

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

E.C., Appellant)

and)

DEPARTMENT OF EDUCATION, OFFICE OF)
SPECIAL EDUCATION & REHABILITATIVE)
SERVICES, Washington, DC, Employer)

**Docket No. 14-1467
Issued: July 2, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 16, 2014 appellant filed a timely appeal from January 23 and February 18, 2014 merit decisions 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.²

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective May 5, 2013 because she ceased to have residuals of her July 27, 2010 work injury after that date; (2) whether it properly determined that appellant received a \$5,791.08 overpayment of compensation; and (3) whether OWCP abused its discretion by refusing to waive recovery of the overpayment.

¹ 5 U.S.C. §§ 8101-8193.

² On June 16, 2014 appellant submitted a timely request for oral argument in connection with OWCP's February 18, 2014 decision. In an order issued on February 3, 2015, the Board denied her request for oral argument and ordered that the present appeal proceed to a decision based on a review of the case record.

FACTUAL HISTORY

OWCP accepted that on July 27, 2010 appellant, then a 51-year-old vocational rehabilitation program specialist, sustained a medial meniscus tear of her left knee, lateral collateral ligament sprain of her left knee, and sprain of her thoracic region due to losing her balance and stumbling at work.³ Appellant stopped work and received wage-loss compensation beginning November 8, 2010 on the daily rolls. She was placed on the periodic rolls beginning February 13, 2011.

On February 17, 2011 Dr. Hamid R. Quraishi, an attending Board-certified orthopedic surgeon, performed OWCP-authorized arthroscopic surgery on appellant's left knee, including partial medial meniscectomy and chondroplasty of the patella. During the surgery, chondral lesions of the medial condyles were noted.

In a September 21, 2012 report, Dr. Stuart J. Gordon, a Board-certified orthopedic surgeon serving as an OWCP referral physician, discussed appellant's factual and medical history, including the treatment of her July 27, 2010 work injury⁴ and the findings of diagnostic testing from 2010 through 2012 showing degenerative disease of the thoracic spine, lumbar spine, and left knee. He also related his examination findings, noting that appellant complained of pain in her thoracic and lumbar spines but indicated that there was no appreciable paraspinal muscle spasm and that range of motion was full. Straight leg raise testing was negative in the seated and supine positions. Appellant had symmetric thigh and calf girth and mild bilateral varus of the legs, more on the left than right. Dr. Gordon noted that, for the right knee, appellant had mild medial and patellofemoral crepitus, but no irritability with full range of motion. For the left knee, appellant had complaints of pain through the medial proximal tibia and the patellofemoral region. However, there was no posterior mass or joint line tenderness with McMurray testing. Appellant limited her knee flexion to 100 degrees and her extension and quadriceps tendon mechanisms were intact. Dr. Gordon noted that appellant's subjective complaints "and claims of causality to the date of injury are beyond what one would expect." He diagnosed morbid obesity status post gastric bypass, not work related; preexisting extensive degenerative disease left knee, not work related; July 27, 2010 aggravation of preexisting left knee arthritis, now back to baseline; preexisting degenerative disease of the thoracolumbar spine; and aggravation of thoracolumbar strain, now back to baseline. Dr. Gordon concluded that appellant ceased to have residuals of her July 27, 2010 work injury. He found that she could return to her regular work as a vocational rehabilitation program specialist on a full-time basis and stated:

"I do not hold the opinion that her current subjective complaints are related to the date of injury. In my opinion, they are related to underlying degenerative disease of the thoracolumbar spine and left knee.

³ Appellant stated that a chair handle broke while she was standing and that she lost her balance and stumbled. There is no indication that she fell to the ground on July 27, 2010.

⁴ Dr. Gordon provided an accurate history of the July 27, 2010 work injury by noting that on that date a chair handle broke while appellant was standing and she stumbled but did not fall.

“With respect to injury-related factors of disability, I do not find any residual objective findings, with respect to the date of injury. In my opinion, her objective findings are related to preexisting degenerative disease.

