

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

S.M., Appellant)

and)

U.S. POSTAL SERVICE, VEHICLE)
MAINTENANCE FACILITY, Cleveland, OH,)
Employer)

Docket No. 12-1431
Issued: December 11, 2012

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

On June 26, 2012 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated June 20, 2012 concerning an overpayment of compensation. 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.

ISSUES

The issues are: (1) whether OWCP properly determined that an overpayment of compensation in the amount of \$5,518.92 had been created for the period August 29 through October 22, 2011; and (2) whether it properly found appellant to be at fault in the creation of the overpayment, thereby finding that waiver of the recovery of the overpayment was not warranted.

On appeal appellant contends that he was not at fault in the creation of the overpayment as he notified OWCP when he returned to work. He also argued that he had difficulty getting the claims examiner to return his calls or respond to his questions.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 8, 2005 appellant, then a 35-year-old garageman, filed a traumatic injury claim alleging that on March 7, 2005 he sustained a strained rotator cuff in the performance of duty. OWCP accepted the claim for right shoulder strain and right rotator cuff strain, a permanent aggravation of right shoulder impingement, a partial thickness tear of the right rotator cuff and aggravation of right shoulder degenerative arthritis. It authorized right shoulder arthroscopic surgery which occurred on October 27, 2005 and May 25, 2011.

By letter dated July 20, 2011, OWCP informed appellant that he was being placed on the periodic rolls for total disability effective July 3, 2011. It informed him that he would receive regular payments in the amount of \$3,093.87 every 28 days until he returned to work. Appellant was advised to notify OWCP immediately when he returned to work to avoid an overpayment of compensation. If he worked during any period covered by a compensation payment, he must return the payment.

The record reflects that appellant returned to full-duty work on August 29, 2011.

The record contains a computer printout form dated October 14, 2011 noting the termination of appellant's compensation. It noted a termination date of August 30, 2011, 54 days outstanding and an amount of \$5,518.92.

On January 6, 2012 OWCP issued a preliminary overpayment determination. It found that appellant was overpaid compensation in the amount of \$5,518.92 for the period August 29 through October 22, 2011, following his return to full-duty work at salary. OWCP found that he was at fault in creating the overpayment because he failed to return the check for compensation for total disability to which he was not entitled.

On January 27, 2012 appellant requested a prerecoupment hearing, which was held before an OWCP hearing representative on April 25, 2012. He contended that he was not at fault in the creation of the overpayment and submitted a completed overpayment recovery questionnaire and supporting documentation of his monthly income and expenses.

By decision dated June 20, 2012, OWCP found appellant was overpaid compensation for the period August 29 through October 22, 2011 in the amount of \$5,518.92. Appellant was found at fault in the creation of the overpayment, which precluded waiver of recovery. OWCP requested \$200.00 until the overpayment was repaid.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 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 duty.²

² 5 U.S.C. § 8102.

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 circumstances.³ OWCP's regulations provide that compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.⁴

ANALYSIS -- ISSUE 1

By letter dated July 20, 2011, OWCP placed appellant on the periodic rolls for temporary total disability. Appellant returned to work on August 29, 2011. The question to be determined is whether an overpayment of compensation was created based on receiving both wage-loss compensation under FECA and wages from the employing establishment. The Board finds that the case is not in posture for decision as it is unable to determine whether an overpayment occurred or the amount.

The record is unclear as to how OWCP determined the amount of \$5,518.92. The only evidence in the record is a computer printout dated October 14, 2011 noting the termination of appellant's wage-loss benefits as of August 30, 2011. It does not establish payment was made to appellant or how any overpayment was calculated. In order to confirm the amount of the overpayment, the record should establish the specific compensation payments that were made, the date payments were issued and the period covered by the specific compensation payments. The Board notes that, while OWCP listed the period of the overpayment, it did not document for the record how the amount was calculated or provide supporting evidence to certify the calculation.⁵ The record contains no worksheet or computer printouts showing how the overpayment was calculated. OWCP's hearing representative affirmed the amount of the overpayment and denied waiver because she found appellant at fault in the creation of the overpayment. The Board is unable to determine from the record whether OWCP correctly calculated the period and amount of the overpayment. It is necessary that OWCP make findings of fact including a clear explanation of how the fact and the amount of overpayment were determined.⁶ On remand, OWCP must fully explain how the amount was determined and provide supporting documentation, to be followed by any necessary development and a *de novo* decision.

³ *Id.* at § 8116(a).

⁴ 20 C.F.R. § 10.500(a). See *W.B.*, Docket No. 09-1440 (issued April 12, 2010); *W.P.*, 59 ECAB 514 (2008); *Danny E. Haley*, 56 ECAB 393 (2005).

⁵ See Federal (FECA) Procedure Manual, Part 6 -- Overpayment, *Initial Overpayment Actions*, Chapter 6.200.2 (May 2004).

⁶ See *O.R.*, 59 ECAB 432 (2008) (with respect to overpayment decisions, OWCP must provide clear reasoning showing how the overpayment was calculated); *Jenny M. Drost*, 56 ECAB 587 (2005) (to comply with OWCP procedures, an overpayment decision must contain a clearly written explanation indicating how an overpayment was calculated).

CONCLUSION

The Board finds that the case is not in posture for decision.⁷

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 20, 2012 is set aside and the case remanded for further proceedings consistent with this decision.

Issued: December 11, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁷ In view of the disposition of the first issue, the second issue of fault need not be considered by the Board.