

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

R.G., Appellant)
and) Docket No. 15-0144
U.S. POSTAL SERVICE, POST OFFICE,) Issued: July 27, 2016
Dallas, TX, Employer)

)

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 October 23, 2014 appellant filed a timely appeal from a September 25, 2014 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 merits of the overpayment issues.

ISSUES

The issues are: (1) whether appellant received a \$7,657.10 overpayment of compensation for the period January 9, 2009 through May 31, 2013, for which she was not at fault; (2) whether the overpayment is subject to waiver of recovery; and (3) whether OWCP properly withheld \$300.00 per month from appellant's continuing compensation payments.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 7, 2004 appellant, then a 47-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that a box fell on her left temple while in the performance of her federal duties. Appellant visited a hospital emergency department that day where she was treated for a superficial head injury. OWCP accepted the claim for contusions of the head and left shoulder and a concussion without loss of consciousness. On November 7, 2004 appellant was released to limited duty. As the employing establishment did not have any limited duty available, appellant has not returned to work. She has been paid wage-loss compensation benefits.

On September 18, 2013 appellant advised OWCP that she discovered a mistake in the mileage she had claimed for travel to and from her doctor during the period January 9, 2009 through May 31, 2013. While she had claimed 35 miles each way for a total of 70 miles, she asserted the mileage should have been 30.5 miles going to the doctor and 35.5 miles for the return trip home, for a total of 66 miles. Appellant stated she would like to pay back any monies owed, if any. In an October 24, 2013 letter, OWCP advised appellant they would review her case to determine if there was an overpayment of travel mileage reimbursement.

On January 28, 2014 appellant forwarded a check for \$100.00 to start repayment of any potential overpayment.

By letter dated March 25, 2014, OWCP issued a preliminary determination that appellant was at fault in the creation of a \$7,657.10 overpayment of compensation for the period January 6, 2009 through May 31, 2013. OWCP indicated that on March 21, 2013, the Department of Labor's Office of Inspector General related that appellant had submitted a large number of mileage reimbursement claims to OWCP for travel relating to seeing Dr. William Larkin, a Board-certified surgeon. Since 2009, appellant submitted 252 OWCP-957 forms claiming 70 miles round trip from her residence in Red Oak, TX to Dr. Larkin's office in Dallas, TX, for a total of \$26,806.65 in mileage reimbursement. OWCP found, however, that appellant was entitled to reimbursement only in the amount of \$19,149.55 and, thus, was overpaid \$7,657.10. It advised that its investigation verified appellant was traveling to Dr. Larkin's office for medical appointments. However, appellant had inflated her mileage reimbursements on each trip by 20 miles. Using Google maps and odometer readings from the shortest route, the agents verified the mileage from appellant's home to her doctor's office was actually 50 miles round trip, not the 70 miles she had claimed and for which she had been reimbursed.

OWCP made a preliminary finding that appellant was at fault in the creation of the overpayment as she was aware or should have been reasonably been aware that she was overstating the mileage claimed on the reimbursement forms. Appellant was advised that she could request a telephone conference, a final decision based on the written evidence, or a hearing if she disagreed that the overpayment occurred, with the amount of the overpayment, or if she believed that recovery of the overpayment should be waived. OWCP requested that appellant complete an accompanying overpayment recovery questionnaire (Form OWCP-20) and submit financial documents in support thereof within 30 days.

In attached spreadsheets, OWCP calculated the overpayment for the period January 6, 2009 through May 31, 2013. The spreadsheets noted appellant's mileage reimbursements from January 6, 2009 to May 31, 2013, listed the transaction control billing number from Affiliated Computer Systems for each of the 252 OWCP 957 travel reimbursement claims for a total of 731 trips, the dates claimed for 731 trips, as well as the reimbursement amounts for years 2009 through 2013.² Calculations were also provided for the reimbursement total that should have been received for the actual mileage of 50 miles roundtrip. For the period January 6, 2009 to May 31, 2013, OWCP found that appellant had received a total of \$26,806.65 at 70 miles roundtrip claimed but was only entitled to reimbursement for 50 miles for a total of \$19,149.55, which resulted in an overpayment in the amount of \$7,657.10.