“With respect to total disability, I would expect three weeks from the date of injury and four to six weeks from the date of arthroscopy.”

In a March 11, 2013 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits because she ceased to have residuals of her July 27, 2010 work injury. It informed her that the weight of the medical evidence rested with the September 21, 2012 report of Dr. Gordon, the referral physician. OWCP provided appellant 30 days to submit evidence and argument challenging the proposed termination.

In a March 27, 2013 letter, appellant challenged the proposed termination and argued that she still had residuals of her work injury as evidenced by the reports of attending physicians, including Dr. Quraishi and Dr. Joshua A. Thomas, an osteopath.

Appellant submitted a March 5, 2013 report in which Dr. Quraishi stated that she was reporting increased left knee problems. Examination of her left knee revealed tenderness in the medial joint line. Dr. Quraishi indicated that he had read the opinion of Dr. Gordon and did not agree with it. He noted that appellant had degenerative disease in her left knee and that total knee replacement was her only option. In an April 2, 2013 report, Dr. Quraishi stated, “Over the years, the patient’s degenerative arthritis has accelerated rather rapidly and now at this stage has reached where she needs to have a total knee replacement done.”

In an April 4, 2013 report, Dr. Thomas noted that appellant reported that she had pain in the right side of her mid back and low back. He indicated that she had displacement of thoracic and lumbar discs and sacroiliitis but stated that she was not a current surgical candidate because she did not have any progressive weakness, bowel and bladder loss, or intractable pain.

In an April 19, 2013 decision, OWCP terminated appellant’s wage-loss compensation and medical benefits effective May 5, 2013 because she had no residuals of her July 27, 2010 work injury after that date. It based its termination action on the September 21, 2012 report of Dr. Gordon and noted that the reports of appellant’s attending physicians were of limited probative value regarding appellant’s work-related residuals. On May 7, 2013 appellant requested a hearing.

In a July 9, 2013 notice, OWCP advised appellant of its preliminary determination that she received a \$5,791.08 overpayment of compensation for the period May 5 to June 1, 2013. It noted that the overpayment occurred because her wage-loss compensation was terminated effective May 5, 2013 but she continued to receive wage-loss compensation through June 1, 2013.⁵ OWCP also made a preliminary finding that appellant was at fault in creating the overpayment because she accepted a payment that she knew or reasonably should have known was incorrect. It advised her that she could submit evidence challenging the fact, amount, or finding of fault and request waiver of the overpayment. OWCP informed appellant that she

⁵ The record contains documents showing that on June 1, 2013 appellant received, through an electronic transfer into her bank account, \$5,791.08 in wage-loss compensation for the period May 5 to June 1, 2013.

could submit additional evidence in writing or at prerecoupment hearing, but that a prerecoupment hearing must be requested within 30 days. It requested that she complete and return an enclosed financial information questionnaire (Form OWCP-20) within 30 days even if she was not requesting waiver of the overpayment.

Appellant submitted a Form OWCP-20 which she completed on July 15, 2013. She indicated that she had \$5,800.00 in monthly income, \$2,000.00 in assets held in a savings account, and \$7,200.00 in monthly expenses comprised of \$2,700.00 for rent, \$200.00 for food, \$700.00 for utilities, \$800.00 for unspecified miscellaneous expenses, and \$2,800.00 for debts to various creditors. Appellant requested waiver of recovery of the \$5,791.08 overpayment and asserted that she was not at fault in its creation because she assumed that the electronic payment she received was her last payment for valid wage-loss compensation.

On July 17, 2013 appellant timely requested a telephonic prerecoupment hearing with an OWCP hearing representative regarding the preliminary overpayment notice.

