

determined that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

FACTUAL HISTORY

On January 18, 2013 appellant, then a 42-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her left ankle that day when she stepped off stairs onto a narrow pathway and rolled her left ankle while in the performance of duty. She stopped work that day. On March 14, 2013 OWCP accepted sprains of the left foot and ankle. Appellant received continuation of pay from January 18 through March 4, 2013 and FECA compensation on the supplemental rolls commencing March 6, 2013. On January 7, 2015 OWCP expanded the acceptance of the claim to include late effect of left tendon injury.

On September 26, 2014 appellant filed a notice of recurrence (Form CA-2a). She noted that she was scheduled for left ankle surgery on September 29, 2014.³ OWCP accepted the recurrence and paid wage-loss compensation for temporary total disability on the supplemental rolls commencing September 29, 2014. It placed appellant on the periodic rolls effective January 11, 2015.

On December 17, 2014 OWCP acknowledged receipt of appellant's direct deposit sign up form effective that day.

In a letter dated January 2, 2015, OWCP advised appellant that it had placed her on the periodic rolls and notified her of her continuing compensation payments and her responsibility to return to work if she was no longer totally disabled in connection with the accepted injury. An attached EN1049 form instructed:

“To minimize the possibility of an overpayment of compensation, NOTIFY THIS OFFICE IMMEDIATELY WHEN YOU GO BACK TO WORK. For payments sent by electronic funds transfer (EFT), a notification of the date and amount of payment appears on the statement from your financial institution. Each payment shows the period for which payment is made. If you have worked for any portion of this period, return the payment to this office even if you already advised OWCP that you are working.” (Emphasis in the original.)

On an EN1032 form, received by OWCP on June 3, 2015, appellant reported that she had returned to work as a mail carrier on April 13, 2015.

OWCP terminated appellant's FECA compensation effective October 13, 2015. It indicated that appellant had returned to work on April 13, 2015.

³ The record indicates that appellant underwent revision of the posterior tendon of the left foot on September 29, 2014.

In an e-mail dated November 12, 2015, the employing establishment confirmed that appellant returned to full-time work on April 13, 2015.

On November 16, 2017 OWCP notified appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$20,931.30 for the period April 13 to October 12, 2015 because she received FECA compensation after she returned to full-time work on April 13, 2015. It provided calculations showing that, for this period, she received net FECA compensation totaling \$20,931.30. OWCP further found appellant at fault in the creation of the overpayment because she knowingly accepted compensation to which she was not entitled, noting that she knew or should have known that she continued to receive FECA compensation after her return to work. It wrote that, in a letter dated January 2, 2015, appellant was informed of her responsibilities regarding a return to work. OWCP attached an overpayment action request and an overpayment recovery questionnaire (Form OWCP-20), and allotted 30 days for appellant to submit the requested information.

By decision dated December 20, 2017, OWCP finalized the preliminary overpayment determination.

In correspondence postmarked December 15, 2017, appellant requested a prerecoupment hearing with OWCP's Branch of Hearings and Review. She contended that she was not at fault and furnished a completed overpayment recovery questionnaire in which she indicated that she had zero cash on hand and \$200.00 in her checking account. Appellant listed monthly income of \$5,200.00 and monthly expenses of approximately \$6,707.00. She submitted no supporting financial documentation.

By letter dated January 17, 2018, OWCP informed appellant that the final overpayment decision issued on December 20, 2017 had been vacated due to the timely filing of her appeal to the Branch of Hearings and Review.

At a June 13, 2018 hearing, appellant maintained that she was not at fault in the creation of the overpayment. The hearing representative left the record open for 30 days for appellant to submit financial information supporting her expenses. Appellant submitted additional evidence, but no financial documentation was received.

By decision dated August 28, 2018, an OWCP hearing representative found that appellant received an overpayment of compensation in the amount of \$20,931.30 for the period April 13 to October 12, 2015 based on her receipt of FECA compensation after her return to full-time work on April 13, 2015. The hearing representative further found appellant at fault in the creation of the overpayment because she was aware that she continued to receive compensation after her return to work and, therefore, accepted a payment she knew or should have been expected to know was incorrect. The hearing representative noted that appellant submitted no documentation to support her claimed expenses and set recovery of the overpayment at \$200.00 a month.

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 duty.⁴ 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.⁵

OWCP's procedures provide that, once an overpayment is identified, it is responsible for determining whether the claimant was with fault or without fault, issuing a preliminary finding, and unless a hearing is requested, OWCP is responsible for issuing a final decision.⁶ These procedures note that, if the claimant is determined to be without fault, a preliminary overpayment determination must be released along with a Form OWCP-20 within 30 days of the date the overpayment is identified. Both, the reason that the overpayment occurred and the reason for the finding of without fault, must be clearly stated. A preliminary overpayment determination informs the claimant of the right to submit evidence and the right to a prerecoupment hearing on the issues of: (a) fact and amount of overpayment; and (b) waiver of recovery of the overpayment. Along with the preliminary overpayment determination, OWCP should provide a clearly written statement explaining how the overpayment was created.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$20,931.30 for the period April 13 to October 12, 2015.

As noted, OWCP procedures provide that a preliminary overpayment determination must be released along with an OWCP-20 within 30 days of the date the overpayment is identified.⁸

In this case, OWCP was first formally placed on notice that appellant had returned to work when it received an EN1032 form on June 3, 2015 in which she reported that she had returned to work on April 13, 2015. It, however, did not issue a preliminary notice regarding the overpayment until November 16, 2017, two years later. This preliminary notice was, therefore, not issued within 30 days after the overpayment of compensation was identified.

⁴ *Supra* note 1 at § 8102(a).

⁵ *Id.* at § 8129(a).

⁶ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(a)(2) (May 2004).

⁷ *Id.*; *see also L.P.*, Docket No. 18-0095 (issued March 12, 2020).

⁸ *Id.*

The Board, thus, finds that OWCP did not follow its own procedures as it did not issue a preliminary notice of overpayment within 30 days of identifying an overpayment based upon appellant's return to work.⁹

CONCLUSION

The Board finds that OWCP failed to follow its established procedures in determining that appellant received an overpayment of compensation in the amount \$20,931.30 for the period April 13 to October 12, 2015.

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2018 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 22, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.