United States Department of Labor
Employees' Compensation Appeals Board

S.Y., Appellant	)	
and	)	**Docket No. 16-0772**
	)	**Issued: December 20, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Alameda, CA, Employer	)	

Appearances:
John Casey, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 7, 2016 appellant, through his representative, timely appealed an October 27, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney's or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that appellant submitted additional evidence after OWCP rendered its October 27, 2015 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1).

ISSUES

The issues are: (1) whether appellant received an overpayment in the amount of $4,095.26 for the period April 5, 2012 through May 31, 2014; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

Appellant, now a 63-year-old former city carrier, injured his lower back in the performance of duty on January 25, 1997. OWCP initially accepted his occupational disease claim (Form CA-2) for lumbar sprain and lumbar subluxation, and later expanded the claim to include aggravation of lumbar degenerative disc disease (L4-5, L5-S1) and erectile dysfunction. Appellant retired on disability effective January 27, 2002. He was 48 at the time of his retirement.

In July 2012, appellant filed a claim for a schedule award (Form CA-7). He submitted an April 5, 2012 impairment rating from Dr. Robert S. Ferretti, a Board-certified orthopedic surgeon, who found 20 percent right lower extremity permanent impairment due to sensory and motor deficits involving the L5 and S1 nerve roots. Dr. Ferretti rated appellant under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009). He specifically referenced *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the sixth edition (July/August 2009). With respect to the L5 nerve root, Dr. Ferretti found a moderate sensory deficit (three percent) and a mild motor deficit (five percent).[4] With regard to the S1 nerve root, he found a moderate sensory deficit (two percent) and a moderate motor deficit (eight percent).[5] After adjustments for functional history (grade modifier 1) and clinical studies (grade modifier 2), Dr. Ferretti calculated a net adjustment of +1, which resulted in an L5 rating of 11 percent and an S1 rating of 12 percent. He then combined the L5 and S1 ratings and found 20 percent right lower extremity permanent impairment.[6]

Dr. Ferretti also found five percent whole person permanent impairment due to erectile dysfunction, which he attributed to L4-5, L5-S1 involvement.[7] After converting the 5 percent whole person impairment to 12 percent lower extremity impairment, he then combined the erectile dysfunction impairment (12 percent) with the spinal nerve extremity impairment (20 percent) for a total lower extremity impairment rating of 30 percent.[8] Lastly, Dr. Ferretti

[4] *See* Proposed Table 2, Spinal Nerve Impairment: Lower Extremity Impairments, *The Guides Newsletter* (July/August 2009).

[5] *Id.*

[6] According to the Combined Values Chart, a 12 percent rating and an 11 percent rating represent a combined rating of 22 percent, not 20 percent. *See* Appendix A, A.M.A., *Guides* 604 (6th ed. 2009).

[7] Dr. Ferretti rated appellant's erectile dysfunction under Table 7-6, Penile Disease, A.M.A., *Guides* 144 (6th ed. 2009).

[8] Dr. Ferretti referenced Table 16-10, A.M.A., *Guides* 530 (6th ed. 2009), as authority for converting appellant's whole person erectile dysfunction impairment into a lower extremity impairment.

indicated that appellant had reached maximum medical improvement (MMI) as of December 7, 2009.[9]

OWCP referred the case to its district medical adviser (DMA), Dr. Leonard A. Simpson, an orthopedic surgeon. In a report dated May 4, 2013, the DMA found 17 percent permanent impairment of both the left and right lower extremities based on motor and sensory deficits involving the L5 and S1 nerve roots. The DMA's spinal nerve extremity rating differed from Dr. Ferretti's in two respects. First, unlike Dr. Ferretti, the DMA rated appellant's left lower extremity in addition to the right. The two physicians were in agreement regarding the extent of appellant's L5 nerve root impairment (11 percent), as well as the appropriate net adjustment (+1). They also concurred with respect to appellant's moderate S1 sensory deficit (two percent). However, the second area of disagreement concerned the extent of appellant's S1 motor deficit. The DMA found only a mild S1 motor deficit (three percent) in comparison to Dr. Ferretti's moderate S1 motor deficit (eight percent).[10] After appropriate adjustments, the DMA found seven percent S1 lower extremity impairment. When combined, the L5 and S1 (11 + 7 percent) impairments represented 17 percent lower extremity impairment. The DMA also found 13 percent impairment of the penis.[11] Finally, the DMA relied on Dr. Ferretti's April 5, 2012 examination date as the date appellant had reached MMI.

