

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

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<b>W.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 14-1842</b>
	)	<b>Issued: January 21, 2015</b>
<b>DEPARTMENT OF THE ARMY,</b>	)	
<b>Fort Polk, LA, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 19, 2014 appellant filed a timely appeal from a July 11, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding an overpayment of compensation. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over merits of this case.

**ISSUES**

The issues are: (1) whether appellant received an overpayment of \$5,202.55 for the period September 5, 2005 through July 21, 2007 because he received compensation at the augmented rate when he had claimed no eligible dependents; (2) whether OWCP properly found that appellant was at fault in the creation of the overpayment and not subject to waiver; and (3) whether it properly required repayment of the overpayment by withholding \$525.00 per month from appellant's continuing monthly compensation benefits.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On February 25, 1991 appellant, then a 35-year-old painter, filed a traumatic injury claim alleging that he stepped on an oil dip stick cover and his left ankle buckled under him. OWCP accepted the claim for left ankle strain, derangement of anterior of medial meniscus, and left unspecified internal derangement of knee. Appellant stopped work on the date of injury and was eventually placed on the periodic rolls for payment for total disability. He received wage-loss compensation at the augmented rate of 75 percent due to having eligible dependents of a wife and a daughter born November 24, 1991. Appellant subsequently had two more children: a daughter, date of birth May 22, 1993, and a son, date of birth January 23, 1997. On September 5, 1996 he requested that his compensation payments be directly deposited into his bank account.

On September 5, 2005 appellant and his wife separated. Based on a court order dated September 8, 2005, he was ordered to pay child support payments of \$550.00 a month to his wife until February 8, 2007.<sup>2</sup> On May 26, 2006 appellant was granted a divorce with his former spouse retaining sole custody of the minor children.

On September 19, 2006 appellant submitted a completed Form CA-1032 indicating that he had no dependents for the 15 months prior. OWCP continued to pay FECA compensation at the augmented rate and deduct child support from his wages.

On July 22, 2007 appellant remarried.

On September 26, 2007 appellant submitted a completed Form CA-1032 claiming his new wife and his three children as dependents for the 15 months prior. On Form CA-1032 dated September 27, 2008 he stated that he was not married but claimed his three children as dependents for the 15 months prior. On Form CA-1032 dated October 2, 2009 appellant claimed his wife and children as his dependents for the 15 months prior. On Form CA-1032 dated September 14, 2010 he claimed his wife and three children as his dependents for the prior 15 months. On Form CA-1032 dated June 23, 2011 appellant claimed his wife and two of his three children as dependents, noting that his oldest daughter was 19 years old and needed to be taken off support as she was not in school. In a December 6, 2011 Form CA-1032, appellant claimed his wife and son as dependents. He noted that his older daughter was 20 years old and not in school and that his second daughter was 18 years old and not in school. In a September 20, 2012 Form CA-1032, appellant stated that he was not married and claimed his son as his only dependent, noting that his two daughters were over 18 years old and not in school. In a September 7, 2013 Form CA-1032, he claimed his wife as a dependent but not his children, stating that they were too old.

In August 2013, OWCP stopped child support deductions. It noted there was no child support order in place for appellant's son, still a minor.

In an April 9, 2014 notice of proposed decision, OWCP found appellant was entitled to \$13,199.00 in compensation for child support payments that had been garnished from his wage-

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<sup>2</sup> By order dated October 12, 2006, the 30<sup>th</sup> Judicial District removed State of Louisiana Department of Social Services as the payee of child support and named appellant's former wife as the payee for all payments of child support.

loss compensation payments after his two daughters turned 18 years old, pursuant to the September 8, 2005 court order, mandating appellant's child support obligations. It also noted that appellant's claim that he had no dependents during the period September 5, 2005 to July 21, 2007 appeared inconsistent with the facts of appellant's legal obligation.

On April 21, 2014 appellant requested a review of the written record before OWCP's Branch of Hearings and Review. On May 1, 2014 OWCP's Branch of Hearings and Review returned the case file to the district office for issuance of a final decision.

In an April 21, 2014 statement, which OWCP received May 1, 2014, appellant indicated that since February 8, 2007 he was "not to have to pay child support" for his three minor children as the child support order was in place only for the period September 9, 2005 through February 8, 2007. He indicated that eventually the Department of Social Services was removed from receiving child support payments and his ex-wife was the one paid the child support payments. Appellant indicated that there were no other child support orders. He stated that OWCP continued to take out child support even though the order had ended February 8, 2007. Appellant stated that he told OWCP to stop taking out child support when his daughters turned 18 years old but he did not stop child support for his son because he was unaware that the child support order had expired on February 8, 2007. He alleged that once the court order expired on February 8, 2007, OWCP should have stopped taking child support out but only did so in August 2013 after he hired an attorney. Appellant alleged the \$13,199.00 did not cover all the money due him as child support payments should have been stopped February 8, 2007 and not when his two oldest children turned 18 years old.

