

FACTUAL HISTORY

In the prior appeal,² the Board found that appellant received a \$12,100.35 overpayment of compensation when OWCP failed to withhold premiums for postretirement basic life insurance for the period March 3 to October 25, 2011. The Board affirmed OWCP's August 3, 2012 overpayment decision on the issues of fact and amount of overpayment. The Board found that appellant, by operation of OWCP's FECA procedure manual, was not at fault in creating the overpayment. The Board remanded the case for consideration of whether he was entitled to waiver of recovery of the overpayment. The facts of this case, as set forth in the Board's prior decision, are hereby incorporated by reference.³

On September 6, 2013 OWCP asked appellant to submit an updated overpayment recovery questionnaire, as his household circumstances might have changed since the form he completed in 2011. It explained that the form would be used to consider whether waiver should be granted or to determine whether current collections should be modified. OWCP asked appellant to attach supporting documents, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips and any other records that supported the income and expenses listed. It notified appellant that failure to submit the requested information within 30 days would result in the denial of waiver and no further request for waiver would be considered until the requested information was furnished. Appellant did not respond.

In a decision dated October 7, 2013, OWCP denied waiver of recovery of the overpayment. It noted that it had received no response from appellant and a review of his overpayment recovery questionnaire from 2011 showed that he failed to provide supporting financial documentation. OWCP deferred to its hearing representative's August 3, 2012 decision on the issue of rate of recovery. In light of appellant's income, including rental income from a second home, his expenses, his checking account balance, his age and the size of the debt, the hearing representative determined that the debt should be recovered in the amount of \$250.00 every 28 days.

On the same day that it issued its final overpayment decision, OWCP received a September 25, 2013 letter from appellant requesting waiver due to financial hardship. Appellant argued that the \$250.00 deducted from his continuing compensation payments had caused him to fall behind in his payments. He submitted financial documents to show that he had bills that were past due. Appellant added that his credit score was severely compromised and that he was being threatened with legal action.

By decision dated October 11, 2013, OWCP advised appellant that the information he submitted was "insufficient to support your request for waiver." It explained that he did not complete a new overpayment recovery questionnaire and had not submitted all the supporting financial documents requested. OWCP added: "This office cannot use the limited information provided to consider waiver or to determine whether collections should be modified."

² Docket No. 13-642 (issued August 12, 2013).

³ On January 16, 2001 appellant, a 51-year-old letter carrier, injured his right leg in the performance of duty. OWCP accepted his claim for right calf sprain and thrombophlebitis.

On appeal, appellant argued that his financial situation has changed for the worse due to the reduction of his compensation. He noted that OWCP made an error 12 years ago and that he was not at fault. Appellant added that OWCP is collecting for insurance that was not available to him at the time and requested waiver.

LEGAL PRECEDENT -- ISSUES 1&2

Section 8129(a) of FECA provides that when an overpayment of compensation has been made 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 OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.⁵ If it finds that the recipient of an overpayment was not at fault, repayment will still be required unless: (1) adjustment or recovery of the overpayment would defeat the purpose of FECA; or (2) adjustment or recovery of the overpayment would be against equity and good conscience.⁶

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. 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. This information will also be used to determine the repayment schedule, if necessary. Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.⁷

Whenever an overpayment has been made to an individual who is entitled to further payments, proper adjustment shall be made by decreasing subsequent payments of compensation having due regard to 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 resulting hardship upon such individual.⁸

ANALYSIS -- ISSUES 1&2

The Board has previously reviewed the issues of fact and amount of overpayment. The Board's August 12, 2013 decision became final upon the expiration of 30 days from the date of the filing of the order.⁹ Fact and amount of the overpayment are already decided and are not

⁴ 5 U.S.C. § 8129(a).

⁵ 20 C.F.R. § 10.433(a).

⁶ *Id.* at § 10.434.

⁷ *Id.* at § 10.438.

⁸ *Id.* at § 10.321(a).

⁹ *Id.* at § 501.6(d).

subject to further consideration by the Board on this appeal.¹⁰ In the absence of a new review by OWCP, this matter is *res judicata*.¹¹

Following the Board's 2013 decision, OWCP provided appellant with an overpayment recovery questionnaire and asked him to complete and submit the form. It explained the purpose of this information and the need to support the information with financial records. OWCP also notified appellant of the consequences for failing to submit the information requested.

Appellant failed to submit the questionnaire. Instead, he requested waiver due to financial hardship. Appellant submitted documents to show that he was past due on certain accounts, that his credit score was compromised and that he was being threatened with legal action. Although this evidence has some bearing on whether he was experiencing financial hardship, he did not provide OWCP with the information it requested. Appellant failed to provide adequate updated information to determine whether his circumstances warranted waiver of the overpayment or modification of the repayment schedule. He did not fully disclose his monthly income, including any rental income he was receiving from a second home. Appellant did not itemize or document his monthly expenses in order to determine whether any income might be available for debt repayment. He did not disclose his assets in order to determine whether his resource base supported waiver. Appellant represented that he was behind in some of his bills; but this did not allow OWCP to apply established criteria for determining whether adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. His failure to provide the information requested gave OWCP no basis to waive the recovery of the overpayment or reduce deductions from continuing compensation.

In the absence of the financial information provided by the overpayment recovery questionnaire, OWCP was left to consider the probable extent of appellant's future compensation payments, the rate of his compensation and minimum collection guidelines. It gave due regard to the relevant factors. The Board finds that OWCP properly denied modification of the rate of recovery from continuing compensation payments.¹²

CONCLUSION

The Board finds that OWCP properly denied waiver of the overpayment and properly declined to modify the rate of recovery from continuing compensation payments.

¹⁰ *Hugo A. Mentink*, 9 ECAB 628 (1958).

¹¹ *Id.*

¹² *See Gail M. Roe*, 47 ECAB 268 (1995) (when an individual failed to provide the requested information on income, expenses and assets, the Board found that OWCP did not abuse its discretion in following 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).

ORDER

IT IS HEREBY ORDERED THAT the October 11 and 7, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 19, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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