

FACTUAL HISTORY

On September 25, 2013 appellant, then a 50-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she was involved in a work-related motor vehicle accident when another vehicle struck her postal vehicle. She alleged injury to her left shoulder and back. OWCP accepted her claim for lumbar sprain, left shoulder and upper arm sprain, and neck sprain. Appellant stopped work on December 18, 2013 and returned to work on December 5, 2016. OWCP subsequently expanded acceptance of the claim to include rotator cuff tear of left shoulder and impingement of the left shoulder. Appellant underwent an authorized September 18, 2014 arthroscopy of the left shoulder and arthroscopic rotator cuff repair, acromioplasty and excision of the distal clavicle.

On April 15, 2016 appellant filed a claim for a schedule award (Form CA-7). By decision dated December 13, 2016, OWCP granted appellant a schedule award for 10 percent permanent impairment of her left upper extremity. The period of the award ran from July 8, 2016 to February 11, 2017, which totaled 31.20 weeks of compensation or payments of \$2,094.93 every 28 days.

In a manual adjustment form, OWCP documented that it paid appellant \$2,094.93 for the period February 5 to March 4, 2017. However, appellant should have been paid only \$527.25 for the period February 5 to 11, 2017. The difference of \$1,567.68 was determined to be an overpayment. Copies of fiscal worksheets were provided.

On April 27, 2017 OWCP provided appellant with a preliminary determination of overpayment, finding that she had received an overpayment of compensation in the amount of \$1,567.68 as her schedule award payments, which should have ended on February 11, 2017, were inadvertently continued through March 4, 2017. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant complete an overpayment recovery questionnaire (Form OWCP-20) to determine the issues of waiver and recovery of the overpayment. It provided appellant appeal rights to either request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing. OWCP afforded her 30 days to respond. Appellant did not respond within the time allotted.

By decision dated June 5, 2017, OWCP finalized its preliminary determination that appellant was without fault in the creation of the overpayment in the amount of \$1,567.68³ for the period February 12 through March 4, 2017. It noted that the overpayment arose because her schedule award was inadvertently paid through March 4, 2017. OWCP found that appellant had not responded to the preliminary determination of overpayment and, without supporting financial information, the overpayment was not subject to waiver of recovery. It requested that she remit the full amount of the overpayment within 30 days.

On June 12, 2017 OWCP received appellant's June 5, 2017 request for a prerecoupment hearing before an OWCP hearing representative, along with a completed Form OWCP-20 overpayment recovery questionnaire, postmarked June 7, 2017.

³ OWCP mistakenly noted that the overpayment amount was \$1,567.88 as opposed to \$1,567.68.

By decision dated June 21, 2017, OWCP denied appellant's request for a prerecoupment hearing as she did not request a prerecoupment hearing within 30 days of the preliminary overpayment finding. It also noted that a final overpayment decision was not subject to the hearing provisions of 5 U.S.C. § 8124(b).

On appeal appellant requests that the overpayment be waived as she was in debt and only worked in a temporary position.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA⁴ and its implementing regulations⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. Section 20 C.F.R. § 10.404 states that compensation is provided for specified periods of time for the permanent loss or loss of use of certain members.⁶

OWCP's procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,567.68 for the period February 12 through March 4, 2017. The amount of the overpayment is not in dispute.

OWCP granted appellant a schedule award on December 13, 2016 for the period July 8, 2016 through February 11, 2017. The evidence of record establishes that OWCP continued to pay her schedule award compensation after February 11, 2017, the date the award expired. Consequently, any payments appellant received for the period February 12, 2017 through March 4, 2017 constituted an overpayment of compensation. OWCP properly calculated the \$1,567.68 overpayment by reducing the amount of compensation she received, \$2,094.93 for the period February 5 through March 4, 2017, by the amount she was entitled to receive \$527.25 for the period February 5 through February 11, 2017, to reach the overpayment amount of \$1,567.68. Appellant has not contested this amount. The Board accordingly affirms the fact and amount of the overpayment.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* Effective May 1, 2009, OWCP began using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). See *J.L.*, Docket No. 14-0898 (issued March 26, 2015).

⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2(c) (May 2004).

