

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

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**D.T., Appellant**

**and**

**U.S. CAPITOL POLICE, PATROL DIVISION,  
Washington, DC, Employer**

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**Docket No. 16-0710  
Issued: November 2, 2016**

*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  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 26, 2016 appellant filed a timely appeal from a September 4, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP properly denied appellant's request for subpoenas; (2) whether OWCP properly found a \$64,497.04 overpayment of compensation for the period April 20, 2002 through February 8, 2014; (3) whether OWCP properly found appellant at fault in the creation of the overpayment and, therefore, not entitled to waiver of recovery; and (4) whether OWCP properly directed recovery of the overpayment by withholding \$270.00 every 28 days from appellant's continuing compensation payments.

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

On appeal, appellant contends that she was not at fault in creating the overpayment of compensation and argues that recovery of the overpayment would be against equity and good conscience.

### **FACTUAL HISTORY**

On July 10, 1997 appellant, then a 37-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained injuries during a driver's training exercise, when she struck her nose on the vehicle door frame. She stopped work on the date of injury and has not returned. OWCP accepted the claim for an abrasion of the nose, forehead contusion, nasal fracture, cervical strain, concussion, and cerebrospinal rhinorrhea. Appellant has concurrent medical conditions of headaches, generalized anxiety disorder, and depression.

Since 1998, appellant has received compensation for total disability on the periodic rolls. She received compensation at the augmented rate based on a dependent son, born June 29, 1982. In all EN1032 forms, appellant was advised that, if the status of any dependent changed, she was to notify OWCP. The EN1032 forms clearly advised at Part C, that compensation at the augmented rate would be paid for an eligible dependent. The form advised that augmented compensation could be claimed for an unmarried child, who lived with the claimant and was under the age of 18; an unmarried child who was over the age of 18 but who could not support himself or herself because of mental or physical disability; or an unmarried child between the ages of 18 and 23 who was a full-time student and had not completed four years of school beyond the high school level.

In an April 4, 2002 letter, OWCP advised appellant that it required additional information to determine eligibility for her claimed dependent beyond his 18<sup>th</sup> birthday. Appellant was asked to provide a statement and certification of school enrollment using attached forms to verify her son's student status. OWCP afforded appellant 30 days to submit additional evidence.

On April 10, 2002 appellant completed a Form EN1032. She claimed her son, born June 29, 1982, as a dependent. On April 10, 2002 appellant also completed Form EN1617 and advised that her son was enrolled full time in a course of study at Baltimore International College. She indicated that he began attendance at the college on April 4, 2000 and that his recent term ended April 19, 2002. A May 1, 2002 signature from the registrar of the college accompanied the form.

On January 20, 2004 appellant completed a Form EN1032 and claimed her son as a dependent. In 2004, she also relocated from Maryland to Washington State and informed OWCP of her new address.

On February 14, 2005 appellant requested a change in her health plan from a family health plan, to self-only coverage. Although OWCP issued a refund of oversubscribed health insurance premiums for the period beginning November 28, 2004, it continued to pay augmented compensation. In a December 31, 2005 Form EN1032, appellant claimed her son as an eligible dependent.

On February 6, 2006 OWCP received a three-page letter from appellant, which indicated that her compensation payments were wrong due to improper deductions. Appellant noted that

her son had turned 22 in 2004 and OWCP should not have continued to deduct for family health insurance premiums.

On January 19, 2007 appellant advised on a Form EN1032 that her son was over the age of 23 as of June 29, 2006 and was no longer a dependent. On her January 9, 2008 EN1032 form, she reported that her son was not attending college and was no longer a dependent.

In a February 12, 2007 letter, appellant advised OWCP of her continued difficulties in changing to a West Coast insurance plan and requested that her premium oversubscription be corrected.

In her January 19, 2010 Form EN1032, appellant reported that her son stopped being a dependent in March 2005 when he no longer attended school. In her January 30, 2011 Form EN1032, appellant reported that her son was no longer a dependent as he was over the maximum age for dependency, but she still supported him and that he provided care for her. In her December 7, 2011 and January 4, 2013 Forms EN1032, appellant stated that her son stopped being a dependent when he turned 23 years old. In her January 28, 2013 and December 17, 2014 Form EN1032, appellant advised that her son stopped being a dependent after college.

OWCP reduced appellant's compensation to the basic statutory rate of 66 2/3 effective February 9, 2014.

