

¹⁰ *See J.S.*, Docket No. 19-1363 (issued April 10, 2020); *Gregg B. Manston*, 45 ECAB 344 (1994).

individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.¹¹

With respect to whether an individual is without fault, section 10.433(b) of OWCP regulations provide that whether or not OWCP determines that 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.¹²

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.¹³ 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.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that appellant was at fault in the creation of the overpayment because he accepted a payment which he knew or should have known to be incorrect.

In the January 14, 2015 acceptance letter, OWCP advised appellant that he was to immediately inform it upon his return to work to avoid an overpayment of compensation and that, if he worked during any period covered by a compensation payment, he had to return the payment to OWCP. Thus, appellant should have known that he could not receive wage-loss compensation after his return to work.¹⁵

The record contains evidence that appellant received a check dated March 30, 2019 covering wage-loss compensation for the period March 3 to 30, 2019 and a check dated April 27, 2019 covering wage-loss compensation for the period March 31 to April 27, 2019. Appellant did not return the compensation checks he received.

Therefore the Board concludes that appellant was at fault in the creation of the overpayment as he should have known that, at the time he returned to work on March 16, 2019, he was not entitled to continue to receive compensation and had an obligation to return payments he knew or

¹¹ 20 C.F.R. § 10.433(a).

¹² *Id.* at § 10.433(b).

¹³ *Id.* at § 10.430(a).

¹⁴ *Id.* at § 10.430(b).

¹⁵ *Id.*

should have known were incorrect.¹⁶ As he was at fault in the creation of the overpayment, appellant is precluded from waiver of recovery of the overpayment of compensation.¹⁷

On appeal appellant asserts that he should not be found at fault in the creation of the overpayment as it was the employing establishment's error. As explained above, the record establishes that he should have known that the payment he received was incorrect. Appellant was, therefore, at fault in the creation of the overpayment.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,600.21 for the period March 16 through April 27, 2019 because he continued to receive wage-loss compensation following his return to full-duty work. The Board further finds that he was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the December 4, 2019 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: January 26, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁶ *Supra* note 11. *See also J.H.*, Docket No. 17-0592 (issued May 1, 2018); *William F. Salmonson*, 54 ECAB 152 (2002).

¹⁷ *Supra* note 10.