During the hearing held on December 18, 2013, appellant testified that she received a single electronic payment following her return to work, but that she assumed OWCP had correctly paid her for compensation that was due to her. She indicated that it would be a hardship for her to repay the overpayment of compensation and that she had borrowed \$7,500.00 from relatives but had not made any payments on those loans. Appellant discussed her current financial situation with respect to monthly income, monthly expenses and assets. The hearing representative provided her 30 days to submit additional information regarding her finances. He advised her that she may not claim specific expenses on a monthly basis if those expenses were charged to a line of credit or credit card and ultimately reflected in any minimum payment for the account, as this would in effect double count the expenses.

On December 20, 2013 OWCP granted appellant a schedule award for a two percent permanent impairment of her right leg. Appellant received an electronic transfer of \$8,969.76 on December 20, 2013 in connection with this schedule award.

On January 6, 2014 appellant submitted various documents regarding her financial circumstances, including billing statements. An earnings statement showed she received income from the employing establishment of \$2,827.00 every 14 days and a billing statement showed that her monthly mortgage was \$1,646.00. Other documents showed that the minimum monthly charges for various expenses related to credit cards, utilities, and other debts. The total amount of these minimum payments equaled \$4,213.00.⁶ Appellant also submitted a statement claiming monthly expenses of \$300.00 for automobile fuel, \$350.00 for food and toiletries, \$100.00 monthly for miscellaneous expenses (including oil changes and parking fees), \$80.00 for church tithing, and \$50.00 to \$100.00 for doctor visits and medicine. She indicated that some of these expenses were paid for with cash and some by using credit cards.

In a January 23, 2014 decision, an OWCP hearing representative affirmed OWCP's April 19, 2013 decision with respect to the termination action noting that OWCP met its burden

⁶ Appellant indicated that these payments included \$25.00 for a Macy's store card and \$92.00 for water from the Washington Suburban Sanitary Commission.

of proof to terminate appellant's wage-loss and medical benefits effective May 5, 2013 based on the September 21, 2012 report of Dr. Gordon.⁷

Later, in a February 18, 2014 decision, an OWCP hearing representative determined that appellant received a \$5,791.08 overpayment of compensation because she received wage-loss compensation for the period May 5 to June 1, 2013 despite the fact that her wage-loss compensation had been terminated effective May 5, 2013. He found that, contrary to the preliminary fault determination, appellant was not at fault in creating the \$5,791.08 overpayment because she could not have known, given the electronic transmission of the monies in a single payment, that she had accepted an improper payment. However, the hearing representative determined that the \$5,791.08 overpayment was not subject to waiver. Regarding the reasoning for this determination, he noted that appellant's only documented income was \$2,827.00 every 14 days. The hearing representative stated that the earnings statements provided by appellant showed a deduction to a savings plan of \$121.00 and noted that including this deduction in net income resulted in biweekly income of \$2,948.00 or monthly income of \$6,387.00. The hearing representative stated:

“In terms of monthly expenses, [appellant] documented \$5,779.00 in expenses. Documentation of payment of her mortgage, loans from PNC, SunTrust and GE Capital, Verizon expenses, five credit cards, State Farm insurance, two department store accounts, an overdraft account, gas, electric and water bills, an additional life insurance plan, home security system, and a housing association. The reported figures were largely accepted as stated, with the exception of reduction of the Macy's store account minimum payment from \$25.00 monthly to \$6.00 (as documented on the statement provided), and division of the reported water bill by three to account for the quarterly billing cycle documented on the statement. No documentation of the existence of the family loans was provided, and no evidence of any repayment was found. For those reasons, [OWCP] does not accept the expenses as reported.

“[Appellant] further claimed \$300.00 monthly for auto[mobile] fuel, \$350.00 monthly for food and toiletries, \$100.00 monthly for unexplained miscellaneous expenses, \$50.00 to \$100.00 monthly for doctor visits and medications, and \$80.00 monthly for church tithing. No support for these expenses was provided, but the claimant acknowledged that these expenses were paid with a combination of cash and credit cards. In reviewing new charges to credit cards, I find no detail to support such claims, but note that in the billing cycle provided to me, new purchases totaled \$519.00. [Appellant] also failed to provide any banking statements to support use of cash for any expenses.... I find that roughly half of the claimed monthly expenses were likely paid with cash, and the balance paid using the previously documented credit instruments. Accordingly, of the \$830.00

