

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

T.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Boston, MA, Employer**

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**Docket No. 12-1710
Issued: January 11, 2013**

Appearances:
John Whitehouse, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 7, 2012 appellant, through her attorney, filed a timely appeal from a July 19, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying waiver of recovery of overpayment. 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.

ISSUE

The issue is whether OWCP properly denied waiver of recovery of a \$4,685.42 overpayment of compensation.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case was previously before the Board. By decision dated December 7, 2011,² the Board remanded OWCP's March 10, 2011 decision to determine whether appellant was entitled to waiver of recovery of an overpayment. The Board found that OWCP properly determined that she had received an overpayment of compensation in the amount of \$4,685.42 and that she was without fault in the creation of the overpayment. Appellant's OWCP-20 form, received on February 28, 2011, listed a monthly income of \$1,094.10 from Social Security Administration (SSA) benefits, \$123.00 from other benefits and \$2,641.38 from workers' compensation for a total monthly income of \$3,858.38. Her assets included \$100.32 in her savings account. Appellant reported that her monthly expenses totaled \$3,922.88. She listed monthly expenses of \$1,160.00 for mortgage and property tax; \$540.00 for food; \$45.00 for electricity; \$50.00 for cell phone; \$85.00 for home telephone; \$410.11 for medication; \$175.00 for dental care credit; \$140.00 for gasoline; \$50.00 for parking in Boston; \$85.00 for car insurance; \$5.00 for excise tax; \$327.77 for automobile loan payments; \$190.00 for three Capital One credit cards; \$50.00 for Household Bank; \$100.00 for Sears; \$70.00 for JC Penney; \$180.00 for Citi Health and \$260.00 for tithing.

The Board remanded the case for OWCP to give due consideration to the evidence submitted and to address how recovery of the overpayment would not cause hardship in light of the financial evidence. The facts of the case as set forth in the prior decision are incorporated herein by reference.³

In a letter dated March 22, 2011, appellant's counsel contended that OWCP should waive recovery of the overpayment because it would defeat the purpose of FECA. He stated that appellant provided documentation which demonstrated that her monthly expenses exceeded her income and that she had debts considerably in excess of her assets.

On February 28, 2012 OWCP requested that appellant provide copies of her monthly bill statements. It specifically requested statements for her medications, dental care, parking at a doctor's office in Boston, car insurance, excise tax, automobile loan payments, credit card statements, Household Bank statement, Sears statement, JC Penney statement, Citi Health statement, church tithe, last two checking and savings statement, and a copy of Veterans Affairs (VA) and SSA statements.

Appellant submitted a SSA statement reflecting that she received \$1,130.00 a month beginning January 2012 and a credit union savings account statement balance of \$100.52. She also submitted a copy of her prescription record from January to November 2011, which demonstrated that she paid approximately \$43.49 a month for medication. Appellant submitted various credit card statements indicating that she owed monthly payments of \$44.00 to GE

² Docket No. 11-1188 (issued December 7, 2011).

³ On October 7, 1994 appellant, then a 55-year-old flat sorter operator, filed an occupational disease claim alleging that she suffered from pain in her right shoulder and lower back as a result of working as a flat sorter operator for five years. OWCP accepted her claim for right bicipital tendinitis and aggravation of chronic lumbosacral strain. Appellant stopped work and returned to full duty on May 30, 1996. She stopped work again on July 7, 1998 and was placed on the periodic rolls for temporary total disability beginning September 24, 1999.

Capital; \$31.00 to Slate; \$50.00 to two Capital One credit cards; \$32.00 to Bank Gold; \$60.00 to Sears and \$59.00 to JC Penney. She also submitted bill payments of \$822.00 a year for automobile insurance; \$52.50 for 2012 excise tax; \$90.00 for an August 22, 2011 vehicle registration fee; \$140.64 for a January 20, 2012 Verizon bill; and \$136.16 for a March 4, 2012 gas and electricity bill from National Grid. Appellant submitted a statement of \$24.00 for a monthly sponsorship for Child Fund and included copies of 10 checks in the amount of \$260.00 each to a church.

