

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On March 13, 2013 appellant, then a 34-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his right knee while in the performance of duty. OWCP accepted the claim for a sprain of the lateral collateral ligament of the right knee, a pathologic fracture of other specified parts of the right femur, a tear of the right medial meniscus, a right neoplasm of uncertain behavior of the right connective and other soft tissue, and chondromalacia patellae of the right knee. It paid appellant compensation for total disability beginning April 28, 2014.

Appellant returned to modified work with the employing establishment on April 23, 2015. OWCP continued to pay him compensation for total disability on the periodic rolls by electronic funds transfer until July 25, 2015. On August 5, 2015 appellant's vocational rehabilitation counselor notified OWCP that he had resumed work on April 23, 2015 as a telephone monitor.

By decision dated November 2, 2015, OWCP determined that appellant received an overpayment of wage-loss compensation in the amount of \$8,405.72 from April 23 to July 25, 2015 because he returned to work, but continued to receive wage-loss compensation. It found that he was at fault in the creation of the overpayment and determined that he should submit \$250.00 each month to repay the overpayment.

Appellant appealed to the Board. By decision dated July 21, 2016, the Board affirmed in part and set aside in part the November 2, 2015 decision.⁴ The Board found that appellant received an \$8,405.72 overpayment of wage-loss compensation for the period April 23 through July 25, 2015 and that he was at fault in the creation of the overpayment from May 3 to July 25, 2015. The Board determined, however, that he was without fault for the portion of the overpayment created from April 23 to May 2, 2015. The Board remanded the case for OWCP to determine whether appellant was entitled to waiver of recovery of the overpayment for the period April 23 to May 2, 2015.

OWCP paid appellant compensation for total disability on the periodic rolls effective August 21, 2016 after the employing establishment withdrew his temporary assignment.

By decision dated August 31, 2016, OWCP denied waiver of recovery of the overpayment created for the period April 23 to May 2, 2015. It found that appellant did not submit sufficient financial documentation with his 2015 overpayment recovery questionnaire to support waiver of recovery of the overpayment. OWCP determined that it would recover the overpayment by deducting \$250.00 from his continuing compensation payments every 28 days.

³ Docket No. 16-0186 (issued July 21, 2016); Docket No. 16-1836 (issued May 23, 2017).

⁴ Docket No. 16-0186 (issued July 21, 2016).

Appellant appealed to the Board. By decision dated May 23, 2017, the Board set aside the August 31, 2016 decision.⁵ The Board found that OWCP should have issued a new preliminary determination regarding fault with appeal rights and also provided appellant with the opportunity to submit current financial information so that it could properly evaluate whether it should waive recovery of the overpayment. The Board remanded the case for OWCP to provide him with a new preliminary determination of overpayment and overpayment recovery questionnaire.

On July 7, 2017 OWCP advised appellant of its preliminary determination that he received an overpayment of wage-loss compensation in the amount of \$5,905.72, or \$8,405.72 minus the already paid amount of \$2,500.00, for the period April 23 through July 25, 2015 because he returned to work on April 23, 2015, but received compensation for total disability until July 25, 2015. It further informed him that he was at fault in the creation of the overpayment from May 3 through July 25, 2015, but without fault in the creation of the overpayment from April 23 through May 2, 2015. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire (OWCP-20) and submit supporting financial documents. Additionally, it notified him that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

Appellant submitted an overpayment action request form dated July 20, 2017. The form advised that he could request either a telephone conference, a decision based on the written evidence, or a prerecoupment hearing, and that he could select only one of these options. In response, appellant placed checkmarks on the form by all options, indicating that he was requesting a telephone conference, a decision based on the written evidence, and a prerecoupment hearing. He disagreed that the overpayment occurred and requested waiver of recovery.

Appellant telephoned OWCP on August 3, 2017 regarding the overpayment action recovery form. OWCP advised him that it received the form, but that he could only select one option on the form.

By decision dated August 15, 2017, OWCP denied waiver of recovery of the overpayment of wage-loss compensation for the period April 23 through May 2, 2015. It found that he had not submitted any current financial information supporting waiver and also noted that he checked every option on the overpayment action request form. OWCP determined that it would recover the overpayment by deducting \$250.00 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8129 of FECA 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.⁶ Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment.

⁵ Docket No. 16-1836 (issued May 23, 2017).

⁶ 5 U.S.C. § 8129.

