

waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$10.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On August 5, 1987 appellant, then a 56-year-old machinist, filed a traumatic injury claim (Form CA-1) alleging that, on June 11, 1987, he slipped and injured his neck while in the performance of duty. He stopped work on June 18, 1987. On September 25, 1987 OWCP accepted the claim for cervical strain. On May 26, 1988 it expanded acceptance of the claim to include cervical degenerative disc disease at C5-6, rotator cuff impingement, and right shoulder syndrome. OWCP paid intermittent wage-loss compensation on the periodic rolls.

By letter dated May 22, 2018, appellant informed OWCP that his wife had died on May 9, 2018.

The record includes OWCP copies of an overpayment worksheet containing calculations showing that from May 10 to 26, 2018 appellant received \$2,160.21 in compensation at the augmented rate of 75 percent of his monthly pay, when he was entitled to only \$1,919.18 at the basic rate of 66 2/3 percent of his monthly pay. This yielded an overpayment of compensation in the amount of \$241.03.

On August 20, 2018 OWCP issued a preliminary determination finding that appellant had received a \$241.03 overpayment of compensation. It explained that the overpayment occurred because his spouse died on May 9, 2018 and he had no other dependents, but continued to receive compensation at the augmented rate through May 26, 2018. OWCP found appellant without fault in the creation of the overpayment. It provided an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) for his completion and advised that, in order for it to consider the question of waiver or to determine a reasonable method for collection, he must provide a completed Form OWCP-20 and attach supporting financial documentation. OWCP notified appellant that failure to submit the requested information within 30 days would result in the denial of waiver of recovery of the overpayment.

No information was received from appellant in response to the preliminary determination.

By decision dated September 24, 2018, OWCP finalized the preliminary determination, finding that an overpayment in the amount of \$241.03 had occurred because appellant continued to receive compensation at the augmented rate following the death of his spouse, his only dependent. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, noting that he had not responded to the August 20, 2018 preliminary determination. OWCP required recovery by deducting \$10.00 every 28 days from appellant's continuing FECA compensation.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of

duty.³ 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 of his monthly pay.⁴ A disabled employee is entitled to an augmented compensation rate of 75 percent if he or she has one or more dependents.⁵

A dependent includes a husband or wife if: (a) he or she is a member of the same household as the employee; (b) the spouse is receiving regular contributions from the employee for his support; or (c) the employee has been ordered by a court to contribute spousal support.⁶

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.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$241.03 for the period May 10 to 26, 2018.

Appellant initially received compensation payments at the augmented rate of 75 percent as he was married and lived in the same household as his wife. His wife died on May 9, 2018. Appellant, however, continued to receive compensation at the augmented rate after her death when he had no eligible dependents.

The record supports that OWCP erroneously paid appellant compensation based on the augmented rate of 75 percent for the period May 10 to 26, 2018. Appellant was paid \$2,160.21 in FECA compensation for that period at the augmented rate of 75 percent, but was entitled to only \$1,919.18 at the 66 2/3 basic rate. OWCP properly determined that the difference yielded an overpayment of compensation in the amount of \$241.03. The Board thus finds that OWCP properly determined the fact and amount of the overpayment in this case.⁸

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment of compensation shall be recovered by OWCP unless “incorrect payment has been made to an individual who is without fault and

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8105(a).

⁵ *Id.* at § 8110(b).

⁶ *Id.* at 8110(a)(2); *see also K.S.*, Docket No. 15-0940 (issued September 9, 2015).

⁷ *B.W.*, Docket No. 18-1412 (issued February 8, 2019); *see Ralph P. Beachum, Sr.*, 55 ECAB 442, 445 (2004).

⁸ *W.A.*, Docket No. 18-0070 (issued May 14, 2018); *see D.S.*, Docket No. 17-1224 (issued August 28, 2017).

when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.”⁹

Section 10.438 of OWCP regulations provides that 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 on an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.¹⁰

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver 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 conscious.¹¹ Appellant, however, had the responsibility to timely provide financial information to OWCP, but did not do so.¹²

In its preliminary determination dated August 20, 2018, OWCP requested that appellant provide a completed overpayment recovery questionnaire and supporting financial information. It advised appellant that waiver would be denied if he failed to furnish the requested financial information within 30 days. Appellant did not respond to the preliminary determination before OWCP issued its final overpayment determination on September 24, 2018. As a result, OWCP did not have the necessary financial information to determine whether recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience. Because appellant failed to submit the requested information within 30 days, OWCP had no discretion in the matter. The law therefore required a denial of waiver.¹³

Consequently, as appellant did not submit the financial information required under section 10.438 of OWCP’s regulations, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation in the amount of \$241.03.¹⁴

⁹ 5 U.S.C. § 8129.

¹⁰ 20 C.F.R. § 10.438.

¹¹ *Id.*; see also *R.H.*, Docket No. 15-0392 (issued February 3, 2016).

¹² *Supra* note 10.

¹³ *Supra* note 11.

¹⁴ *Id.*; see *S.A.*, Docket No. 15-0592 (issued April 9, 2015).

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 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 his 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.¹⁵

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$10.00 every 28 days from appellant's continuing compensation.

Although OWCP provided appellant an overpayment recovery questionnaire with the August 20, 2018 preliminary determination, as noted, he did not submit a completed questionnaire or other financial information prior to the September 24, 2018 final overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁶ When an individual failed to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.¹⁷ As appellant did not submit any financial information to OWCP as requested, the Board finds that OWCP properly directed recovery of the \$241.03 every 28 days from his continuing compensation payments.

On appeal appellant alleges that the overpayment was paid in full prior to the September 24, 2018 decision. This evidence was not of record at the time of the September 24, 2018 decision.¹⁸

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$241.03 for the period May 10 to 26, 2018. The Board further finds that OWCP properly denied waiver of recovery of the overpayment, and required recovery by deducting \$10.00 every 28 days from his continuing compensation payments.

¹⁵ 20 C.F.R. § 10.441; *see Steven R. Cofrancesco*, 57 ECAB 662 (2006).

¹⁶ *Id.* at § 10.438.

¹⁷ *W.A.*, *supra* note 8; *see Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Chapter 6.200.4(c)(2) (May 2004).

¹⁸ *See supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 22, 2019
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