⁷ The hearing representative also found that, after the proper termination action, which was effective May 5, 2013, appellant submitted a July 27, 2012 report of Dr. Quraishi which created a new conflict in the medical opinion evidence regarding whether she continued to have residuals of her July 27, 2010 work injury. He remanded the case to OWCP for referral of appellant to an impartial medical specialist for an examination and opinion on this matter. After developing the medical evidence, OWCP was directed to issue a decision regarding whether appellant established that she had disability after May 5, 2013 due to the July 27, 2010 work injury.

in expenses claimed monthly, I have accepted cash expenses of \$415.00. The above findings result in accepted monthly expenses of \$6,194.00. Net monthly cash flow available for repayment of the overpayment, after deduction of the \$50.00 allowance beyond ordinary living expenses, equals \$6,387.00 -- \$6,194.00 -- \$50.00, or \$143.00.”⁸

LEGAL PRECEDENT -- ISSUE 1

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁹ OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.¹⁰ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹¹

ANALYSIS -- ISSUE 1

OWCP accepted that on July 27, 2010 appellant sustained a medial meniscus tear of her left knee, lateral collateral ligament sprain of her left knee, and sprain of her thoracic region due to losing her balance and stumbling at work. On February 17, 2011 Dr. Quraishi, an attending Board-certified orthopedic surgeon, performed OWCP-authorized arthroscopic surgery on appellant’s left knee, including partial medial meniscectomy and chondroplasty of the patella. In an April 19, 2013 decision, OWCP terminated appellant’s wage-loss compensation and medical benefits effective May 5, 2013 because she had no residuals of her July 27, 2010 work injury after that date. It based its termination action on the September 21, 2012 report of Dr. Gordon, a Board-certified orthopedic surgeon who served as an OWCP referral physician. In a January 23, 2014 decision, an OWCP hearing representative affirmed OWCP’s termination of appellant’s wage-loss compensation and medical benefits effective May 5, 2013.¹²

In his September 21, 2012 report, Dr. Gordon discussed appellant’s factual and medical history, including the treatment of her July 27, 2010 work injury and the findings of diagnostic testing from 2010 through 2012 showing degenerative disease of the thoracic spine, lumbar spine, and left knee. He reported the findings of his physical examination noting that her thoracic and lumbar spines showed no appreciable paraspinal muscle spasm and that range of motion was full. Dr. Gordon indicated that appellant had full knee motion, other than some self-

⁸ The hearing representative found that recovery of the \$5,791.08 overpayment should be made through monthly payments of \$100.00. With respect to the recovery of an overpayment, the Board’s jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *D.R.*, 59 ECAB 148 (2007); *Miguel A. Muniz*, 54 ECAB 217 (2002). As appellant was not in receipt of compensation at the time of OWCP’s overpayment determination, the Board does not have jurisdiction over the method of recovery of the overpayment in this case. *See Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

⁹ *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

¹⁰ *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

¹¹ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

¹² In the January 23, 2014 decision, the hearing representative remanded the case to OWCP for further development of the medical evidence, but he explicitly indicated that OWCP’s termination action effective May 5, 2013 was proper.

restricted motion on the left. He concluded that she ceased to have residuals of her July 27, 2010 work injury. Dr. Gordon found that appellant was able to return to her regular work as a vocational rehabilitation program specialist on a full-time basis and stated that her current subjective complaints were not related to the July 27, 2010 injury. Rather, they were related to preexisting degenerative disease of the thoracolumbar spine and left knee.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Gordon. The September 21, 2012 report of Dr. Gordon establishes that appellant had no residuals of her July 27, 2010 work injury after May 5, 2013. The Board has carefully reviewed the opinion of Dr. Gordon and notes that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Gordon provided a thorough factual and medical history and accurately summarized the relevant medical evidence.¹³ He provided medical rationale for his opinion by explaining that there were no objective residuals of the July 27, 2010 work injury and that appellant's continuing problems were due to the natural progression of her preexisting degenerative disease.