On May 24, 2013 OWCP referred the DMA's report to Dr. Ferretti for review. In a supplemental report dated June 4, 2013, he responded noting his agreement with the DMA's May 4, 2013 determination regarding the "bilateral lower extremities." Dr. Ferretti further noted that "[a]s to the impairment of the penis, I defer to the finding of Dr. Simpson of 13 [percent], as I am not an expert in this area."

On July 16, 2013 OWCP granted a schedule award for 17 percent permanent impairment of each lower extremity and 13 percent permanent impairment of the penis. The award covered a period of 124.57 weeks beginning April 5, 2012. The July 16, 2013 schedule award specifically noted the initial discrepancy between the DMA's impairment rating and Dr. Ferretti's. OWCP further noted that it referred the DMA's May 4, 2013 report to Dr. Ferretti, who provided a June 4, 2013 supplemental report "agreeing with the final percentages … recommended by the DMA."

Appellant requested a hearing before an OWCP hearing representative, which was scheduled for November 13, 2013. Neither he nor his representative specifically challenged the

[9] The December 7, 2009 MMI date was based on a similarly dated report from Dr. Douglas Grant, who advised that appellant was "[p]ermanent and [s]tationary." Dr. Grant is a Board-certified physiatrist with a subspecialty in pain medicine. He was one of several physicians at Integrated Pain Management/IPM who had been treating appellant's lumbar condition since March 12, 1998. The earliest reference to Dr. Grant's involvement with appellant's care dates back to June 17, 2004. Between December 11, 2006 and December 7, 2009, Dr. Grant saw appellant at six-month intervals, and on each occasion he declared him to be permanent and stationary.

[10] *See* Proposed Table 2, Spinal Nerve Impairment: Lower Extremity Impairments, *The Guides Newsletter* (July/August 2009).

[11] The DMA similarly rated appellant's erectile dysfunction under Table 16-10, A.M.A., *Guides* 530 (6th ed. 2009), but did not convert the five percent whole person impairment to a lower extremity impairment. Instead, the DMA relied on guidance from the procedure manual and converted appellant's whole person impairment to an impairment of the penis. *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4d(2)(b) (January 2010).

percentage of impairment awarded "at this time," but instead argued for an earlier date of MMI. Appellant believed that his schedule award should have been based on a December 7, 2009 date of MMI. He also believed he was entitled to a larger payout based on consumer price index adjustments. The hearing representative informed appellant and his representative that the entire case file would be reviewed before making a decision and the review could possibly affect the remainder of the award. Appellant's representative was notified that the record would be held open for an additional 30 days should additional evidence need to be submitted. The hearing concluded and no additional evidence was received.

In a January 16, 2014 decision, an OWCP hearing representative declared a conflict in medical opinion between the DMA and Dr. Ferretti regarding both the date of MMI and the percentage of impairment. Consequently, he set aside the July 16, 2013 schedule award and remanded the case to OWCP for referral to an impartial medical examiner (IME).

Dr. Timothy C. Howard, a Board-certified orthopedic surgeon and IME, examined appellant on May 5, 2014. He questioned whether appellant's erectile dysfunction was employment related, but nonetheless recommended that OWCP let stand the 13 percent for permanent impairment of the penis. The Dr. Howard also deferred to the DMA with respect to the previous 17 percent right lower extremity impairment rating. Regarding impairment of the left lower extremity, he noted there should be no rating because currently there were no symptoms or clinical findings to support impairment. As to when appellant reached MMI, Dr. Howard advised OWCP to accept the December 7, 2009 date.

Based on his review of the record, Dr. Howard noted that with respect to appellant's back and legs, he had been declared permanent and stationary as early as April 1997.[12] Dr. Howard further noted that several other physicians made similar permanent and stationary findings in November 2002, May 2003, and December 2004. He also noted Dr. Grant's December 7, 2009 permanent and stationary finding, as well as the DMA's reliance on Dr. Ferretti's April 5, 2012 examination date for purposes of establishing MMI.

As to when appellant reached MMI, Dr. Howard opined:

> "My feeling at this time is to simply accept the [December 7, 2009] date as the patient having reached MMI and, thus, permanent and stationary status. One could just as easily pick earlier permanent and stationary dates as the patient's complaints and negative [examination] findings after 2002 all seem to be pretty much the same. However, in picking between [December 7, 2009] and [April 5, 2012], I feel that it is best to simply accept Dr. Grant's declaration of [December 7, 2009]."