In an April 8, 2014 response, appellant requested a prerecoupment hearing. She disagreed with the amount of the overpayment as she felt she was denied due process because she was never asked what route she drove. Appellant included a handwritten outline of the route driven to the physician's office, which included street names, but did not list mileage. She stated that the IG Agent drove a route that was shown on Google Maps, which was approximately 26.5 miles, and that he had rounded it up to 30 miles. Appellant indicated that Commonwealth and Inwood roads were congested and she did not use them.³ She stated she did not like to drive freeways as they made her nervous and, if at all possible, she would take another route, even if it was longer. She stated that when she first started going to the doctor, OWCP told her that she did not have to drive the freeways and could take another route. However, since the interviews with the Special Agent and the Postal Inspector, she now drove the most direct route, including freeways. She stated that she took medication to calm her nerves while driving freeways. She stated that if OWCP used the mileage the IG Agent used, rounded to 30 miles, it would reduce the overpayment amount by half and she would settle for that amount, \$3,828.55, in a one-time payment.

On June 20, 2014 appellant partially completed a Form OWCP-20, Overpayment Recovery Questionnaire. She alleged that OWCP had not used the route she drove to figure the amount that may be owed. Appellant related that in November 2004 she was told that she did not have to drive the freeway and she still had not been told that she had to drive freeways. She listed \$4,690.00 in monthly income. Appellant did not complete the section of the form that asked her to list her FECA income.⁴

At the July 10, 2014 hearing appellant disagreed with the amount of overpayment. Her representative at the time stated that appellant was told by a U.S. Postal liaison for OWCP, Tara Johnson, that appellant could drive any route. The representative stated appellant did not think it fair that she now had to drive the most direct route as she was never told that in the beginning.

² From January 6, 2009 to December 29, 2009, appellant was reimbursed at .55 cents a mile; from January 4, 2010 to December 17, 2010, she was reimbursed at .50 cents a mile; from January 7, 2011 to April 13, 2012, appellant's travel mileage was reimbursed at .51 cents a mile, and from April 19, 2012 to May 31, 2013, she was reimbursed at .55 cents a mile.

³ Inwood Road was listed on appellant's handwritten outline of the route driven to and from the physician's office to her home.

⁴ According to the record, at that time she was receiving net compensation every 28 days of \$3061.16.

The representative contended that the mileage should be mitigated as, while there was no doubt some type of overpayment occurred, there was no intent to defraud OWCP by inflating the mileage. Regarding the issue of using the Hampton Road route that Google maps suggested, which avoided freeways and took 25.6 miles from appellant's home to Dr. Larkin's office, appellant testified that both Hampton Road and the freeway were bad alternatives as there often were wrecks and congestion on those roads. Appellant testified that there was no medical reason that she was unable to drive freeways, just that she felt it was nerve racking. Appellant initially testified that she did not know whether she had an asset base over \$8,000.00. However her husband testified and confirmed that they had assets equal to or in excess of the \$8,000 resource base. Appellant was advised at the hearing of the type of financial documentation needed to establish hardship to repay the overpayment.

In an August 14, 2014 response to the hearing transcript, an employing establishment manager stated that appellant had stopped working in 2004. He contended that appellant should have been aware she was overstating her mileage by 20 miles each trip and that she should reimburse the funds owed. The employing establishment manager referenced the August 14, 2014 email from an employing establishment official, Ms. Johnson, worked in injury compensation from 2008 to 2011, but he stated that she did not have the authority to authorize appellant to drive a route of her choice to her doctor, and Ms. Johnson did not speak to appellant at any time about her mileage for her OWCP claim. He further stated the employing establishment was not in agreement with appellant's suggestion to pay a reduced amount, that she did not fully complete the Overpayment Recovery Questionnaire, and that she was less than truthful in declaring her income and assets.

