

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

C.C., daughter of J.C., Appellant)

and)

DEPARTMENT OF ENERGY, WESTERN)
AREA POWER ADMINISTRATION,)
Sacramento, CA, Employer)

**Docket No. 15-1230
Issued: September 8, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 12, 2015 appellant filed a timely appeal from a March 13, 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 has established that appellant received an overpayment of compensation in the amount of \$811.66 for the period December 29, 2014 to January 10, 2015; and (2) whether OWCP properly denied waiver of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

The employee, appellant's father, was a 43-year-old line mechanic who was fatally injured when he was struck in the chest by a falling tree on August 20, 1991. Appellant was born on December 28, 1991. Her mother and guardian, filed a Form CA-5 claim for survivor's benefits on February 14, 1992 on behalf of appellant, who was named as the beneficiary. Appellant was placed on the periodic rolls and paid beneficiary compensation as of October 16, 1992 and continuing at the compensation rate of 40 percent.

By letter dated December 3, 2009, OWCP informed appellant that it required additional information to support her continuing entitlement to compensation as a dependent. It asked her to submit documentation indicating that she was pursuing a full-time course of study or training with the attached Form EN1617. OWCP advised appellant that under FECA she was prohibited from accepting compensation to which a beneficiary is not entitled and that, if she was no longer a full-time student, had completed four years of education beyond high school, had married, or had reached age 23, she was required to notify OWCP immediately and return any uncashed compensation checks.

In a telephone call dated December 3, 2009, appellant's mother informed OWCP that appellant's 18th birthday was approaching, but that she was still in school. She submitted a Form EN1617 which indicated that appellant was currently enrolled in a charter school in Reno, Nevada.

By letter dated June 14, 2010, OWCP informed appellant's mother that, although compensation may continue to be paid on behalf of an unmarried child age 18 or older who is either a full-time student or incapable of self-support, it required additional information to determine whether appellant had continuing eligibility for compensation beyond her 18th birthday. It stated that compensation is payable for an unmarried child who has reached age 18 and is a student who has not completed four years of education beyond high school; a student is defined in 5 U.S.C. § 8101(17) as one who is currently pursuing a full-time course of study at an accredited school, college or university or at a technical, trade, vocational, business, or professional school. OWCP advised her that compensation was not payable beyond the end of the semester or enrollment period in which the child either completes the fourth year of education beyond high school or reaches the age of 23 years. Appellant completed the Form EN1617 and submitted it to OWCP on June 23, 2010; she advised that she would be attending Truckee Meadows Community College as of August 28, 2010.

On September 19, 2012 OWCP was informed that appellant had been attending Oklahoma City Community College as of July 30, 2012 and was expected to graduate in December 2014.

By form letter dated December 8, 2014, received by OWCP on December 12, 2014, appellant advised OWCP that she was enrolled at Vatterot College in Oklahoma City from January 13 to December 28, 2014.

In an OWCP worksheet dated January 21, 2015, it was noted that appellant had received an overpayment in the amount of \$811.66, covering the period December 29, 2014 to

January 10, 2015. The form stated that an overpayment had been created because she had turned 23 years of age on December 28, 2014 and was therefore no longer entitled to survivor benefits.

On February 4, 2015 OWCP issued a preliminary determination that appellant had received an overpayment in compensation in the amount of \$811.66 for the period December 29, 2014 to January 10, 2015 because she continued to receive death benefits after she turned 23 years old on December 28, 2004. It calculated the overpayment by taking the direct deposit compensation check she received in the amount of \$1,748.19 for the period December 14, 2014 through January 10, 2015, a period of 28 days, dividing it by 28 days, which equaled \$62.4353 per day, and then multiplying that by the 13 days that she was not eligible for compensation from December 29, 2014 to January 10, 2015, which totaled an overpayment of \$811.66.

