

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

_____)	
T.F., Appellant)	
)	
and)	Docket No. 21-1104
)	Issued: May 1, 2023
U.S. POSTAL SERVICE, HAWTHORNE POST)	
OFFICE, Hawthorne, CA, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 14, 2021 appellant filed a timely appeal from a June 15, 2021 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.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,323.36 for the period February 28 through March 27, 2021, for which she was without fault, because she received schedule award compensation to which she was not entitled; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 9, 2013 appellant, then a 54-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she injured her left hand when a case shelf fell down on her hand while in the performance of duty. She stopped work on August 10, 2013. OWCP accepted the claim for left wrist and hand contusions. It later expanded acceptance of the claim to include a sprain, localized primary osteoarthritis, osteophyte, other enthesopathies not elsewhere classified of the left hand, and pyogenic arthritis of the left forearm. OWCP paid appellant wage-loss compensation on the supplemental rolls effective August 4, 2014.

On May 5 and November 19, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award. On November 4, 2020 OWCP granted her a schedule award for nine percent permanent impairment of the left upper extremity. The award ran for 28.08 weeks during the period September 3, 2020 through March 18, 2021. OWCP indicated that the schedule award was based on the clinical findings and a September 3, 2020 report of Dr. Mark Bernhard, a family medicine specialist, and the district medical adviser (DMA).

On April 16, 2021 OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$3,323.36 for the period February 28 through March 27, 2021 because she was overpaid for her schedule award. It explained that she received a final full periodic schedule award payment in addition to a supplemental schedule award payment “for the number of days of your approved scheduled award for the month of March.” OWCP determined that appellant was without fault in the creation of the overpayment. It provided her with an overpayment action request form, requested that she submit a completed overpayment recovery questionnaire (Form OWCP-20), and advised her that she could request waiver of the overpayment. OWCP further requested that appellant provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, it notified her that, within 30 days of the date of the letter, she could request a final decision based on the written evidence, or a preresoupment hearing.

On April 28, 2021 appellant completed an overpayment action request form requesting waiver of the overpayment. She asserted that she was experiencing financial hardship and did not have the income necessary to repay the overpayment.

By decision dated June 15, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$3,323.36 for the period February 28 through March 27, 2021 because she received a schedule award payment to which she was not entitled. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, noting that appellant had not completed a Form OWCP-20 or submitted documentation supporting waiver of recovery.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of 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 his or her duty.² Section 8129(a) of FECA provides, in pertinent part:

“When an overpayment has been made to an individual under this subchapter 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 an individual is entitled.”³

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.⁴

The schedule award provisions of FECA⁵ and its implementing regulations⁶ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. Section 20 C.F.R. § 10.404 provides that compensation is awarded for specified periods of time for the permanent loss or loss of use of certain members.⁷ FECA provides for 312 weeks of compensation for 100 percent loss or loss of use of an upper extremity⁸ and the implementing regulations provides that compensation for proportionate periods of time is payable for partial loss.⁹

OWCP’s procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.¹⁰

² *Id.* at § 8102(a).

³ *Id.* at § 8129(a).

⁴ *Id.* at § 8116(a).

⁵ *Supra* note 1.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.*

⁸ 5 U.S.C. § 8107(c)(2).

⁹ *Supra* note 6.

¹⁰ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1f(1)(i) (September 2020). *See G.S.*, Docket No. 20-1580 (issued March 19, 2021); *T.C.*, Docket No. 20-0302 (issued November 12, 2020).

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,323.36 for the period February 28 through March 27, 2021, for which she was without fault, because he received compensation to which he was not entitled.

OWCP granted appellant a schedule award for nine percent impairment of the left upper extremity. The period of the award ran for 28.08 weeks from September 3, 2020 through March 18, 2021. The Board notes that nine percent of the 312 weeks of compensation allowable for total loss of use of an upper extremity equals 28.08 weeks of compensation. OWCP issued a final schedule award supplemental payment of \$2,204.00 for the period February 28 through March 18, 2021. However, it then issued an additional full schedule award payment on the periodic roll of \$3,323.36 for the period February 28 through March 27, 2021, which constituted an overpayment.¹¹

The Board accordingly finds that the fact and amount of the overpayment has been established.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA¹² provides that 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. Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹³

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her income (including compensation benefits) to meet current ordinary and necessary living expenses, and also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹⁴

Section 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt and when an individual, in reliance on such

¹¹ *G.S., id.; T.C., id.*

¹² *Supra* note 1.

¹³ *G.L.*, Docket No. 19-0297 (issued October 23, 2019).

¹⁴ 20 C.F.R. § 10.436. OWCP Procedures provide that assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) (September 2020).

payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁵

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁶ This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.¹⁷ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery of the overpayment, and no further request for waiver shall be considered until the requested information is furnished.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁹ Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.²⁰

In its preliminary overpayment determination dated April 16, 2021, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised her that it would deny waiver if she failed to furnish the requested financial information in a timely manner. Appellant did not complete a Form OWCP-20 and did not provide any supporting financial documentation. OWCP, therefore, did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.²¹

¹⁵ 20 C.F.R. § 10.437(b)(1).

¹⁶ *Id.* at 10.438(a).

¹⁷ *Id.*; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁸ *Id.* at § 10.438(b).

¹⁹ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

²⁰ 20 C.F.R. § 10.438; *V.B.*, Docket No. 20-0976 (issued January 26, 2021).

²¹ *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

Consequently, the Board finds that OWCP properly denied waiver of recovery of the overpayment.²²

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,323.36 for the period February 28 through March 27, 2021, for which she was without fault, because she received a schedule award payment to which she was not entitled. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

²² The Board's jurisdiction over recovery of an overpayment is limited to those cases where OWCP seeks recovery from continuing compensation under FECA. 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018). As appellant is no longer in receipt of wage-loss compensation, the Board lacks jurisdiction over OWCP's recovery of the overpayment. *L.C.*, Docket No. 19-1094 (issued February 25, 2020); *D.R.*, 59 ECAB 148 (2007).