In a decision dated July 19, 2012, OWCP denied waiver of recovery. It determined that based on the evidence submitted appellant's monthly expenses were \$935.77 less than she previously indicated on her February 28, 2011 OWCP-20 form. OWCP issued a Debt Amortization Schedule noting that OWCP had withheld \$100.00 every four weeks since March 13, 2011 and would continue to withhold the amount until the overpayment was paid in full on October 18, 2014.

LEGAL PRECEDENT

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.⁴ A finding that appellant was without fault is not sufficient, in and of itself, for OWCP to waive 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, pursuant to the guidelines provided in the implementing federal regulations.

Section 10.436 of the implementing regulations⁵ provide that recovery of an overpayment will defeat the purpose of FECA if recovery would cause hardship to a currently or formerly entitled beneficiary such that: (a) the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses; and (b) the beneficiary's assets do not exceed the resource base of \$8,000.00 of an individual with one dependent.⁶ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. In other words, the amount of monthly funds available for debt repayment is the difference between current income and adjusted living expenses (*i.e.*, ordinary and necessary living expenses plus \$50.00).⁷

Recovery of an overpayment is considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be

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

⁵ 20 C.F.R. § 10.436.

⁶ *Id.* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a)(1)(b) (October 2004).

⁷ *Id.*

made, gives up a valuable right or changes his or her position for the worse.⁸ Conversion of the overpayment into a different form, such as food, consumer goods, real estate, etc., from which the claimant derived some benefit, is not to be considered a loss.⁹

When an overpayment has been made to an individual who is entitled to further payments and no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors so as to minimize any hardship.¹⁰

ANALYSIS

OWCP found that appellant was without fault in the creation of the overpayment. Because she is without fault, OWCP may recover the overpayment only if recovery would not defeat the purpose of FECA or be against equity and good conscience.

Following the December 7, 2011 Board decision, appellant submitted additional financial documents. She noted that her monthly SSA benefits increased from \$1,094.00 to \$1,130.00 beginning January 2012, which means her monthly income totaled \$3,894.38, not \$3,858.38 as noted on her February 28, 2011 OWCP-20 form. Appellant submitted statements demonstrating that her automobile monthly payment of \$327.77 was paid in full and 10 checks for \$260.00 each which noted that her pledge for a religious campaign should be paid in full. The record reveals that her Citi Health monthly payment is \$25.00 not \$180.00; her three Capital One card payments are \$83.00 total not \$190.00 total, her JC Penney payment was \$59.00 not \$70.00, and her Sears payment was \$25.00 not \$100.00 as listed on her February 28, 2011 OWCP-20 form. The Board finds that OWCP properly determined that, based on the documentation submitted, appellant's monthly expenses were \$935.77 less than indicated on her February 28, 2011 OWCP-20 form. The record reveals that appellant's total monthly expenses are \$2,987.11, not \$3,922.88 as previously claimed. The record establishes that her monthly income exceeds her monthly expenses by \$907.27. Because appellant has income which exceeds her monthly expenses by more than \$50.00, the Board finds that she failed to demonstrate that recovery of the overpayment would defeat the purpose of FECA.¹¹ The Board therefore finds that OWCP properly determined that she was not entitled to waiver.

The Board also finds that there is no evidence and appellant does not allege that she relinquished a valuable right or changed her position for the worse in reliance on the excess compensation she received. Pursuant to its regulations, OWCP properly found that recovery of the overpayment would not be against equity or good conscience.

The evidence does not establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. Accordingly, the Board finds that

⁸ 20 C.F.R. § 10.437(b).

⁹ Federal (FECA) Procedure Manual, *supra* note 6.

¹⁰ 20 C.F.R. § 10.441(a).

¹¹ *Supra* note 8.

OWCP properly denied waiver of recovery of the overpayment in the amount of \$4,685.42. Accordingly, OWCP may recover the debt by decreasing later payments to which appellant is entitled.¹²

On appeal appellant alleges that OWCP incorrectly stated her financial circumstances in determining that recovery of overpayment would not be waived. The Board finds, however, that the financial information appellant submitted support OWCP's findings that recovery of the overpayment would neither defeat the purpose of FECA nor be against equity and good conscience. Therefore, OWCP properly denied waiver of recovery of the overpayment.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹² *G.B.*, Docket No. 11-1568 (issued February 15, 2012).