Appellant alleged that reports of attending physicians showed that she continued to have residuals of the July 27, 2010 work injury. However, these reports are of limited probative value on this issue because they do not contain a rationalized opinion that she continued to have work-related residuals. In March 5 and April 4, 2013 reports, Dr. Quraishi indicated that appellant needed total knee replacement surgery for her left knee. However, he did not indicate that this need was related to residuals of the July 27, 2010 work injury and, in fact, suggested that the surgery was necessitated by the natural progression of her preexisting degenerative disease.¹⁴ In an April 4, 2013 report, Dr. Thomas, an osteopath, noted that appellant had displacement of thoracic and lumbar discs and sacroiliitis but stated that she was not a current surgical candidate. He did not provide any opinion on the cause of appellant's condition.

With respect to the termination issue, appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

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.¹⁵ 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

¹³ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

¹⁴ Dr. Quraishi indicated that he had read the opinion of Dr. Gordon and did not agree with it. However, he did not provide any explanation for this brief statement.

¹⁵ 5 U.S.C. § 8102(a).

prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.”¹⁶

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹⁷ Section 8116 of FECA defines the limitations on the right to receive compensation benefits. This section of FECA provides that, while an employee is receiving compensation, he or she may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.¹⁸ OWCP’s regulations state in pertinent part: compensation for wage loss due to disability is available only for any periods during which an employee’s work-related medical condition prevents her from earning the wages earned before the work-related injury.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly found that appellant received a \$5,791.08 overpayment of compensation. In an April 19, 2013 decision, OWCP terminated appellant’s wage-loss compensation and medical benefits effective May 5, 2013 because she had no residuals of her July 27, 2010 work injury after that date. As explained above, this termination action was proper. The record reveals, however, that appellant continued to receive total disability compensation from OWCP through June 1, 2013. Appellant was not entitled to receive disability compensation between May 5 and June 1, 2013 and the amount of compensation she received during this period, \$5,791.08, represented an overpayment of compensation. For these reasons, she received a \$5,791.08 overpayment.

LEGAL PRECEDENT -- ISSUE 3

The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP’s discretion pursuant to statutory guidelines.²⁰ These statutory guidelines are found in section 8129(b) of FECA which states: “Adjustment or recovery [of an overpayment] by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.”²¹ If OWCP finds a claimant to be without fault in the matter of an overpayment, then, in accordance with section 8129(b), OWCP may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of FECA nor be against equity and good conscience.

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

¹⁶ *Id.* at § 8129(a).

¹⁷ *Id.* at § 8102.

¹⁸ *Id.* at § 8116(a).

¹⁹ 20 C.F.R. § 10.500.

²⁰ See *Robert Atchison*, 41 ECAB 83, 87 (1989).

²¹ 5 U.S.C. § 8129(b).

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.²² According to 20 C.F.R. § 10.437, 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 payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.²³ To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.²⁴

The Board has held that an employee who receives payments from OWCP in the form of direct deposit may not be at fault the first time incorrect funds are deposited into his or her account, as the acceptance of the resulting overpayment lacks the requisite knowledge.²⁵ The Board has also held in cases involving a series of incorrect payments, where the requisite knowledge is established by a letter or telephone call from OWCP or simply with the passage of time and a greater opportunity for discovery, the claimant will be at fault for accepting the payments subsequently deposited.²⁶ Previous cases have held that receiving one or two erroneous direct deposit payments does not necessarily create the requisite knowledge to find that a claimant was at fault in the creation of the overpayment.²⁷

ANALYSIS -- ISSUE 3

In his February 18, 2014 decision, the hearing representative properly found that appellant was not at fault in the creation of the \$5,791.08 overpayment because she could not have known, given the electronic transmission of the monies in a single payment, that she had accepted an improper payment.²⁸ He then proceeded to evaluate appellant's request for waiver of the overpayment under the standards for employees who are not at fault in the creation of the overpayment.