On the issue of impairment, Dr. Howard provided the following explanation:

> "In spite of the patient being dramatically improved since Dr. Ferretti's evaluation, I believe it is time to end the multiple doctor evaluations and simply accept Dr. Simpson's reevaluation of Dr. Ferretti's impairment ratings. Once

[12] With respect to appellant's erectile dysfunction, Dr. Howard commented that there had never been a permanent and stationary (P&S) declaration concerning that particular condition, but that now he "seems to be at a permanent and stationary status …."

> again, we should accept the [December 7, 2009] MMI/P&S statement and move ahead. I also feel that as the Department of Labor has accepted … [erectile dysfunction] related to the injury, that we accept that for what it is. Thus, the 13 percent interpretation by Dr. Ferretti and confirmed by Dr. Simpson should stand.
>
> "However, I do believe that Dr. Simpson should have more expertise in using the [A.M.A., *Guides* (6th ed. 2009)], as Dr. Ferretti and I have only used this edition for a few cases. Thus, Dr. Simpson's 17 percent determination should stand for the right leg, but there should be no impairment rating for the left leg as there are presently no symptoms and no clinical findings."

In light of the Dr. Howard's above-noted findings, OWCP stopped payment on appellant's schedule award effective June 1, 2014.

On June 20, 2014 OWCP referred Dr. Howard's report to its DMA, Dr. Arthur S. Harris, for the purpose of "[assuring] that the referee physician appropriately applied the A.M.A., *Guides* in calculating the impairment rating."[13] In a July 5, 2014 report, Dr. Harris found zero (0) percent impairment of the left and right lower extremities, noting there was "no objective evidence of lumbar radiculopathy."[14] He explained that based on the results of the IME's recent evaluation, appellant's condition had markedly improved since Dr. Ferretti's April 5, 2012 examination. Dr. Harris also found 13 percent permanent impairment of the penis, with a December 7, 2009 date of MMI.

In an August 11, 2014 decision, OWCP found that the medical evidence did not support an increased impairment over the previous schedule award. It further advised appellant that a separate decision was forthcoming addressing any overpayment.

Appellant timely requested a hearing before an OWCP hearing representative with respect to the August 11, 2014 schedule award decision.

On September 30, 2014 OWCP issued a preliminary finding that appellant received an overpayment of $4,095.26 for the period April 5, 2012 through May 31, 2014. It explained that the overpayment was the result of the Dr. Howard's finding that appellant currently had 17 percent permanent impairment of the right lower extremity, zero (0) impairment of the left lower extremity, and 13 percent impairment of the penis, which was a lesser rating than the July 16, 2013 schedule award.[15] OWCP further advised that appellant was not at fault in creating the overpayment.

Appellant requested a prerecoupment hearing before an OWCP hearing representative. He also submitted an October 28, 2014 overpayment recovery questionnaire (OWCP-20).

[13] Dr. Harris is a Board-certified orthopedic surgeon.

[14] In his May 5, 2014 report, the IME noted that "Motor power and sensory [examination] was felt to be normal at the legs…." He further noted that electrodiagnostic findings of bilateral S1 involvement was not well-confirmed by clinical evaluations.

[15] OWCP calculated that appellant had already been paid $46,966.35 pursuant to the July 16, 2013 schedule award. Based on the Dr. Howard's May 5, 2014 rating, appellant was only entitled to receive $42,871.09 for the period December 7, 2009 MMI through May 20, 2011 (75.61 weeks).

Appellant reported total monthly income of $4,690.72, which included $3,165.00 in rental property. His usual monthly household expenses included $600.00 for food, $400.00 for clothing, $600.00 for utilities, $600.00 for unspecified other/miscellaneous expenses, and $1,100.00 for mortgages on two properties (residence and rental).[16] Appellant's assets included real estate with a reported fair market value of $1,250,000.00 and cash, checking/savings, and securities (stocks/bonds) totaling $8,800.00. However, he did not provide any documentation to substantiate his reported income, expenses, and assets.

By decision dated March 4, 2015, an OWCP hearing representative affirmed OWCP's August 11, 2014 schedule award decision.[17] He noted that both the IME and the DMA opined that appellant did not sustain a greater impairment than previously awarded.