By letters dated February 21 and December 17, 2014, OWCP advised appellant that it required additional information to determine eligibility for her dependent beyond his 18<sup>th</sup> birthday, which occurred on June 29, 2000. It requested verification of his student status or medical evidence establishing that he was incapable of self-support. Appellant was asked to provide a statement and certification of school enrollment using attached forms. OWCP afforded her 30 days to submit the requested evidence.

On January 21, 2015 OWCP received a written response from appellant. Appellant indicated that her son completed high school in 2000 and that he stopped attending college in 2002. She indicated that she paid for his college expenses but she was having difficulty securing a transcript. Appellant acknowledged that she continued to receive augmented compensation even after she telephoned OWCP and reported that her son had finished school in Maryland. She noted that she also filled out the yearly forms indicating the same. Appellant indicated that she still supported her son since he cared for her following her injury. A copy of the transcript from Baltimore International College indicated that appellant's son withdrew from all classes after the spring session of 2002, which ended April 19, 2002. During a January 27, 2015 call to OWCP, appellant reported that she tried to enroll her son in college in Washington and that she had paid something, but he did not attend.

In ACPS Manual/Fiscal Payment Worksheet and supporting documentation, OWCP indicated that appellant's son turned 18 years old on June 29, 2000. Appellant claimed him as a dependent until the EN1032 dated January 19, 2007. There is no verification that appellant's son continued to attend college full time beyond April 19, 2002, the end of the spring 2002 term. However appellant's compensation rate was not adjusted until the periodic rolls payment beginning February 9, 2014. OWCP indicated that for the period April 20, 2002 through

February 8, 2004, appellant received \$578,119.83 in augmented compensation, but was only entitled to \$513,622.79 at the basic rate. This resulted in an overpayment of compensation in the amount of \$64,497.04.

On February 11, 2015 OWCP advised appellant that it had made a preliminary overpayment determination in the amount of \$64,497.04 for the period April 20, 2002 through February 8, 2014, as she had received compensation at the augmented compensation rate when she was entitled to the basic rate. It found that she was at fault in the creation of the overpayment because she was aware or should have been reasonably aware that she was accepting payments that exceeded her actual entitlement.

On March 10, 2015 OWCP received appellant's request for a prerecoupment hearing before an OWCP hearing representative. Appellant completed a Form OWCP-20 Overpayment Recovery Questionnaire and included some supporting financial information. She reported a net monthly income of \$5,265.23 with monthly expenses of \$5,221.02. Appellant claimed her adult son, daughter-in-law, two cats, two dogs, and a parrot as dependents. No income from her son or daughter-in-law was reported. Appellant denied responsibility for the overpayment and requested a waiver. She argued that she would not have taken out several loans, if she knew of the debt. Appellant also noted that her car payment was large as she had selected a short-term loan.

Evidence submitted with the Form OWCP-20 Overpayment Recovery Questionnaire included leave records from 1998 and 1999, a credit union bank statement and a Chase Bank checking statement. A mortgage payment of \$1,688.00 was documented. A car note of \$1,075.00 was documented, along with \$79.00 in property taxes for a six-month period. Another car payment was documented, but the debtor was not indicated. An electric bill of \$211.00 was submitted, as well as a semi-annual insurance payment for four vehicles of \$531.00. A bill from a homeowner's association was in her son's name. A minimum Capital One care payment of \$35.00 was noted, but the account holder was not identified. Television and Internet services were in her son's name, with monthly invoicing of \$90.00. Taxes on the second lot of her residence of \$13.00. A Walmart card carried a \$25.00 minimum payment. Propane bills were in her son's name. There was a January 2014 statement from a dentist. Annual dues for appellant's police lodge in Washington, DC were \$50.00. Lowe's and Home Depot lines of credit were reported but not documented and no minimum payment was identified. The annual automobile insurance premium on a Harley-Davidson was \$52.50. Hardware and grocery bills were also submitted, showing payment with cash or debit card.

In a March 31, 2015 letter, appellant requested a hearing before an OWCP hearing representative in Washington, DC as her witnesses and family lived in that vicinity. She requested that the Branch of Hearings and Review subpoena a specific individual from the employing establishment's Human Resources office, so that she could challenge her salary and the individual could testify to her difficulties with communication and speech. Appellant also asked to subpoena OWCP telephone records from 2002 to show that she had advised OWCP that she no longer had a dependent. She requested subpoenas of all the Form EN1032's which she had completed, along with her entire case file, and transcripts from a federal court case which was unrelated to OWCP. Appellant argued that, since she had reported the change in dependency, any resultant overpayment was not her fault.