In an August 22, 2014 letter, appellant objected to the employing establishment statement that she was less than truthful. She indicated that she did complete the Overpayment Recovery Questionnaire and her only income was what she received from OWCP. Appellant stated that the employing establishment had no personal knowledge of her case.

By decision dated September 25, 2014, an OWCP hearing representative found that appellant was without fault in creating the overpayment. He noted that while OWCP's procedure manual noted that travel to a physician's office was to be by the most direct route for expense reimbursement, appellant had not been advised of such requirement. The hearing representative noted, however, that appellant's husband's testimony that their asset base exceeded \$8,000 precluded waiver.

LEGAL PRECEDENT -- ISSUE 1

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree of the period of disability or aid in lessening the amount of monthly compensation.⁵

⁵ 5 U.S.C. § 8103.

With respect to travel expenses for medical treatment, the regulations provide:

“(a) The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what a reasonable distance to travel is, OWCP will consider the availability of services, the employee’s condition and the means of transportation. Generally, a round[-]trip distance of up to 100 miles is considered a reasonable distance to travel.⁶ Travel should be undertaken by the shortest route, and if practical, by public conveyance. If the medical evidence shows that the employee is unable to use these means of transportation, OWCP may authorize travel by taxi or special conveyance.”⁷

In interpreting this section, the Board has recognized that OWCP has broad discretion in approving services provided under FECA. The only limitation on OWCP’s authority is that of reasonableness.⁸ OWCP may authorize medical treatment but determine that the travel expense incurred for such authorized treatment was unnecessary or unreasonable.⁹

ANALYSIS -- ISSUE 1

In this case, appellant admitted she mistakenly claimed and was reimbursed for 70 miles roundtrip travel to Dr. Larkin during the period January 6, 2009 through May 31, 2013. She does not dispute that an overpayment occurred, but disputes the amount of the overpayment. OWCP noted that during the period in question appellant filed 252 travel vouchers for which she was reimbursed a total of \$26,806.65 as the trip to Dr. Larkin was 70 miles roundtrip travel, but was only entitled to reimbursement in the amount of \$19,149.55 as the trip to Dr. Larkin was in fact no more than 50 miles roundtrip. Thus she was overpaid \$7,657.10. OWCP advised its investigation verified that appellant was traveling to Dr. Larkin’s office for medical appointments. However, she had inflated the mileage on the 252 travel vouchers by 20 miles for each trip. Using Google maps and odometer readings, IG agents verified the mileage from appellant’s home to her doctor’s office was at the most 50 miles.

The hearing representative noted that the route one-way from appellant’s home to Dr. Larkin’s office via interstate highway 35 was 23.98 miles per MapQuest and 24.6 miles per Google maps. An alternative one-way direct route, which did not use any highways, from appellant’s home to Dr. Larkin’s office was *via* Hampton Road and was 25.6 miles.¹⁰ The

⁶ Effective August 29, 2011, the regulations changed and a round-trip of up to 100 miles is considered reasonable. See FECA Bulletin No. 14-02-03 (issued January 29, 2014).

⁷ 20 C.F.R. § 10.315(a).

⁸ A.O., Docket No. 08-580 (issued January 28, 2009); see also *Marjorie S. Geer*, 39 ECAB 1099 (1988) (OWCP has broad discretionary authority in the administration of FECA and must exercise that discretion to achieve the objectives of section 8103).

⁹ W.M., 59 ECAB 132 (2007); *Mira R. Adams*, 48 ECAB 504 (1997).

¹⁰ The Board notes that these different routes average 24.73 miles, which rounds to 25.00 miles one-way from appellant’s home to Dr. Larkin’s office or 50 miles roundtrip.

hearing representative noted, and the record supports, there is no medical evidence of record from a physician which supports appellant is unable to drive freeways. Appellant testified that the Hampton Road route was congested and always had wrecks, but provided no documentation to support her assertion.

