

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

H.M., Appellant

and

**DEPARTMENT OF THE ARMY, Fort Polk, LA,
Employer**

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**Docket No. 16-0101
Issued: April 7, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 22, 2015 appellant filed a timely appeal from a September 24, 2015 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 \$6,174.26, as he was paid compensation at an augmented rate for the period February 19, 2014 through July 25, 2015 while he had no eligible dependents; (2) whether OWCP abused its discretion in denying waiver of the overpayment; and (3) whether OWCP properly required repayment of the overpayment by deducting \$111.17 each month from appellant's continuing compensation payments.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 11, 1984 appellant, then a 35-year-old civil service employee, filed a traumatic injury claim (Form CA-1) as a result of a work-related incident in April 1984 when he fell from a back hoe. His claim was accepted in early 1985 for sprain of the hip and thigh, sprain of the lumbar back, sprain of other specified sites, and intervertebral disc disorder with myelopathy of the cervical region. Appellant received compensation on the periodic rolls, as of June 16, 2002, at a percentage rate of pay at 75 percent due to having one or more dependents.

In a Form EN1032 completed on July 7, 2013, appellant indicated that he continued to claim his wife as a dependent. Each form advised him regarding the circumstances when he would be entitled to receive compensation at an augmented pay rate:

“A claimant who has no eligible dependents is paid compensation at 66 2/3 percent of the applicable pay rate. A claimant who has one or more eligible dependents is paid compensation at 75 percent of the applicable pay rate. You must answer the questions below to ensure your compensation is paid at the correct rate.

“You may claim compensation for a dependent if you have one or more of the following: (a) a husband or wife who lives with you; (b) an unmarried child, including an adopted child or stepchild, who lives with you and is under 18 years of age; (c) an unmarried child who is 18 or over, but who cannot support himself or herself because of mental or physical disability; (d) an unmarried child under 23 years of age who is a full-time student and has not completed four years of school beyond the high school level; and (e) a parent who totally depends upon you for support.”

In a Form EN1032 completed on July 1, 2014, appellant indicated that he no longer claimed his wife as a dependent, as she had died on February 18, 2014 as a result of a house fire. He continued to report no dependents in a Form EN1032 dated June 16, 2015.

By letter dated February 12, 2015, appellant explained that on February 18, 2014 his home had burned down and his wife had died in the fire. He stated that he had attempted to contact the correct person to report this information and noted that her death would affect his compensation checks.

In a payment worksheet dated August 19, 2015, OWCP calculated that appellant was entitled to \$41,969.11 for the period February 19, 2014 through July 25, 2015, but that he had been paid \$48,143.37 at the augmented rate, resulting in an overpayment of \$6,174.26.

By letter dated August 24, 2015, OWCP advised appellant that a preliminary determination had been made that he received an overpayment of compensation in the amount of \$6,174.26 for the period February 19, 2014 through July 25, 2015 because he received compensation benefits at the 75 percent augmented rate when he no longer had an eligible dependent. It also made a preliminary determination that he was at fault in the creation of the overpayment because he accepted a payment he knew or should have known was incorrect. OWCP further requested that appellant complete the enclosed overpayment recovery

questionnaire Form OWCP-20 and submit supporting financial documents. Appellant was advised that for OWCP to consider the questions of fault or waiver, or to determine a reasonable method for collection, he must complete and submit the enclosed Form OWCP-20. Under 20 C.F.R. § 10.438, failure to submit the requested information within 30 days would result in denial of waiver and no further request for waiver would be considered until the requested information was provided. Additionally, OWCP notified appellant that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing.

On September 10, 2015 appellant requested that the district office make a decision based on the written evidence and attached a letter explaining his circumstances. He explained that his daughter had made several attempts to notify OWCP of the change in dependency status and submitted his Forms EN1032 in a timely manner. However, appellant noted that due to the tragic death of his wife, he did not normally check his direct deposit from OWCP for errors. He asked that his overpayment be waived. Appellant did not submit a completed Form OWCP-20.

By decision dated September 24, 2015, OWCP finalized the preliminary decision and found that appellant received a \$6,174.26 overpayment. It noted that the preliminary finding that he was at fault was incorrect, as he provided an adequate explanation indicating that he was unaware of the payments following the change in dependent status. However, OWCP further noted that the circumstances of appellant's case did not warrant waiver of the overpayment. It noted that appellant had not completed an enclosed OWCP-20 form outlining his income and expenses, and that, as such, there was no evidence of record establishing that a waiver would be warranted.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA² 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 duty.³ Section 8129(a) of FECA provides, in pertinent part, that 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.⁴

The basic rate of compensation under FECA is 66 2/3 percent of the injured employee's monthly pay.⁵ When the employee has one or more dependents as defined by FECA, he is entitled to have his compensation augmented at eight and one-third percent.⁶

² *Id.* at § 8102.

³ *Id.* at § 8102(a).