On July 16, 2015 the prerecoupment hearing was held. Appellant represented herself at the hearing and was assisted by her son. She challenged the accuracy of her salary from 1998 onward and argued that she had asked for her pay scale, but it was not been provided.<sup>2</sup> Appellant also testified that she had correctly completed the forms in 2007. The human resource specialist for the employing establishment also testified. She indicated that she had to repeat herself with appellant and that appellant appeared confused when discussing her claim. Appellant indicated that her mother helped her complete her tax returns, and the EN1032 forms. Her son testified that appellant was on a lot of medication and had frontal lobe damage. Appellant indicated that she was unable to find a doctor near her new home and continued to see her doctor in Maryland until 2007. At that time, she stopped all medications, including narcotics.

Appellant testified as to her income and expenses. She indicated that she received OWCP benefits, as well as Social Security Administration (SSA) income of \$1,735.00 monthly. For expenses, appellant reported a mortgage and two cell phone bills, propane and electricity expenses, cable television and Internet services, homeowner association dues, and veterinary bills. Appellant noted credit cards and that she had two car notes with an outstanding balance of \$54,000.00, as well as a second car loan for a vehicle she gave to her son. She noted that she also owned an old pickup and another car, which belonged to her son. Propane usage was around \$800.00 annually, as they used a wood stove. Appellant reported a plumbing bill of \$600.00 for April. She advised that she had transferred most of her assets to her son after her injury. Appellant noted that she owned investment property in Arizona, from which she pays \$265.00 monthly. She briefly discussed an overpayment proceeding caused by a reimbursement for pharmacy expenses many years ago.<sup>3</sup>

Appellant testified that she had attempted to work after her injury, but could not complete paperwork and therefore stopped work. Her physicians could not identify any pathology, but she reported difficulty reading. Appellant also testified as to the seriousness of her injuries, and that she lost her job and her life was significantly changed by the event.

Appellant noted that in 2002 she telephoned her examiner to report that her son finished college, but no change in payment status followed. She expressed confusion with how to complete paperwork, and indicated that calling OWCP did not help. Appellant's son testified that he did not work, but his wife occasionally walked dogs or painted houses in addition to being a life coach. He reported earnings of between \$8,000.00 and \$10,000.00 annually.

Following the hearing, appellant submitted copies of letters from 2003 and 2005, which noted difficulty with travel reimbursement and provided bank account information. No argument or evidence was submitted which challenged the period or calculation of the overpayment. No additional financial information was submitted.

Appellant provided a copy of the hearing transcript, with handwritten annotations. She also provided a two-page handwritten argument. Appellant referenced, but did not submit, a

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<sup>2</sup> Appellant was advised that the pay rate was set on February 4, 1998 at \$51,501.00.

<sup>3</sup> The hearing representative requested that appellant provide at least two recent billing cycles of each income and expenses she wished OWCP to consider.

credit statement. She stated that in 2006, she was admitted for voluntary psychiatric observation. Appellant reiterated that she had notified OWCP when her son finished college. She indicated that her son's father stopped paying child support after her injury and that he took advantage of her cognitive problems.

In a March 3, 2002 report, Dr. Michael S. Diamond, an internist, indicated that he had followed appellant for a year for anxiety and mood disorder due to head trauma. Examination findings revealed no evidence of cognitive impairment. Dr. Diamond noted that appellant recently had some of her poetry published. In a September 23, 2002 report, he noted that her concentration was poor and that she reported being variably forgetful, but reported that overall cognitive status had improved.

In a May 5, 2003 letter, Dr. Robert D. Gerwin, a Board-certified psychiatrist, indicated that appellant told him that she could not fill out the travel vouchers required for reimbursement. He noted that she had suffered a head injury, which had resulted in cognitive dysfunction, so it had been difficult, if not impossible, for her to fill out forms and carry out a complex sequence of events that are seemingly simple for others. Dr. Gerwin opined that this was a permanent impairment. In a November 1, 1999 note, he noted that appellant had "difficulty with thinking."