Appellant asserted the mileage should have been 30.5 miles going to the doctor and 35.5 miles for the return trip home, for a total of 66 miles. While appellant provided a copy of the map for the route she took, supporting documentation for the mileage was not provided. Additionally, there is no indication that appellant's preferred route was the most direct or shortest route.

As noted above, OWCP has discretion to authorize reimbursement for travel expenses related to medical treatment. The evidence is sufficient to establish that an overpayment occurred, as appellant submitted inflated travel reimbursement on 252 travel vouchers. The evidence is also sufficient to establish that the roundtrip distance from appellant's home to Dr. Larkin's office using the shortest, most direct route from her residence to Dr. Larkin's office was no more than 50 miles. As such, OWCP properly found appellant was overpaid \$7,657.10 during the period January 6, 2009 through May 31, 2013 as she was reimbursed a total of \$26,806.65 during the stated period for 70 miles roundtrip travel, but was only entitled to reimbursement in the amount of \$19,149.55 for 50 miles roundtrip travel.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(a) of FECA provides that when an overpayment of compensation occurs because of an error of fact of law, adjustment or recovery shall be made by decreasing later payment to which the individual is entitled.¹¹ The only exception to this requirement that an overpayment must be recovered is set forth in section 8129(b):

Adjustment or recovery 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 FECA or would be against equity and good conscience.

Thus, a finding that appellant was without fault is not sufficient, in and of itself, for OWCP to waive the overpayment. OWCP must exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience, pursuant to the guidelines provided in the implementing federal regulations.

Section 10.436 of the implementing regulations¹² provide that recovery of an overpayment will defeat the purpose of FECA if recovery would cause hardship to a currently or formerly entitled beneficiary such that: (a) the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet

¹¹ 5 U.S.C. § 8129(a).

¹² 20 C.F.R. § 10.436.

current ordinary and necessary living expenses;¹³ and (b) the beneficiary's assets do not exceed the resource base as determined by OWCP from data provided by the Bureau of Labor Statistics.¹⁴

Recovery of an overpayment is considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his position for the worse.¹⁵ Conversion of the overpayment into a different form, such as food, consumer goods, real estate, etc., from which the claimant derived some benefit, is not to be considered a loss.¹⁶

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.¹⁷

ANALYSIS -- ISSUE 2

OWCP found that appellant was without fault in creating the overpayment of compensation because she had not been informed that she would only be reimbursed for travel via the shortest route for her medical appointments. It then considered whether she was entitled to waiver of recovery of the overpayment. Waiver is only possible if recovery would defeat the purpose of FECA or would be against equity and good conscience. In order to establish that repayment of the overpayment would defeat the purpose of FECA, appellant must show that she requires substantially all of her income to meet current ordinary and necessary living expenses and that her assets do not exceed the established limit as determined by OWCP's procedures.¹⁸

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA as OWCP properly found that appellant did not meet the second prong of this test. Her \$8,000.00 in assets, as testified by her husband, exceeded the allowable resource base. The asset base is determined from established sources as outlined in OWCP procedures. Liquid assets include such sources as cash, the value of stocks, bonds, savings accounts, mutual funds and

¹³ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. In other words, the amount of monthly funds available for debt repayment is the difference between current income and adjusted living expenses (*i.e.*, ordinary and necessary living expenses plus \$50.00) Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6 (a) (June 2009). *See also C.J.*, Docket No. 14-644 (June 10, 2014).

¹⁴ *Id.* OWCP's procedures provide that assets must not exceed a resource base of \$4,800 for an individual with a spouse.

¹⁵ 20 C.F.R. § 10.437(b).

¹⁶ Federal (FECA) Procedure Manual, *supra* note 13 at Chapter 6.200.6.b(3) (October 2004).