OWCP found that appellant was not at fault in the creation of the overpayment because she received her compensation by direct deposit. It further advised her that, while she was found without fault in the creation of the overpayment, recovery may not be made if it could be shown that such recovery would defeat the purpose of the law or would be against equity and good conscience. OWCP informed appellant that if she disagreed with the decision she could, within 30 days, submit evidence or argument to OWCP, or request a precoupment hearing with the Branch of Hearings and Review on the matter of the overpayment, and that any response she wished to make with regard to the overpayment should be submitted within 30 days of the February 4, 2015 letter. Appellant was advised that if she believed that the overpayment should be waived, she should complete a financial recovery questionnaire form and submit documents such as income tax returns, bank statements, bills, canceled checks, pay slips, and other records to support her claimed income and expenses. Failure to submit this information within 30 days would result in denial of waiver.

No additional information relevant to waiver of the overpayment was provided by appellant.

By letter to appellant dated February 9, 2015, OWCP advised that her school had verified that the semester ended on December 28, 2014, and her compensation benefits would therefore be terminated as of December 29, 2014.

In a telephone call dated February 12, 2015, appellant informed OWCP that she was still attending college and would be submitting the paperwork from the college. On March 10, 2015 OWCP received a completed form from Vatterot College, dated February 12, 2015, indicating that she was enrolled full time at the college beginning January 13, 2014 and was expected to graduate on March 8, 2015.

On March 13, 2015 OWCP finalized the preliminary determination regarding the overpayment in compensation in the amount of \$811.66 for the period December 29, 2014 to January 10, 2015. It found that the information appellant provided in response to the February 4, 2015 preliminary notice of overpayment was not sufficient to establish waiver of the overpayment.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 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 duty.³ Furthermore, section 8133 of FECA⁴ provides that compensation in case of death from an injury sustained in the performance of duty is payable to a child until the child has reached 18 years of age, but shall continue if she is a student as defined by section 8101(17) at the time she reaches 18 years of age for so long as she continues to be such student or until she marries. The term student is defined in section 8101(17) as an individual under 23 years of age who has not completed four years of education beyond high school and who is regularly pursuing a full-time course of study.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$811.66 from December 29, 2014 to January 10, 2015. The record supports that she received compensation by direct deposit in the amount of \$1,748.19 for the period December 14, 2014 through January 10, 2015. As appellant turned 23 years of age on December 28, 2014, and her school semester had ended. Thus, she was no longer a “student” as defined by section 8101(17) of FECA⁶ and was therefore not entitled to survivor’s benefits after that date. OWCP calculated the overpayment by dividing the compensation appellant received for the period December 14, 2014 through January 10, 2015, \$1,748.19, by 28, which equaled \$62.4353 per day, and multiplying it by the 13 days that she was overpaid from December 29, 2014 to January 10, 2015, totaling an overpayment of \$811.66. It properly calculated the amount of the overpayment.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA⁷ provides that an overpayment must be recovered unless “incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.” 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.⁸

² 5 U.S.C. §§ 8101-8193.

³ *Id.* at § 8102(a).

⁴ *Id.* at § 8133.

⁵ *Id.* at § 8101(17). *See also R.P., daughter of L.P.*, Docket No. 14-136 (issued August 13, 2014).

⁶ *Id.* at § 8101(17).

⁷ *Id.* at § 8129(a)-(b).

⁸ *See Robert Atchison*, 41 ECAB 83 (1989).

Section 10.438 of the regulations provide that 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 on an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.⁹

ANALYSIS -- ISSUE 2

OWCP determined that appellant was without fault in the creation of the overpayment. A finding of no fault does not mean, however, that the claimant may keep the money, only that OWCP must consider eligibility for waiver for this period.¹⁰ Appellant responded to the February 4, 2014 preliminary overpayment determination by submitting documentation showing that she was still enrolled in college. However, this was not a sufficient basis to establish waiver of the overpayment. Appellant was informed in the preliminary determination dated February 4, 2015 that she should submit financial documentation to substantiate a waiver of the overpayment. Appellant did not do so. As a result, OWCP did not have the necessary financial information to determine whether recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience and therefore properly denied waiver of the overpayment.¹¹

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$811.66 for the period December 28, 2014 to January 10, 2015. The Board further finds that OWCP properly denied waiver of the overpayment.

⁹ 20 C.F.R. § 10.438.

¹⁰ See *George A. Rodriguez*, 57 ECAB 224 (2005).

¹¹ See *K.S.*, Docket No. 14-1646 (December 22, 2014).

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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