By decision dated September 4, 2015, an OWCP hearing representative denied appellant's request for subpoenas. He denied the subpoena request for copies of documents in appellant's case file, including the EN1032 forms, as they had been provided to appellant on April 7 and 16, 2015 and were also available from OWCP electronically. As appellant failed to offer any argument as to how the records she requested from an unspecified federal court case would be relevant or controlling in the instant case, that subpoena request was also denied. As she had requested the attendance of a specified human resource specialist at the hearing and the specialist indicated her desire to participate and had participated at the hearing, no subpoena was warranted.

The hearing representative affirmed that an overpayment of compensation in the amount of \$64,497.04 occurred during the period April 20, 2002 through February 8, 2014, for which appellant was with fault. He found no medical evidence on file diagnosing appellant with a cognitive deficit and that appellant should have been reasonably aware that she had accepted compensation at a rate to which she was not entitled. The hearing representative also found that while appellant provided incomplete documentation of income and expenses, she had a monthly income of \$5,562.00 and monthly expenses of \$5,221.00.<sup>4</sup> As the difference was more than the required \$50.00, the hearing representative found that a repayment of \$270.00 from each periodic rolls check could be recovered.

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

Section 8126 of FECA provides that the Secretary of Labor, on any matter within his jurisdiction under the subchapter, may issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles.<sup>5</sup> The implementing regulations provide that a claimant

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<sup>4</sup> This figure was based on all expenses as reported.

<sup>5</sup> 5 U.S.C. § 8126(1).

may request a subpoena, but the decision to grant or deny such a request is within the discretion of the hearing representative, who may issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents. Subpoenas are issued for documents only if they are relevant and cannot be obtained by other means and for witnesses only where oral testimony is the best way to ascertain the facts.<sup>6</sup> In requesting a subpoena, a claimant must explain why the testimony is relevant to the issues in the case and why a subpoena is the best method or opportunity to obtain such evidence because there is no other means by which the testimony could have been obtained.<sup>7</sup>

To request a subpoena, the requestor must submit the request in writing and send it to the hearing representative as early as possible, but no later than 60 days (as evidenced by postmark, electronic market or other objective date mark) after the date of the original hearing request.<sup>8</sup> Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are clearly contrary to logic and probable deduction from established facts.<sup>9</sup>

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

Appellant requested that OWCP subpoena documents in her case file, including the EN1032 forms, records from an unspecified federal court case, and the attendance of a human resource specialist at her hearing. The hearing representative denied appellant's requests for subpoenas in the above matter.

The Board finds that the hearing representative acted within his discretion in denying the request for subpoenas. Copies of documents in appellant's case file, including the EN1032 forms, had been provided to appellant prior to the hearing and were also available from OWCP electronically. While appellant requested that the records from an unspecified federal court case be subpoenaed, she did not establish the necessity of those documents, and how the federal case was applicable to her case. Finally, the Board notes that the human resource specialist from the employing establishment did participate in the hearing. Accordingly, the Board finds that the hearing representative properly denied appellant's subpoena request.

### **LEGAL PRECEDENT -- ISSUE 2**

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from a personal injury sustained while in the performance of duty.<sup>10</sup> If the disability is total, the United States shall pay the employee during the period of total disability the basic compensation rate of 66 2/3 percent of his or her monthly pay. A disabled

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<sup>6</sup> 20 C.F.R. § 10.619; *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at § 10.619(a)(1).

<sup>9</sup> *See R.H.*, Docket No. 14-220 (issued May 2, 2014). *Claudio Vazquez*, 52 ECAB 496 (2001).

<sup>10</sup> 5 U.S.C. § 8102(a).

employee is entitled to an augmented compensation rate of 75 percent of his or her monthly pay if he or she has one or more dependents.<sup>11</sup>

A dependent includes an unmarried child who, while living with the employee or receiving regular contributions from the employee toward his or her support, is either under 18 years of age or over 18 years of age and incapable of self-support due to physical or mental disability.<sup>12</sup> A child is also considered a dependent if he or she is an unmarried student under 23 years of age who has not completed four years of education beyond the high school level and is currently pursuing a full-time course of study at a qualifying college, university, or training program.<sup>13</sup>

If a claimant received compensation at the augmented rate during a period when he or she did not have an eligible dependent, the difference between the compensation that was disbursed at the 75 percent augmented rate and the compensation that should have been disbursed at the 66 2/3 percent basic rate constitutes an overpayment of compensation.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$64,497.04 for the period April 20, 2002 through February 8, 2014, as she received compensation at the augmented rate when she did not have any eligible dependents.