¹⁷ *Id.* at § 10.438(a); *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

¹⁸ 20 C.F.R. § 10.436.

certificates of deposit. Nonliquid assets include the fair market value of an owner's equity in property such as a camper, boat, second home, and furnishings/supplies, vehicles, jewelry and artwork.¹⁹ While the testimony elicited at the hearing, other than appellant's husband's admission, was vague in nature regarding the couple's asset base, the Board notes that the evidence of record does indicate that appellant and her husband own two properties, have a savings account, and an undocumented JPMorgan account, from which funds are transferred to savings.

Because appellant has not met the second prong of the two-prong test for whether recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider the first prong of the test, *i.e.*, whether appellant needs substantially all of her current income to meet ordinary and necessary living expenses.

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.²⁰ The Board notes in this regard that in reporting her income and expenses, appellant did not provide specific information regarding her FECA benefits for consideration of financial hardship.

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.

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA. Section 10.441(a) of the regulations provides:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to [OWCP] the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, [OWCP] shall decrease later payments of compensation, taking into account 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 hardship.”²¹

Under OWCP's procedures, the compromise of all or part of the overpayment and any charges may be made depending upon the claimant's financial circumstances in order to set a repayment schedule. Compromise of the principal of the overpayment can be considered if

¹⁹ *Supra* note 12.

²⁰ See 20 C.F.R. § 10.437; *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

²¹ 20 C.F.R. § 10.441.

application of the interest charges would extend the period of repayment more than 35 percent. Such a determination is made at the time the repayment schedule is established.²² Compromise is a matter which rests in the discretion of OWCP.²³

ANALYSIS -- ISSUE 3

In this case, OWCP determined that appellant was without fault in the creation of the overpayment. The hearing representative denied compromise of the debt and set recovery at \$300.00 from appellant's continuing compensation.

Charges can be waived if appellant is without fault in the creation of the overpayment and the application of charges will extend the period of indebtedness beyond the debtor's life expectancy. In setting the rate of recovery from appellant's continuing compensation, OWCP's hearing representative considered the fact that recovery of the principal balance of \$7,657.10 with interest would take appellant 25.81 months to repay, which was less than appellant's life expectancy of 296.4 months. Therefore, charges could not be waived. As previously noted compromise is a matter which rests in the discretion of OWCP, and a compromise order is not subject to review by the Board.²⁴

The record reflects that OWCP exercised its discretion in not compromising the outstanding balance of the overpayment and in setting the rate of recovery from appellant's continuing compensation. In doing so, it considered the factors provided under section 10.441, such as appellant's age, life expectancy, the rate of compensation paid and the period in which recovery could be obtained with reference to her financial circumstances. There is no evidence of record to establish that OWCP abused its discretion in setting the rate of recovery of \$300.00 a payment cycle from appellant's continuing compensation so as to minimize financial hardship.

On appeal appellant argues that she was without fault in creating the overpayment and she was never informed that she had to drive the most direct route. A finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.²⁵ As discussed, recovery of the overpayment would not defeat the purpose of FECA or would be against equity and good conscience.

²² See Federal (FECA) Procedure Manual, *supra* note 13 at Chapter 6.300.5 (May 2004). See Jorge E. Diaz, 53 ECAB 403 (2002).

²³ D.C., Docket No. 10-1046 (issued January 19, 2011); Linda D. Lane, 46 ECAB 727 (1995).

²⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.300.6(d) (May 2004).

²⁵ L.S., 59 ECAB 350 (2008).

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$7,657.10 for the period January 6, 2009 through May 31, 2013. OWCP also properly determined that appellant was not entitled to waiver of recovery of the overpayment, and that recovery should be made by withholding \$300.00 per month from her continuing compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2014 decision of the Office of Workers' Compensation Programs is affirmed.²⁶

Issued: July 27, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

²⁶ James A. Haynes, Alternate Judge, participated in the original decision, but was no longer a member of the Board effective November 16, 2015.