In a May 27, 2014 preliminary decision, OWCP found appellant was overpaid the amount of \$5,202.55 for the period September 5, 2005 through July 21, 2007 because he accepted payments at the augmented rate of 75 percent when he had no qualifying dependents. It further found that he was with fault in the creation of the overpayment because he accepted a payment that he knew or reasonably should have known was incorrect.

On June 16, 2014 appellant requested a review of the written record before OWCP's Branch of Hearing and Review. In a five-page statement, he argued that he did not understand why he owes OWCP money as he provided OWCP copies of the court order for child support and OWCP continued to pay child support long after the court order had expired on February 8, 2007. Appellant did not submit a completed OWCP-20 form or provide any supporting financial evidence.

By decision dated July 11, 2014, OWCP finalized the overpayment of compensation in the amount of \$5,202.55 for the period September 5, 2005 through July 21, 2007 for which appellant was found with fault in the creation of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 1**

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 duty.<sup>3</sup> If the disability is total, the United States shall pay the employee during the disability monthly

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<sup>3</sup> 5 U.S.C. § 8102(a).

compensation equal to  $66 \frac{2}{3}$  percent of his monthly pay, which is known as his basic compensation for total disability.<sup>4</sup> Where the employee has one or more dependents as defined in FECA, he is entitled to have his basic compensation augmented at the rate of  $8 \frac{1}{3}$  percent, for a total of 75 percent of monthly pay.<sup>5</sup>

A dependent includes an unmarried child who, while living with the employee or receiving regular contributions from the employee toward his support, is either 18 years of age or over 18 years of age and incapable of self-support due to physical or mental disability.<sup>6</sup> A child is also considered a dependent if he or she is an unmarried student under 23 years of age who has not completed four years of education beyond the high school level and is currently pursuing a full-time course of study at a qualifying college, university or training program.<sup>7</sup>

If a claimant receives augmented compensation during a period where he or she has no eligible dependents, the difference between the compensation he or she was entitled to receive at the two-thirds compensation rate and the augmented compensation received at the three-quarters rate constitutes an overpayment of compensation.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP erred in declaring an overpayment of compensation for the period September 5, 2005 through July 21, 2007.

On his September 19, 2006 CA-1032 form appellant claimed no dependents for the 15 months prior. The factual evidence of record reflects that appellant was separated from his first wife on September 5, 2005 and was court ordered to pay child support for his dependent children from September 8, 2005 through February 8, 2007. His wages were garnished from his OWCP benefits to meet the obligations created under this court order. Appellant remarried on July 22, 2007 and claimed augmented compensation on CA-1032 forms dated September 26, 2007 and September 27, 2008. Because he was under a court order to pay child support commencing September 8, 2005, he remained entitled to augmented compensation on September 8, 2005 even though he reported that he had no qualifying dependents.<sup>9</sup> Under FECA, an employee is entitled to augmented wage-loss compensation for dependent children so long as they are unmarried and under the age of 18 and the employee contributes to their support. In this case, appellant was receiving augmented compensation benefits based on court-ordered child support payments. Thereafter, he filed for and was paid augmented compensation based on his marriage to his second wife and his dependent children. Accordingly, OWCP's finding that appellant received

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<sup>4</sup> *Id.* at § 8105(a).

<sup>5</sup> *Id.* at § 8110(b).

<sup>6</sup> *Id.* at § 8110(a).

<sup>7</sup> *E.G.*, 59 ECAB 599 (2008).

<sup>8</sup> *Diana L. Booth*, 52 ECAB 370 (2001).

<sup>9</sup> *See Clarence Brown*, Docket No. 05-307 (issued June 9, 2005). The record did not establish that appellant was making any court-ordered support payments for his daughter during the period in question. Therefore, he had no eligible dependents and was entitled to compensation at the basic two-thirds rate.

an overpayment of \$5,202.55 for the period September 5, 2005 through July 21, 2007 is reversed.

OWCP paid appellant an additional \$5,202.55 due to his augmented rate status from September 5, 2005 through July 21, 2007. While it subsequently declared an overpayment of \$5,202.55, this finding is reversed because appellant properly received the augmented compensation due to the dependency status of his three children who were under 18 years of age during the period in question and for which he was court-ordered to provide child support.<sup>10</sup>

**CONCLUSION**

The Board finds that OWCP improperly determined that appellant received an overpayment in the amount of \$5,202.55 for the period September 5, 2005 through July 21, 2007 as he had eligible dependents and was entitled to augmented compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 11, 2014 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 21, 2015  
Washington, DC

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

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

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

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<sup>10</sup> Due to the disposition of this case, the remaining issues on appeal and appellant's arguments are moot.