Appellant was paid augmented compensation for her dependent son, born June 29, 1982, until February 8, 2014. Although her son had reached age 18 on June 29, 2000, she continued to receive augmented compensation through February 8, 2014. OWCP asked appellant to provide documentation that her son was either in school full time or disabled due to a mental or physical condition, and she verified his eligibility as a qualified dependent up to April 19, 2002, when his college spring 2002 term ended. The evidence of record does not establish that appellant's son was pursuing a full-time course of study as defined under FECA during the period of the overpayment. The Board finds that after April 19, 2002 appellant was no longer entitled to augmented compensation, as there is no evidence to support that her son was a qualified dependent as of April 20, 2002.

Payroll records establish that OWCP continued to pay appellant compensation at the augmented rate from April 20, 2002 through February 8, 2014, which amounted to a total of \$578,119.83. Appellant, however, was only entitled to receive \$513,622.79 in compensation at the basic rate, resulting in an overpayment of compensation in the amount of \$64,497.04. Accordingly, the Board finds that OWCP properly determined an overpayment of compensation in the amount of \$64,497.04.

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<sup>11</sup> See *O.R.*, 59 ECAB 432, 436 (2008). See also 5 U.S.C. §§ 8105(a) and 8110(b).

<sup>12</sup> 5 U.S.C. § 8110(a).

<sup>13</sup> See *E.G.*, 59 ECAB 599, 603 n.10 (2008).

<sup>14</sup> See *Ralph P. Beachum, Sr.*, 55 ECAB 442, 445 (2004).

### **LEGAL PRECEDENT -- ISSUE 3**

According to section 8129(a) of FECA, adjustment or recovery shall be made under regulations prescribed by the Secretary of Labor when an overpayment of compensation was made because of an error of fact or law.<sup>15</sup> The only exception is if the individual is without fault in the creation of the overpayment and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>16</sup> Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives from OWCP are proper.<sup>17</sup> A recipient is at fault in the creation or acceptance of an overpayment if he has done any of the following: (1) made an incorrect statement as to a material fact which he knew or should have known to be incorrect; (2) failed to provide information which he knew or should have known to be material; or (3) accepted a payment which he knew or should have known to be incorrect.<sup>18</sup>

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.<sup>19</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly found appellant at fault in the creation of the overpayment and, therefore, not entitled to waiver of recovery.

When appellant was placed on the periodic rolls she was advised of her augmented compensation rate. The EN1032 forms appellant submitted up to January 19, 2007 clearly advised at Part C, that compensation at the augmented rate would be paid for an unmarried child between 18 and 23 who is a full-time student. Appellant provided verification of her son's student status up to April 19, 2002, but at no time thereafter, although she continued to claim him as a dependent until January 19, 2007.

Therefore, the Board finds that appellant accepted payments that she knew or should have known were incorrect. She was responsible for taking all reasonable measures to ensure that payments she received from OWCP were proper. Although appellant was advised by OWCP on April 4, 2002 that she had to verify her son's eligibility for dependent status beyond his 18<sup>th</sup> birthday, and she provided verification up to April 2002, appellant thereafter accepted compensation payments that were clearly based on having one or more dependents. She

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<sup>15</sup> *Id.* at § 8129(a).

<sup>16</sup> *Id.* at § 8129(b).

<sup>17</sup> 20 C.F.R. § 10.433(a). *See K.C.*, Docket No. 11-1307 (issued January 10, 2012).

<sup>18</sup> *Id.* *See B.H.*, Docket No. 09-292 (issued September 1, 2009).

<sup>19</sup> *Id.* at § 10.438(a); *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

accepted payments that she knew or should have known were incorrect. For this reason, the Board finds that appellant was at fault in creating the overpayment. The Board will affirm OWCP's decision regarding fault.<sup>20</sup>

While appellant had offered argument that she was of diminished mental capacity or had difficulty with speech and communication, there is no reasoned medical report of record which either diagnosed a cognitive deficit or supports her argument. Dr. Gerwin indicated that appellant suffered a head injury which resulted in cognitive dysfunction in his May 5, 2003 report, but he offered no studies or objective evidence to support such contention. While he noted in his November 1, 1999 report, that appellant had difficulty with thinking, he again offered no diagnosis or evidence to support this statement. Dr. Diamond, in his reports from 2002, failed to find any evidence of cognitive impairment. The Board thus finds appellant at fault under the third standard, as she accepted compensation which she knew she was not entitled to receive<sup>21</sup> and, as such, recovery of the overpayment of compensation in the amount of \$64,497.04 may not be waived.

