

FACTUAL HISTORY

This case has previously been before the Board.² In a February 24, 2014 decision, the Board affirmed OWCP's finding of fact of overpayment but found that further development was required on the issue of amount of overpayment. The case was remanded to determine the correct amount of the overpayment, as OWCP had improperly offset the overpayment with an underwithholding of health and life insurance premiums and an underpayment of compensation created when it failed to pay appellant compensation for a June 8, 2012 medical appointment. The Board also directed OWCP to consider waiver. The facts of the previous Board decision are incorporated herein by reference.³ The relevant facts of the case are set forth below.

On remand, OWCP recalculated the amount of the overpayment as directed by the Board. It completed a worksheet which indicated that appellant had received \$3,868.00 in compensation from June 3 to 30, 2012, but because he had returned to work, he was entitled to only \$414.43. OWCP deducted \$414.43, the amount to which he was entitled, and \$396.96 for health benefits premiums, \$18.30 for basic life insurance premiums, and \$7.08 for optional life insurance premiums, resulting in an overpayment of compensation of \$3,031.23.

In an April 11, 2014 decision, OWCP determined that appellant received an overpayment of compensation in the amount of \$3,031.23 from June 3 to 30, 2012. It found that he was without fault in the creation of the overpayment.⁴ OWCP ordered the processing of a check in the amount of \$96.70 to compensate appellant for four hours of time lost on June 8, 2012 to attend a medical appointment.

On June 11, 2014 OWCP reissued the April 11, 2014 decision because the decision had been returned to it as undeliverable.

LEGAL PRECEDENT

Under section 8129 of FECA and the implementing regulations, an overpayment must be recovered unless 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.⁵

² Docket No. 13-1619 (issued February 24, 2014).

³ OWCP accepted that on February 27, 2007 appellant, then a 24-year-old shipfitter, sustained an employment-related lumbar strain and temporary and permanent aggravation of a herniated nucleus pulposus while in the performance of duty. Appellant stopped work on June 24, 2009 because no work was available within his physical limitations. OWCP placed appellant on the periodic compensation rolls and paid appropriate wage-loss compensation for his total disability. On June 6, 2012 the employing establishment informed OWCP that appellant had returned to full-time modified-duty work as a transportation assistant on that day. OWCP stopped his automatic compensation payment, but he continued to receive total disability compensation from June 3 to 30, 2012.

⁴ In the April 11, 2014 decision, OWCP ordered the processing of a check in the amount of \$96.70 to compensate appellant for four hours of time lost on June 8, 2012 to attend a medical appointment.

⁵ 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

Section 10.431 of the implementing regulations provide that, before seeking to recover an overpayment or adjust benefits, OWCP will advise the individual in writing that the overpayment exists and the amount of the overpayment.⁶ The written notification must also include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.⁷ Additionally, OWCP is obliged to advise the individual of his or her right to inspect and copy the government records relating to the overpayment.⁸ Finally, the preliminary notice must inform the individual of his or her right to challenge the fact or amount of the overpayment, the right to contest the preliminary finding of fault in the creation of the overpayment, if applicable, and the right to request a waiver of recovery of the overpayment.⁹ The recipient of the alleged overpayment may present evidence in response to OWCP's preliminary notice either in writing or at a prerecoupment hearing.¹⁰ The evidence must be presented or the hearing requested within 30 days of the date of the written notice of overpayment.¹¹ Failure to request the hearing within this 30-day time period shall constitute waiver of that right.¹²

OWCP procedures provide that, once an overpayment is identified and calculated, 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.¹³ These procedures note that, if the claimant is determined to be with fault, Form CA-2201 (preliminary finding notice) must be released within 30 days of the date the overpayment is identified. Both the reason that the overpayment occurred and the reason for the finding of fault must be clearly stated. Form CA-2201 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; (b) fault and (c) waiver. Along with Form CA-2201, OWCP should provide a clearly written statement explaining how the overpayment was calculated.¹⁴

ANALYSIS

The Board previously affirmed the fact of overpayment of compensation from June 3 to 30, 2012 as appellant received compensation for total disability after he had returned to work.

⁶ 20 C.F.R. § 10.431(a).

⁷ *Id.* at § 10.431(b).

⁸ *Id.* at § 10.431(c).

⁹ *Id.* at § 10.431(d).

¹⁰ *Id.* at § 10.432.

¹¹ *Id.*

¹² *Id.*

¹³ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4 (May 2004).

¹⁴ *Id.* at Chapter 2.600.4(a)(1) (May 2004).

However, it otherwise set aside OWCP's finding regarding the amount of the overpayment, noting that it could not offset an overpayment with underpayment of compensation.

On remand, in a decision dated April 11, 2014, OWCP found that appellant received an overpayment of compensation in the amount of \$3,031.23. In a worksheet, it considered only the amount of the overpayment. OWCP determined that appellant had received \$3,868.00 in compensation and benefits from June 3 to 30, 2012 when he should have received only \$414.43. It deducted \$396.96 for health benefits premiums, \$18.30 for basic life insurance premiums and \$7.08 for optional life insurance premiums, which yielded an overpayment of compensation of \$3,031.23.

The Board finds, however, that OWCP failed to follow its procedures in issuing the April 11, 2014 overpayment decision.

OWCP regulations provide that before seeking to recover an overpayment or adjust benefits, it will advise the individual in writing that the overpayment exists and the amount of overpayment.¹⁵ It must inform the individual of his or her right to challenge the fact or amount of the overpayment, the right to contest the preliminary finding of fault in the creation of the overpayment and the right to request a waiver of recovery of the overpayment.¹⁶ OWCP procedures further provide that a preliminary finding of overpayment must be provided within 30 days and must clearly identify the reason that the overpayment occurred and the basis for any fault finding.¹⁷

In this case, OWCP failed to issue a revised preliminary determination advising appellant of its findings following the Board's prior decision remanding the case. As such, it failed to provide him with the right to challenge the amount of overpayment or to request waiver of recovery of the overpayment, thereby infringing upon his procedural rights under its own regulations.¹⁸ The Board has previously determined that failure to inform a claimant in writing of his or her rights is reversible error.¹⁹ Therefore, OWCP did afford the procedural rights to appellant under its regulations and improperly issued the April 11, 2014 overpayment decision.²⁰ Accordingly, the Board finds that the case must be remanded for OWCP to issue a preliminary determination to appellant regarding any overpayment in accordance with its procedures, prior to making any final overpayment determination.

¹⁵ 20 C.F.R. § 10.431(a).

¹⁶ *Id.* at § 10.431(d).

¹⁷ *See supra* note 14.

¹⁸ 20 C.F.R. §§ 10.431, 10.432.

¹⁹ *F.C.*, 59 ECAB 666 (2008) (where the Board found reversible error when OWCP failed to provide notice to the claimant, the right under 20 C.F.R. § 10.431(c) to inspect and copy government records regarding the overpayment).

²⁰ *Supra* note 18; *see also K.H.*, Docket No. 11-603 (issued September 27, 2011); *K.G.*, Docket No. 08-2135 (issued April 16, 2009).

CONCLUSION

The Board finds that OWCP improperly issued its April 11, 2014 overpayment decision.

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 19, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board