

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

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V.L., Appellant)	
)	
and)	Docket No. 24-0182
)	Issued: November 18, 2024
U.S. POSTAL SERVICE, MAIL PROCESSING)	
ANNEX, Carolina, PR, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 15, 2023 appellant filed a timely appeal from a November 22, 2023 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 appellant received an overpayment of compensation in the amount of \$4,786.04 for the period July 25 through September 9, 2023, because she continued to receive wage-loss compensation for total disability following her return to full-time work; and

¹ 5 U.S.C. § 8101 *et seq.*

² By order dated May 20, 2024, the Board remanded the case to OWCP to complete the record within 30 days and furnish the paper checks covering the period of the overpayment of compensation. *Order To Complete Record Within 30 Days*, Docket No. 24-0182 (issued May 20, 2024). The Board received the completed record on May 22, 2024.

(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 May 9, 2023 appellant, then a 40-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that same date she sustained a right shoulder and arm injury when she was grabbing a heavy tub located above eye level while in the performance of duty. She stopped work on that date. On June 1, 2023 OWCP accepted the claim for strain of other muscles, fascia and tendons at forearm level of the left and right arm. It informed appellant that wage-loss compensation for total disability was available only if she was unable to perform the duties of her regular position and that she should notify OWCP if she returned to work or obtained new employment. OWCP further advised appellant that, if she worked during any portion of the covered period and compensation payments were received *via* either paper check or for payments sent by electronic funds transfer (EFT), she was to return the payment to OWCP even if she had already advised OWCP that she was working. It subsequently paid appellant wage-loss compensation on the supplemental rolls, effective June 24, 2023, and on the periodic rolls, effective July 16, 2023.

In a letter dated July 21, 2023, OWCP outlined appellant's entitlement to wage-loss compensation benefits and attached EN-1049 forms advising that, if she returned to work, she should notify OWCP immediately and that, if appellant worked during any portion of the covered period, and compensation payments were received by paper check or EFT, she was to return the payment to OWCP even if she had already advised OWCP that she was working.

Appellant returned to full-time work on July 25, 2023. OWCP, however, continued to pay appellant wage-loss compensation on the periodic rolls through September 9, 2023. It issued appellant a paper check on August 12, 2023 for \$2,851.26 in wage-loss compensation covering the period July 16 through August 12, 2023. Appellant deposited that paper check into her bank account on August 15, 2023. OWCP issued her a paper check on September 9, 2023 for \$2,851.26 in wage-loss compensation covering the period August 13 through September 9, 2023. Appellant deposited that paper check into her bank account on September 13, 2023.

In a fiscal worksheet dated September 7, 2023, OWCP calculated that appellant received an overpayment of compensation in the amount of \$4,786.04 for the period July 25 through September 9, 2023. It explained that she was overpaid \$1,934.78 for the period July 25 through August 12, 2023, and another \$2,851.26 for the period August 13 through September 9, 2023.

In a preliminary overpayment determination dated September 7, 2023, OWCP notified appellant that she had received an overpayment of compensation in the amount \$4,786.04 for the period July 25 through September 9, 2023 because she returned to full-time work on July 25, 2023 but continued to receive wage-loss compensation for total disability through September 9, 2023. It also made a preliminary finding that she was at fault in the creation of the overpayment because she had accepted payments that she knew or reasonably should have known to be incorrect. OWCP requested that appellant complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation including copies of income tax returns, bank account statement, bills, canceled checks, pay slips,

and any other records that support income and expenses. Additionally, it advised her that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a precoupment hearing. No response was received.

By decision dated November 22, 2023, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$4,786.04 for the period July 25 through September 9, 2023 because she continued to receive wage-loss compensation for total disability following her return to full-time work. It determined that she was at fault in the creation of the overpayment as she accepted compensation payments, which she knew or should have known were incorrect. OWCP required recovery of the overpayment in full within 30 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA 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 federal employment.³ Section 8116 limits the right of an employee 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.⁴ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,786.04 for the period July 25 through September 9, 2023 because she continued to receive wage-loss compensation for total disability following her return to full-time work.