#### **LEGAL PRECEDENT -- ISSUE 4**

Section 8129(a) of FECA provides, in pertinent part, that 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 prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.<sup>22</sup> OWCP's implementing regulations provide that, if an overpayment of compensation has been made to an individual entitled to further payments and no refund is made, it 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.<sup>23</sup>

#### **ANALYSIS -- ISSUE 4**

The Board finds that OWCP properly directed recovery of the overpayment by withholding \$270.00 every 28 days from appellant's continuing compensation payments.

Appellant has provided incomplete documentation of income and expenses. In an overpayment recovery questionnaire (Form OWCP-20) dated February 20, 2015, appellant reported a monthly income of \$5,265.23 with monthly expenses of \$5,221.02. The hearing representative found income was partially established based on FECA wage-loss payments of \$3,532.62 every 28 days and the reported social security benefits of \$1,735.00. The Board notes that the sums total \$5,267.62.<sup>24</sup> Appellant also reported monthly expenses of \$5,486.02. The

<sup>20</sup> See *S.F.*, Docket No. 08-1972 (issued March 18, 2009).

<sup>21</sup> 5 U.S.C. § 8129(b).

<sup>22</sup> *Id.* at § 8129.

<sup>23</sup> 20 C.F.R. § 10.441(a).

<sup>24</sup> The hearing representative, however, found appellant's total reported income to be \$5,562.00 monthly, but did not account for the \$30.00 difference between partially established amount. The Board finds that this is harmless error.

hearing representative found that the following expenses were established: the mortgage payment at \$1,688.00; a 2013 care note payment at \$1,075.00; taxes on the second lot of her residence \$13.00; the Walmart minimum account payment \$25.00; monthly police union membership \$4.00; \$400.00 monthly expenses for food and \$25.00 for clothing; or a total of \$2,805.00. The hearing representative found that all other claimed expenses were either undocumented, too old to be considered an expense, or reflected ownership by appellant's adult son.<sup>25</sup> He found utilities expenses of \$932.48 and other expenses of \$240.00 to be undocumented. The hearing representative noted that appellant's son and daughter-in-law were not dependents, and therefore their expenses relative to the household also could not be considered.

The hearing representative found that even allowing all expenses as reported, but poorly documented, the monthly expenses of \$5,221.00 against the income of \$5,562.00 equaled \$292.00 available funds for debt repayment.<sup>26</sup> He converted this to a 28-day cycle and found \$270.00 was reasonable to recover from appellant's continuing compensation payments.

In light of the fact that appellant's income is only partially established and her expenses are only partially documented, the Board finds that it was reasonable for the hearing representative to recover \$270.00 from appellant's continuing compensation payments based on monthly expenses of \$5,221.00 against the income of \$5,562.00.

OWCP procedures provide that, if a claimant is being paid compensation or is due accrued benefits, the debt should be recovered from such benefits as quickly as possible.<sup>27</sup> Accordingly, the Board finds that OWCP reasonably concluded that a repayment schedule of \$270.00 every 28 days would minimize any resulting hardship while effecting recovery of the overpayment. The Board finds that this was reasonable in the absence of the limited financial documentation proving otherwise.

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<sup>25</sup> This included the car loan for appellant's son's car. The electric bill was in the son's name and the dental bill was too old to be considered a current expense.

<sup>26</sup> The correct calculation amounts to \$291.00 in available funds for debt repayment.

<sup>27</sup> See *Frederick Arters*, 53 ECAB 397 (2002).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for subpoenas. The Board further finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$64,497.04 for the period April 20, 2002 through February 8, 2014, as she received augmented compensation without having any dependents. The Board also finds that OWCP properly found her at fault in the creation of the overpayment and therefore not entitled to waiver of recovery. The Board further finds that OWCP properly directed recovery of the overpayment by withholding \$270.00 every 28 days from appellant's continuing compensation payments.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 4, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2016  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board