The same hearing representative who authored the March 4, 2015 decision also presided over appellant's August 19, 2015 prerecoupment hearing. In an October 27, 2015 decision, the hearing representative finalized OWCP's preliminary determination regarding the fact and amount of the overpayment, as well as OWCP's finding that appellant was not at fault in creating the overpayment. As to the issue of waiver of recovery, the hearing representative denied appellant's request, noting that he had not provided documentation to substantiate his reported income and expenses.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[18] FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[19] Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (6th ed. 2009).[20]

No schedule award is payable for a member, function or organ of the body that is not specified in FECA or in the implementing regulations.[21] The list of scheduled members includes the eye, arm, hand, fingers, leg, foot, and toes.[22] Additionally, FECA specifically provides for

[16] Under the separate heading of "Other Debts" paid by monthly installments, appellant listed two mortgages with combined monthly payments of $1,300.00. Although the monthly figures differ by $200.00, it appears that appellant may have twice reported his mortgage expenditures.

[17] An oral hearing was held on December 17, 2014.

[18] 5 U.S.C. § 8107(c).

[19] 20 C.F.R. § 10.404.

[20] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (February 2013) and *supra* note 11 at Chapter 3.700, Exhibit 1 (January 2010).

[21] *W.C.*, 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

[22] 5 U.S.C. § 8107(c). For a total or 100 percent loss of use of a leg, an employee shall receive 288 weeks' compensation. *Id.* at § 8107(c)(2).

compensation for loss of hearing and loss of vision.[23] By authority granted under FECA, the Secretary of Labor expanded the list of scheduled members to include the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina, and skin.[24]

Neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.[25] However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.[26] The sixth edition of the A.M.A., *Guides* (6th ed. 2009) provides a specific methodology for rating spinal nerve extremity impairment.[27] It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine. The FECA-approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities. The appropriate tables for rating spinal nerve extremity impairment are incorporated in the procedure manual.[28]

In assessing eligibility for a schedule award, the medical evidence must show that the impairment has reached a permanent and fixed state, which is generally referred to as MMI.[29] Assuming MMI has been attained, the date of MMI is usually considered to be the date of the evaluation by the attending physician that is accepted as definitive by OWCP.[30] Schedule awards begin on the date of MMI unless circumstances show a later date should be used.[31] A retroactive determination of the date of MMI is not *per se* erroneous.[32] When the medical evidence establishes that the employee did in fact reach MMI by such date, the determination is proper.[33]

FECA provides that if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.[34] For a conflict to arise the opposing physicians' viewpoints must be of "virtually

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[23] *Id.* at § 8107(c)(13) and (14).

[24] *Id.* at § 8107(c)(22); 20 C.F.R. § 10.404(b). For a total or 100 percent loss of use of one's penis, an employee shall receive 205 weeks' compensation. 20 C.F.R. § 10.404(b).

[25] *Id.* at § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

[26] *Supra* note 20 at Chapter 2.808.6a(3).

[27] The methodology and applicable tables were initially published in *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009).

[28] *See supra* note 11 at Chapter 3.700, Exhibit 4.

[29] *Supra* note 20 at Chapter 2.808.5b(1).

[30] *Id.* at Chapter 2.808.7b.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994). The DMA, acting on behalf of OWCP, may create a conflict in medical opinion. 20 C.F.R. § 10.321(b).

equal weight and rationale."[35] Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well-reasoned and based upon a proper factual background, must be given special weight.[36]

If a claimant who has received a schedule award calculated under a previous edition of the A.M.A., *Guides* is entitled to additional benefits, the increased award will be calculated according to the current, sixth edition.[37] Should the subsequent calculation result in a percentage of impairment lower than the original award, as sometimes occurs, a finding should be made that the claimant has no more than the percentage of impairment originally awarded, that the evidence does not establish an increased impairment, and that OWCP has no basis for declaring an overpayment.[38] However, where both the prior and subsequent ratings were calculated under sixth edition of the A.M.A., *Guides*, a subsequent determination that there is a lesser degree of impairment than previously awarded may support a finding of overpayment.[39]

ANALYSIS -- ISSUE 1

In July 2013, OWCP granted a schedule award for 17 percent bilateral lower extremity permanent impairment and 13 percent permanent impairment of the penis. The award covered a 124.57-week period beginning April 5, 2012. Both appellant's physician, Dr. Ferretti, and the DMA, Dr. Simpson, ultimately agreed regarding the extent of appellant's permanent impairment, but there was a difference of opinion regarding the date of MMI. Dr. Ferretti identified December 7, 2009 as the date of MMI, whereas Dr. Simpson relied on Dr. Ferretti's examination date -- April 5, 2012 -- as the date of MMI. The date of MMI is usually considered to be the date of the evaluation by the attending physician that is accepted as definitive by OWCP.[40] As noted, the July 16, 2013 schedule award found that appellant had reached MMI as of Dr. Ferretti's April 5, 2012 evaluation.