The case record establishes that appellant returned to full-time work on July 25, 2023. However, appellant continued to receive wage-loss compensation for total disability through September 9, 2023. A claimant is not entitled to receive total disability benefits and actual earnings for the same period.⁶ Accordingly, the Board finds that appellant received an overpayment of compensation for the period July 25 through September 9, 2023.⁷

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ *See L.H.*, Docket No. 20-0115 (issued September 4, 2020); *E.R.*, Docket No. 19-1365 (issued December 23, 2019); *J.L.*, Docket No. 18-1266 (issued February 15, 2019); *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *B.H.*, Docket No. 09-0292 (issued September 1, 2009); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.1(a) (September 2020).

⁶ *See M.S.*, Docket No. 16-0289 (issued April 21, 2016); *D.B.*, Docket No. 15-0258 (issued February 1, 2016).

⁷ *B.N.*, Docket No. 22-1337 (issued November 7, 2023); *J.M.*, Docket No. 17-1574 (issued February 8, 2018).

With regard to the amount of the overpayment, OWCP properly determined that it paid appellant \$5,702.52 in wage-loss compensation covering the period July 16 through September 9, 2023. However, because she returned to full-time work on July 25, 2023, she was only entitled to receive \$916.48 for the period July 16 through 24, 2023. Therefore, appellant was overpaid \$4,786.04 for the period July 25 through September 9, 2023. The Board has reviewed these calculations and finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,786.04 for the period July 25 through September 9, 2023.⁸

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides 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 FECA or would be against equity and good conscience.⁹ A claimant who is at fault in the creation of the overpayment is precluded from waiver of recovery of the overpayment.¹⁰

On the issue of fault, 20 C.F.R. § 10.433(a) provides that an individual will be found at 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.¹¹

Even if an overpayment resulted from negligence by OWCP, this does not excuse the employee from accepting payment, which the employee knew or should have been expected to know he or she was not entitled.¹²

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly found that appellant was at fault in the creation of the overpayment thereby precluding waiver of recovery of the overpayment.¹³

⁸ *S.R.*, Docket No. 23-0150 (issued October 16, 2023); *C.V.*, Docket No. 16-0986 (issued September 1, 2016); 20 C.F.R. § 10.500.

⁹ 5 U.S.C. § 8129(b).

¹⁰ *See C.C.*, Docket No. 19-1268 (issued April 2, 2021); *J.S.*, Docket No. 19-1363 (issued April 10, 2020); *B.R.*, Docket No. 18-0339 (issued January 24, 2019); *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *Gregg B. Manston*, 45 ECAB 344, 354 (1994); *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

¹¹ 20 C.F.R. § 10.433(a).

¹² *Diana L. Booth*, 52 ECAB 370 (2001).

¹³ *K.P.*, Docket No. 19-1151 (issued March 18, 2020); *D.W.*, Docket No. 15-0229 (issued April 17, 2014).

As noted above, an overpaid individual is found at fault if they accepted a payment which the individual knew, or should have been expected to know, was incorrect.¹⁴ The Board has explained that when a claimant returns to work and subsequently receives a compensation check in the mail covering a period of employment, if he or she knows or should have known that they were not entitled to such compensation, but decides nonetheless to cash or deposit the check, the cashing or depositing of the check establishes fault.¹⁵

The case record establishes that OWCP advised appellant that to avoid an overpayment of compensation, she must immediately notify OWCP of her return to work. It also advised her that, if she continued to receive wage-loss compensation, but had worked during the covered period, she had to return the check, even if she had reported her return to work to OWCP. Appellant returned to work on July 25, 2023, but continued to receive compensation *via* two subsequent paper check payments: the first issued by OWCP on August 12, 2023 in the amount of \$2,851.26 covering the period July 16 through August 12, 2023; and the second issued by OWCP on September 9, 2023 in the amount of \$2,851.26 covering the period August 13 through September 9, 2023, both of which appellant cashed. As OWCP had previously warned appellant to return any checks received following a return to work, she should have known that these payments were incorrect.¹⁶ Therefore, the Board finds that appellant was at fault in the creation of the overpayment and is thereby precluded from waiver of recovery of the overpayment.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,786.04 for the period July 25 through September 9, 2023 because she continued to receive wage-loss compensation for total disability following her return to full-time work. The Board further finds that OWCP properly found that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

¹⁴ *Supra* note 13.

¹⁵ *See A.W.*, Docket No. 20-0448 (issued March 4, 2022); *William F. Salmonson*, 54 ECAB 152 (2002).

¹⁶ *A.W.*, *id.*

ORDER

IT IS HEREBY ORDERED THAT the November 22, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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