The Board finds that appellant has not established that recovery of the \$5,791.08 overpayment would defeat the purpose of FECA because she has not shown both that she needs

²² 20 C.F.R. § 10.436. An individual is deemed to need substantially all of his or her monthly income to meet current and ordinary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent plus \$960.00 for each additional dependent. See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a (June 2009); *B.F.*, Docket No. 13-785 (issued September 20, 2013).

²³ *Id.* at § 10.437(a), (b).

²⁴ *Id.* at § 10.437(b)(1).

²⁵ See *Tammy Craven*, 57 ECAB 689 (2006).

²⁶ *Id.*

²⁷ *V.S.*, Docket No. 13-1278 (issued October 23, 2013).

²⁸ See *supra* notes 25 through 27.

substantially all of her current income to meet ordinary and necessary living expenses and that her assets do not exceed the allowable resource base. The evidence of record supports that her monthly income exceeds her monthly ordinary and necessary expenses by approximately \$193.00. Earnings statements show that appellant had monthly income of \$6,387.00.²⁹ Other records show that she had a monthly mortgage payment of \$1,646.00. Appellant also claimed that she had \$4,213.00 in monthly minimum payments for credit cards, utilities, and other debts. The hearing representative properly found that the documents of record supported \$4,133.00 of these expenses.³⁰ He also correctly found that appellant had established \$415.00 in additional expenses which included outlays for automobile fuel, food, toiletries, church tithings, and miscellaneous expenses.³¹ Therefore, it has been established that appellant had monthly income of \$6,387.00 and monthly expenses of \$6,194.00.

As appellant's current income exceeded her current ordinary and necessary living expenses by approximately \$193.00, *i.e.*, an amount more than \$50.00, she has not shown that she needs substantially all of her current income to meet current ordinary and necessary living expenses.³² Because she has not met the first prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider the second prong of the test, *i.e.*, whether appellant's assets do not exceed the allowable resource base.

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because she has not shown that she would experience severe financial hardship in attempting to repay the debt or that she relinquished a valuable right or changed her position for the worse in reliance on the payment which created the overpayment.³³

Because appellant has failed to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, she has failed to show that OWCP abused its discretion by refusing to waive the overpayment.

On appeal, appellant argued that she did not have the financial capacity to repay the \$5,791.08 overpayment. As noted, the Board's jurisdiction with respect to the recovery of an overpayment is limited to those cases where OWCP seeks recovery from continuing

²⁹ In reaching this figure, the hearing representative properly noted that appellant's salary from the employing establishment was \$2,948.00 every 14 days (including monies allocated to savings) and that converting this figure to a full month equaled \$6,387.00.

³⁰ The hearing representative explained how the evidence showed that \$80.00 of these expenses were not justified, including \$19.00 of a claimed Macy's store bill and \$61.00 of a water bill (due to conversion of a larger claimed amount to a monthly expense). He also noted that appellant had not documented her claim that she lent \$7,500.00 to relatives.

³¹ The hearing representative determined that \$830.00 of these expenses were valid, but that half of the expenses were already included in appellant's minimum monthly payments on credit cards. It appears that he did not accept appellant's claim of \$50.00 to \$100.00 in unreimbursed medical expenses as he did not include this claimed expense in the \$830.00 figure. The Board notes that there is no evidence in the record supporting these medical expenses.

³² See *supra* note 22.

³³ See *supra* notes 22 and 23.

compensation benefits.³⁴ Because OWCP did not seek recovery from continuing compensation benefits, appellant's argument on appeal relates to a matter not within the Board's jurisdiction.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective May 5, 2013 because she ceased to have residuals of her July 27, 2010 work injury after that date. The Board further finds that OWCP properly determined that appellant received a \$5,791.08 overpayment of compensation and that it did not abuse its discretion by refusing to waive recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the February 18 and January 23, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 2, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

³⁴ See *supra* note 8.