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.⁷

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her income (including compensation benefits) to meet current ordinary and necessary living expenses, and also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.⁸

Section 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his position for the worse.⁹

Section 10.438(a) provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP, as 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.¹⁰ This information would also be used to determine the repayment schedule, if necessary. Section 10.438(b) provides that failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹¹

ANALYSIS -- ISSUE 1

On prior appeal, the Board affirmed OWCP's finding that appellant received an overpayment of compensation in the amount of \$8,405.72 from April 23 through July 25, 2015 because he returned to work on April 23, 2015, but continued to receive wage-loss compensation. The Board further affirmed OWCP's finding that appellant was at fault in creating the overpayment from May 3 through July 25, 2015. However, the Board set aside OWCP's finding of fault with respect to the portion of the overpayment that covered the period April 23 through May 2, 2015. In July 21, 2016 and May 23, 2017 decisions, the Board remanded the case for OWCP to consider waiver of recovery of the overpayment for the period April 23 to May 2, 2015.

OWCP, on July 7, 2017, provided appellant with a preliminary overpayment determination, an OWCP-20, and an overpayment action request form advising him that he could select either a prerecoupment hearing, a telephone conference, or a decision based on the written

⁷ See *Wade Baker*, 54 ECAB 198 (2002).

⁸ 20 C.F.R. § 10.436. OWCP procedures provide that assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a)(1)(b) (June 2009).

⁹ 20 C.F.R. § 10.437.

¹⁰ *Id.* at § 10.438(a).

¹¹ *Id.* at § 10.438(b).

evidence. In response, appellant submitted the overpayment action request form and, by checkmark, selected all options provided on the form of a telephone conference, a prerecoupment hearing, and a decision based on the written evidence. OWCP notified him on August 3, 2017 that he should select only one of the options, but he did not clarify his selection. Appellant did not submit the OWCP-20 or provide financial information.

As appellant did not submit complete financial information, there was insufficient evidence before OWCP to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹² In requesting waiver, the overpaid individual has the responsibility for submitting financial information.¹³ Appellant failed to provide the requested information, as required by section 10.438 of its regulations, and thus was not entitled to waiver.¹⁴ The Board, consequently, finds that OWCP properly denied waiver of recovery of the overpayment of compensation.¹⁵

Appellant contends that he informed his vocational rehabilitation counselor and OWCP of his return to work to avoid an overpayment of compensation, but was accused of lying. His argument on appeal does not specifically address the relevant issue of whether he provided sufficient financial information to support waiver of recovery of the overpayment created from April 23 to May 2, 2015.

LEGAL PRECEDENT -- ISSUE 2

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.¹⁶ 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.”¹⁷

¹² See *supra* note 10; see also *S.C.*, Docket No. 17-0762 (issued March 19, 2018).

¹³ *Id.*; see also *A.R.*, Docket No. 14-1681 (issued March 3, 2016).

¹⁴ *Id.*; see also *L.B.*, Docket No. 09-1327 (issued April 6, 2010).

¹⁵ See *P.D.*, Docket No. 15-0032 (issued March 11, 2016).

¹⁶ *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

¹⁷ 20 C.F.R. § 10.441(a).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly required recovery of the overpayment by deducting \$250.00 every 28 days from appellant's continuing compensation.

Although OWCP provided appellant an overpayment recovery questionnaire with the July 7, 2017 preliminary overpayment determination, as noted, he did not submit a completed questionnaire or other financial information prior to the August 15, 2017 decision denying waiver of recovery of the overpayment from April 23 through May 2, 2015. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁸ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.¹⁹ As appellant did not submit any financial information to OWCP, the Board finds that OWCP properly directed recovery of the overpayment at the rate of \$250.00 every 28 days from his continuing compensation.

CONCLUSION

The Board finds that OWCP properly denied waiver of recovery of an overpayment of compensation for the period April 23 to May 2, 2015. The Board further finds that it properly determined that it would recover the overpayment of compensation by withholding \$250.00 every 28 days from appellant's continuing compensation payments.

¹⁸ *Id.* at § 10.438; *see also* W.A., Docket No. 18-0070 (issued May 14, 2018).

¹⁹ *Frederick Arters*, 53 ECAB 397 (2002); *Gail M. Roe*, 47 ECAB 268 (1995).

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 3, 2018
Washington, DC

Christopher J. Godfrey, 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