LEGAL PRECEDENT -- ISSUE 2

Section 8129(a) of FECA provides that when an overpayment of compensation occurs “because of an error of fact or law,” adjustment or recovery shall be made by decreasing later payment to which the individual is entitled.⁸ 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 insufficient, 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 regulations⁹ provides that recovery of an overpayment will defeat the purpose of FECA if recovery would cause hardship by depriving a presently or formerly entitled beneficiary of income and resources needed for ordinary and necessary living expenses and outlines the specific financial circumstances under which recovery may be considered to defeat the purpose of FECA.

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 or her position for the worse.¹⁰

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.¹¹ 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.¹²

⁸ 5 U.S.C. § 8129(a).

⁹ 20 C.F.R. § 10.436.

¹⁰ *Id.* at § 10.437.

¹¹ *Id.* at § 10.438(a).

¹² *Id.* at § 10.438(b).

ANALYSIS -- ISSUE 2

As OWCP found appellant without fault in the creation of the overpayment, waiver of recovery must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹³

In its April 27, 2017 preliminary notice of overpayment, OWCP advised appellant of its preliminary determination and instructed her to complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, it notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing. Appellant failed to respond within the allotted time and did not submit the overpayment recovery questionnaire or supporting financial documentation. Thus, OWCP did not have the necessary financial information to determine whether recovery of the overpayment would defeat the purpose of FECA or whether it would be against equity and good conscience such that it would cause severe financial hardship.

Failure to submit the requested information within 30 days of the request shall result in denial of waiver of recovery of the overpayment.¹⁴ Consequently, as appellant did not submit the financial information OWCP had properly requested from her as required under section 10.438 of its regulations,¹⁵ which was necessary to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment in the amount of \$1,567.68 for the period February 12 through March 4, 2017.

LEGAL PRECEDENT -- ISSUE 3

OWCP's regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.¹⁶ The date of the request is determined by the postmark or other carrier's date marking.¹⁷ Failure to request the prerecoupment hearing within 30 days shall constitute a waiver of the right to a hearing.¹⁸ The only right to a review of a final overpayment decision is with the Board.¹⁹ The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.²⁰

¹³ 5 U.S.C. § 8129.

¹⁴ *See L.K.*, Docket No. 17-1393 (issued March 20, 2018).

¹⁵ 20 C.F.R. § 10.438; *R.L.*, Docket No. 16-1564 (issued January 4, 2017).

¹⁶ 20 C.F.R. § 10.432.

¹⁷ *Id.* at §§ 10.439, 10.616(a); *see also C.R.*, Docket No. 15-0525 (issued July 20, 2015).

¹⁸ *Id.*; *see also Willie C. Howard*, 55 ECAB 564 (2004).

¹⁹ 20 C.F.R. § 10.440(b).

²⁰ *Id.*

ANALYSIS -- ISSUE 3

OWCP issued a preliminary overpayment determination on April 27, 2017. It advised appellant that she had 30 days to request a precoupment hearing. In correspondence postmarked June 7, 2017, OWCP received her request for a precoupment hearing. The timeliness of the request for a precoupment hearing is determined by the postmark date or other carrier's marking.²¹ Since the request was postmarked on June 7, 2017, more than 30 days after April 27, 2017, it was untimely. As noted, the hearing provisions of section 8124(b) are not applicable to final overpayment decisions, which was issued in this case on June 5, 2017.²² OWCP thus properly denied the request.²³

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,567.68 for the period February 12 through March 4, 2017 for which she was without fault, and that OWCP properly denied waiver of recovery of the overpayment. The Board also finds that OWCP properly denied appellant's request for a precoupment hearing as untimely filed.

²¹ See *C.W.*, Docket No. 15-0554 (issued May 27, 2015); 20 C.F.R. §§ 10.439, 10.616(a).

²² See *supra* note 19.

²³ See *E.V.*, Docket No. 17-1328 (issued December 11, 2017); see also *R.U.*, Docket No. 16-0027 (issued March 24, 2017).

ORDER

IT IS HEREBY ORDERED THAT the June 21 and 5, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 11, 2018
Washington, DC

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

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

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