⁴ *Id.* at § 8129(a).

⁵ *Id.* at § 8105(a).

⁶ *Id.* at § 8105(b).

ANALYSIS -- ISSUE 1

Because appellant's wife died on February 18, 2014, appellant should have received compensation at the adjusted rate of 66 and 2/3 percent commencing February 19, 2014, as he had no eligible dependents. However, the evidence reflects that appellant received compensation at the augmented rate from February 19, 2014 through July 25, 2015.

The record contains logs of appellant's compensation payments from OWCP and a payment worksheet reflecting OWCP's calculation of his overpayment during that period. The documents reveal that he was entitled to receive the amount of \$41,969.11, but actually received \$48,143.37, thus creating an overpayment of \$6,174.26. The Board therefore finds that OWCP properly determined that appellant received an overpayment of compensation for the period February 19, 2014 through July 25, 2015 in the amount of \$6,174.26, the difference between the compensation he was entitled to receive at the two-thirds rate, and the amount he received at the three-quarters augmented rate.⁷

LEGAL PRECEDENT -- ISSUE 2

Section 8129(a) of FECA⁸ provides that, where an overpayment of compensation has been made because of an error of fact or law, adjustments shall be made by decreasing later payments to which an individual is entitled.⁹ The only exception to this requirement is found in section 8129(b) of FECA, which provides that adjustments or recovery may not be made when incorrect payments have been made to an individual who is without fault and when such adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁰

Section 10.438 of OWCP regulations state that a claimant who received an overpayment of compensation is responsible for providing information about income, expenses, and assets to OWCP so that it may determine whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹¹ Failure to submit the information, which will also be used to determine a repayment schedule if necessary, more than 30 days after a request from OWCP, will result in a denial of a waiver of recovery of the overpayment and no further requests for waiver will be considered until the information is submitted.¹²

ANALYSIS -- ISSUE 2

In its preliminary notification to appellant of the existence of the overpayment, OWCP advised him to explain his reasons for seeking a waiver, complete the recovery questionnaire

⁷ See C.S., Docket No. 13-1423 (issued October 23, 2013).

⁸ 5 U.S.C. § 8129(a).

⁹ *Id.*

¹⁰ *Id.* at § 8129(b).

¹¹ 20 C.F.R. § 10.438(a); see also *R.J.*, Docket No. 15-0271 (issued May 14, 2015).

¹² *Id.* at § 10.438(b); *Robert B. Hutchins*, 52 ECAB 344 (2001).

form, and submit financial documents to support his claimed income and expenses. The overpayment recovery questionnaire is designed to obtain the financial information to determine whether adjustment or recovery would defeat the purpose of FECA. Appellant did not return the overpayment recovery questionnaire provided by OWCP and did not otherwise submit financial evidence or supporting documentation to establish that recovery of the overpayment would defeat the purpose of FECA, or would be against equity and good conscience because, in reliance on the overpaid compensation, he relinquished a valuable right or changed his position for the worse. Although he is without fault in the creation of the overpayment, he nevertheless bears responsibility for providing the financial information necessary to support his request to waive recovery of the overpayment. As appellant did not meet the requirement of section 10.438 of OWCP regulations, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹³

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA. Section 10.441(a) of OWCP regulations provide that when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same.¹⁴ If 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.¹⁵

ANALYSIS -- ISSUE 3

OWCP reduced appellant's future compensation payments by \$111.17 every 28 days, taking into account the amount of compensation and the available evidence of his financial circumstances to minimize hardship, as well as the factors set forth in section 10.441 of OWCP regulations. It found that this method of recovery would minimize any resulting hardship on him and that the overpayment would be absorbed by February 2, 2020. As noted, appellant failed to submit any financial information. OWCP's procedure manual provides that, when an individual fails to provide requested financial information, it should follow minimum collection guidelines designed to collect the debt promptly and in full.¹⁶ The Board finds that OWCP properly

¹³ *Id.*

¹⁴ *Id.* at § 10.441.

¹⁵ *Id.*

¹⁶ *Supra* note 7; *see also Frederick Arters*, 53 ECAB 397 (2002). OWCP's procedure manual provides that, if a claimant is being paid compensation or is due accrued benefits from OWCP and does not submit evidence to support a waiver within the allotted time period, the debt should be recovered from such benefits as quickly as possible. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(2), 6.22.4d(1)(b) (May 2004). In all cases where an overpayment is due for recovery, OWCP should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly. *See also* Chapter 6.200.4d(1)(b); *Gail M. Roe*, 47 ECAB 268 (1995).

required repayment of the overpayment of compensation by deducting \$111.17 from each continuing compensation payment.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$6,174.26 for the period February 19, 2014 through July 25, 2015, for which he was not at fault. The Board further finds that he is not entitled to waiver of recovery of the overpayment of compensation and that OWCP properly required repayment of the overpayment by deducting \$111.17 from his future compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2016
Washington, DC

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

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

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