

ISSUES

The issues are: (1) whether OWCP properly denied waiver of recovery of a \$13,319.36 overpayment of compensation; and (2) whether it properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances outlined in the Board's prior decisions are incorporated herein by reference. The facts relevant to this appeal are as follows.

On October 24, 2011 appellant, then a 50-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on September 13, 2011, she twisted her left ankle when descending stairs while in the performance of duty. OWCP accepted the claim for left ankle sprain and paid compensation for total disability beginning October 29, 2011.

OWCP, on September 25, 2013, informed appellant that it had electronically deposited \$13,319.36 into her account on November 23, 2012. It advised her that the money was deposited in error and requested repayment of the funds.

On October 29, 2013, OWCP notified appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$13,319.36 because it had electronically transferred funds into her bank account in error. Appellant requested a prerecoupment hearing. During the prerecoupment hearing, held before an OWCP hearing representative on April 17, 2014, she testified that her husband told her he was waiting on a payment for work and that she learned that the deposit was inaccurate when she received OWCP's September 2013 letter.

In response to OWCP's request for information about her dependency status, appellant indicated that her husband was self-employed and installed electrical equipment. She submitted information regarding her income and expenses.⁵

By decision dated June 19, 2014, OWCP's hearing representative determined that appellant received an overpayment of compensation in the amount of \$13,319.36 on November 23, 2012 because OWCP had electronically deposited money into her account in error. She found that appellant was at fault in the creation of the overpayment because she accepted a payment that she knew or should have known was incorrect. The hearing representative found that the overpayment should be recovered by deducting \$200.00 from continuing compensation payments.

⁴ Docket No. 14-1730 (issued April 13, 2015); Docket No. 16-0443 (issued May 3, 2016).

⁵ In a hardship affidavit form, appellant requested mortgage modification because of short-term hardship. She indicated that her husband's Social Security benefits had "been temporarily suspended" and that she had home repairs, including replacing a furnace and the main sewer lines.

Appellant appealed to the Board. By decision dated April 13, 2015, the Board affirmed in part and set aside in part the June 19, 2014 decision.⁶ It found that appellant received a \$13,319.36 overpayment as OWCP had mistakenly electronically transferred compensation owed to another claimant into her bank account. The Board determined, however, that she was not at fault in the creation of the overpayment and remanded the case for OWCP to consider whether she was entitled to waiver of recovery of the overpayment based on current financial information.

OWCP, on June 15, 2015, requested that appellant submit an overpayment recovery questionnaire with supporting documentation so that it could evaluate whether she was entitled to waiver of recovery of the overpayment. It did not provide a deadline for submission of the information.

By decision dated August 10, 2015, OWCP denied waiver of recovery of the \$13,319.36 overpayment of compensation. It found that appellant had not responded to its request for current financial information. OWCP determined that it would recover the overpayment by deducting \$200.00 from her continuing compensation payments.

Appellant again appealed to the Board. By decision dated May 3, 2016, the Board set aside the August 10, 2015 decision.⁷ It found that OWCP failed to inform her that she must submit any evidence or argument in support of waiver of recovery within 30 days. The Board remanded the case for OWCP to provide appellant with an overpayment recovery questionnaire (Form OWCP-20) with notice of the 30-day time limitation prior to determining whether she is entitled to waiver of recovery of the overpayment.

On June 9, 2016 OWCP again requested that appellant submit a completed overpayment recovery questionnaire within 30 days with supporting documentation so that it could evaluate whether she was entitled to waiver of recovery of the overpayment.

On her completed Form OWCP-20, June 21, 2016, appellant listed that she had no income from any source. She identified her husband as a dependent. Appellant related that she had assets in the Thrift Savings Plan (TSP), but did not specify an amount. She listed total expenses of \$3,398.00. Appellant also noted other unpaid loans. As documentation, she submitted benefit statements showing the compensation she received from OWCP, bank account statements in her name, credit card and utility bills, her mortgage bill, loan extensions, a letter from the Internal Revenue Service about her unpaid balance on taxes, a settlement offer from Dish television regarding an unpaid balance, letters from collection services, and a March 25, 2016 letter from the Office of Personnel Management approving her application for disability retirement.

By decision dated August 17, 2016, OWCP denied waiver of recovery of the overpayment. It found that appellant had not submitted adequate information regarding her income, her spouse's income, and her assets in the TSP for it to determine whether she was

⁶ Docket No. 14-1730 (issued April 13, 2015).

