

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$12,365.56 for the period July 31 through November 4, 2023, because he continued to receive wage-loss compensation for total disability after he returned to full-time work; and (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

On October 29, 2019 appellant, then a 59-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he fractured his left distal radius when he tripped and fell while in the performance of duty. OWCP accepted his claim for left distal radius fracture and subsequently expanded the acceptance of his claim to include permanent aggravation of advanced osteoarthritis of the scaphotrapezoidal (STT) joint of the left thumb. It paid appellant wage-loss compensation for disability on the supplemental rolls, effective December 14, 2019, and on the periodic rolls, effective May 6, 2023.⁴

On September 28, 2023 OWCP received a work status report (Form CA-3) indicating that appellant returned to full-time modified duty with restrictions on July 31, 2023. On October 23, 2023 it received a subsequent Form CA-3 indicating that he returned to full-time regular-duty work with no restrictions on October 2, 2023.

In a November 15, 2023 preliminary overpayment determination, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$12,365.56 for the period July 31 through November 4, 2023 because he returned to full-time work on July 31, 2023, but continued to receive wage-loss compensation through November 4, 2023. It noted that he was paid \$14,277.76 for 112 days of compensation for the period July 16 through November 4, 2023 when he was only entitled to 15 days of compensation. OWCP calculated an overpayment rate of \$127.48 per day, which equated to \$12,365.56 for 97 days of non-entitlement. It further advised appellant of its preliminary determination that he was at fault in the creation of the overpayment. OWCP requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and requested that he submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records to support income and expenses. Additionally, it notified appellant that he could request a final decision based on the written evidence or a precoupment hearing within 30 days.

On December 8, 2023 OWCP received a returned compensation check dated November 4, 2023 for the period October 8 through November 4, 2023 in the amount of \$3,569.44 with "VOID" written across the front.

⁴ Appellant stopped work on the date of injury. OWCP initially paid him compensation for total disability. Following his return to part-time modified-duty work, it paid appellant compensation for loss of wage-earning capacity (LWEC), effective February 15, 2020. He underwent surgery for the accepted conditions on May 4, 2023, and OWCP paid him total temporary disability compensation on the periodic rolls, effective May 6, 2023.

By decision dated February 6, 2024, OWCP finalized its preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$12,365.56 for the period July 31 through November 4, 2023 because he returned to full-time work on July 31, 2023, but continued to receive wage-loss compensation for total disability through November 4, 2023. It found that he was at fault in the creation of the overpayment and, thereby, precluded from waiver of recovery of the overpayment. OWCP determined that appellant should forward the full amount of \$12,365.56, within 30 days as recovery of the overpayment. It further noted that appellant had not responded to the November 15, 2023 preliminary overpayment determination.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA⁵ provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her duty.⁶ Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.⁷ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to full-time work, but continues to receive wage-loss compensation for total disability.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation because he continued to receive wage-loss compensation for total disability after he returned to full-time work.

The record establishes that appellant returned to full-time work at the employing establishment on July 31, 2023. OWCP, however, continued to pay him wage-loss compensation for total disability through November 4, 2023. As noted above, OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to full-time work, but continues to receive wage-loss compensation for total disability. Once appellant had returned to full time work, he was not entitled to receive total disability benefits and actual earnings for that same time period.⁹ Thus, an overpayment of compensation was created in this case.¹⁰

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.*

⁷ *Id.* at § 8116(a)

⁸ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.300.4g (September 2020); *see also D.L.*, Docket No. 20-1522 (issued July 27, 2023); *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *K.P.*, Docket No. 19-1151 (issued March 18, 2020).

⁹ *Id.*

¹⁰ *See T.H.*, Docket No. 23-0194 (issued July 17, 2023); *A.C.*, Docket No. 22-0118 (issued December 15, 2022).

The Board further finds, however, that this case is not in posture for decision with respect to the period and amount of the overpayment.

Following OWCP's November 15, 2023 preliminary overpayment determination, it received additional evidence. In the case of *William A. Couch*,¹¹ the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. While OWCP is not required to list every piece of evidence submitted, the Board notes that the November 4, 2023 returned and voided compensation check was not considered and addressed by OWCP in the February 6, 2024 final overpayment decision.¹²

It is crucial that OWCP consider and address all evidence received prior to the issuance of its final decision, as Board decisions are final with regard to the subject matter appealed.¹³ The Board finds that this case is not in posture for decision as OWCP did not consider and address the above-noted evidence in its February 6, 2024 decision.¹⁴

On remand OWCP shall review all of the evidence submitted and determine the proper amount of the overpayment of compensation. It shall then issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, and instructions for appellant to provide supporting financial information. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁵

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation. The Board further finds that the case is not in posture for decision with regard to the period and amount of the overpayment.

¹¹ 41 ECAB 548 (1990); *see J.R.*, Docket No. 21-1421 (issued April 20, 2022); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

¹² *See C.D.*, Docket No. 20-0168 (issued March 5, 2020).

¹³ *See C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch*, *supra* note 11.

¹⁴ *See Order Remanding Case, L.G.*, Docket No. 23-0637 (issued September 15, 2023).

¹⁵ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2024 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 9, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board