An OWCP hearing representative subsequently set aside the July 16, 2013 schedule award because of a perceived conflict in medical opinion between Dr. Ferretti and Dr. Simpson, the DMA. The hearing representative apparently overlooked Dr. Ferretti's June 4, 2013 supplemental report wherein he had noted his concurrence with Dr. Simpson's May 4, 2013 determination regarding appellant's bilateral lower extremities (17 percent). Dr. Ferretti also deferred to Dr. Simpson's judgment regarding the extent of appellant's penis impairment (13 percent). Thus, there was no conflict regarding the extent of appellant's permanent impairment. The only difference of opinion between the two physicians was the date of MMI. OWCP subsequently accepted December 7, 2009 as the date of MMI. The Board therefore finds that at the time OWCP referred the case to Dr. Howard for an IME there was no conflict of medical

[35] *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

[36] *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[37] *Supra* note 20 at Chapter 2.808.9d.

[38] *Id.*

[39] *Id*. at Chapter 2.808.9e.

[40] *Id.* at Chapter 2.808.7b.

opinion regarding the extent of left lower extremity impairment. Because there was no conflict regarding the extent of appellant's permanent impairment, Dr. Howard's May 5, 2014 report is not entitled to any special weight on this particular issue.

The current overpayment is the result of appellant having previously received 17 percent left lower extremity award when the medical evidence did not support such an award. Appellant's own physician did not provide a rating of the left lower extremity. In his April 5, 2012 report, Dr. Ferretti diagnosed right lower extremity L5 and S1 radiculopathy. On physical examination, he noted sensory and motor deficits involving the right lower extremity, but did not report similar findings with respect to appellant's left lower extremity. Dr. Ferretti only rated appellant for right lower extremity spinal nerve impairment (20 percent). It was Dr. Simpson, the DMA, who rated appellant's left lower extremity. However, Dr. Simpson's May 4, 2013 report offered no explanation for including the left lower extremity, particularly in light of Dr. Ferretti's contrary examination findings. Appellant's physician later acquiesced to Dr. Simpson's 17 percent bilateral lower extremity impairment rating, but Dr. Ferretti did not otherwise explain a basis for the finding of permanent impairment of the left lower extremity. When Dr. Howard examined appellant on May 5, 2014, he reported "No residual left leg symptoms or clinical findings -- thus, no impairment rating."

In light of the above-noted reports from Dr. Ferretti and Dr. Howard, the Board finds that the medical evidence does not support 17 percent left lower extremity permanent impairment under the A.M.A., *Guides* (6th ed., 2009). As such, OWCP properly declared an overpayment of benefits in the amount of $4,095.26 for the period April 5, 2012 through May 31, 2014.[41] Additionally, the Board finds that appellant was not at fault in creating the overpayment.

LEGAL PRECEDENT -- ISSUE 2

An individual who is without fault in creating or accepting an overpayment is nonetheless subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.[42] Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a current or former beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.[43] Additionally, 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 in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, relinquished a valuable right or changed his position for the worse.[44]

[41] *See supra* note 15.

[42] 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

[43] 20 C.F.R. § 10.436(a), (b). For an individual with no eligible dependents the asset base is $4,800.00. The base increases to $8,000.00 for an individual with a spouse or one dependent, plus $960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(b) (June 2009).

[44] *Id*. at § 10.437(a), (b).

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP.[45] This information is necessary for determining whether a waiver of recovery of the overpayment is warranted.[46] The information is also used to determine an appropriate repayment schedule, if necessary.[47] Failure to submit the requested information within 30 days of the request shall result in denial of waiver.[48]

ANALYSIS -- ISSUE 2

The hearing representative agreed with OWCP's preliminary determination that appellant was not at fault in creating the overpayment. However, he denied waiver of recovery because appellant did not provide documentation to substantiate his reported income and expenses. In light of appellant's failure to provide supporting documentation for his reported income and expenses, the hearing representative properly denied waiver of recovery of the overpayment.[49]

CONCLUSION

Appellant received an overpayment of $4,095.26 for the period April 5, 2012 through May 31, 2014. Although he was not at fault in creating the overpayment, appellant is not entitled to waiver of recovery.

[45] *Id.* at § 10.438(a).

[46] *Id.*

[47] *Id.*

[48] *Id.* at § 10.438(b).

[49] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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