⁷ Docket No. 16-0443 (issued May 3, 2016).

entitled to waiver. OWCP noted that she substantiated expenses of \$2,388.52 and that she received \$2,777.00 in compensation, for a difference of \$388.48. It found that it would recover the overpayment by deducting \$200.00 from continuing compensation.

On appeal appellant contends that she submitted evidence about her income by providing her benefit statements showing her compensation from OWCP. She asserted that her husband did not receive any income. Appellant also argues that OWCP erred in finding that she was at fault in creating the overpayment.

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.”⁸ (Emphasis added.) Thus, 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.⁹

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 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.¹⁰

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 her position for the worse.¹¹

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.¹² This information would also be used to determine the repayment schedule, if necessary. Section 10.438(b) provides that

⁸ 5 U.S.C. § 8129.

⁹ See *Wade Baker*, 54 ECAB 198 (2002).

¹⁰ 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).

¹¹ 20 C.F.R. § 10.437.

¹² *Id.* at § 10.438(a).

failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹³

ANALYSIS -- ISSUE 1

On prior appeal, by decision dated April 13, 2015, the Board affirmed OWCP's finding that appellant received an overpayment of compensation in the amount of \$13,319.36 on November 23, 2012 when it mistakenly deposited money into her bank account meant for another claimant. It found, however, that she was not at fault in the creation of the overpayment and remanded the case for consideration of waiver. In a May 3, 2016 decision, the Board again remanded the case for OWCP to evaluate whether appellant was entitled to waiver after finding that it did not inform her that the overpayment recovery questionnaire must be submitted within 30 days.

On June 9, 2016, OWCP provided appellant with an overpayment recovery questionnaire and requested that she submit financial information with supporting documentation within 30 days. In response, appellant submitted a partially completed overpayment recovery questionnaire with some financial information. She listed expenses, but did not include information on income for herself nor her spouse. Appellant further indicated that she had assets in a TSP, but did not provide her amount. Savings in a TSP account are included in the asset base.¹⁴

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.¹⁵ In requesting waiver, the overpayment individual has the responsibility for submitting financial information.¹⁶ Appellant failed to provide the requested information, as required by section 10.438 of its regulations, and thus was not entitled to waiver.¹⁷ The Board thus finds that OWCP properly denied waiver of recovery of the overpayment of compensation.

On appeal appellant asserts that she provided benefit statements documenting her compensation from OWCP and that her husband did not receive income. She did not, however, submit information regarding her assets in the TSP plan, and thus, as discussed, did not provide sufficient evidence to support waiver of recovery of the overpayment.

Appellant also contends that OWCP erroneously found that she was at fault in creating the overpayment. OWCP, however, determined that she was not at fault in creating the

¹³ *Id.* at § 10.438(b).

¹⁴ *See C.P.*, Docket No. 14-0975 (issued September 11, 2014); *R.A.*, Docket No. 13-1121 (issued October 29, 2013).

¹⁵ *See supra* note 12; *see also M.S.*, Docket No. 11-0096 (issued August 17, 2011).

¹⁶ *See supra* note 11; *see also A.R.*, Docket No. 14-1681 (issued March 3, 2016).

¹⁷ *Id.*; *see also L.B.*, Docket No. 09-1327 (issued April 6, 2010).

overpayment, but denied waiver. A finding that a claimant is without fault does not automatically result in waiver. OWCP must exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁸ As noted, it properly denied waiver of the overpayment after finding that appellant had not submitted sufficient evidence to determine whether recovery would defeat the purpose of FECA or be against equity and good conscience.¹⁹

LEGAL PRECEDENT -- ISSUE 2

Section 10.441(a) of OWCP's regulations provides that 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 her attention is called to the 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 hardship.²⁰

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that the overpayment would be recovered by deducting \$200.00 from appellant's continuing compensation payments. As noted, appellant failed to submit all the information necessary to properly represent her financial situation. If appropriate documentation is not submitted as required, OWCP is unable to consider financial circumstances.²¹ The Board notes that OWCP did evaluate the information available, and found that appellant's income from continuing compensation exceeded her documented expenses by \$388.48. The Board finds that OWCP did not abuse its discretion in finding a repayment schedule of \$200.00 from continuing compensation.

CONCLUSION

The Board finds that OWCP properly denied waiver of recovery of a \$13,319.36 overpayment of compensation and properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments.

¹⁸ See *L.S.*, Docket No. 59 ECAB 350 (2008).

¹⁹ See *P.W.*, Docket No. 10-0483 (issued September 15, 2010).

²⁰ *Supra* note 12 at § 10.441(a); see *Steven R. Cofrancesco*, 57 ECAB 662 (2006).

²¹ See *M.S.*, *supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2018
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