

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

C.P., Appellant)	
)	
and)	Docket No. 19-1935
)	Issued: July 1, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Galveston, TX, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 20, 2019 appellant filed a timely appeal from a May 2, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$1,753.79, for the period February 3 through March 2, 2019, as she received an

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the May 2, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

improper payment after the expiration of her schedule award for which she was without fault; and (2) whether OWCP properly denied appellant's request for waiver of recovery of the overpayment.

FACTUAL HISTORY

On March 1, 2017 appellant, then a 40-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on February 6, 2017 she strained her right upper arm while in the performance of duty. She did not stop work. On April 11, 2017 OWCP accepted the claim for muscle, fascia, and tendon strains of the right wrist, hand, shoulder, and upper arm.

On October 9, 2017 appellant underwent a right shoulder arthroscopic rotator repair and subacromial decompression.

On July 24, 2018 appellant filed a claim for a schedule award (Form CA-7). Following development of the claim, by decision dated January 18, 2019, OWCP granted her a schedule award for 12 percent permanent impairment of her right upper extremity. The award ran for 37.44 weeks for the period May 25, 2018 to February 11, 2019.

OWCP records document that appellant received a schedule award payment *via* direct deposit in the amount of \$516.55 for the period February 3 through 11, 2019 on March 1, 2019. Appellant received a second direct deposit schedule award payment for the period February 3 through March 2, 2019 in the amount of \$1,753.79 on March 2, 2019.

In a March 22, 2019 notice, OWCP advised appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$1,753.79 as she received an additional payment after the expiration of her schedule award. It also made a preliminary determination that she was not at fault in the creation of the overpayment because there was no evidence that she knew or should have known the proper course of action to be followed. OWCP informed appellant that she could submit additional evidence in writing or at prerecoupment hearing, but that a prerecoupment hearing must be requested within 30 days of the date of the written notice of overpayment. It requested that she complete and return an overpayment recovery questionnaire (Form OWCP-20) within 30 days, even if she was not requesting waiver of the overpayment. No response was received.

By decision dated May 2, 2019, OWCP finalized its preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$1,753.79 for the period February 3 through March 2, 2019. It determined that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because there was no evidence to substantiate that recovery would defeat the purpose of FECA or be against equity or good conscience. OWCP requested that appellant forward payment in the amount of \$1,753.79.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the

performance of duty.³ Section 10.404 of OWCP regulations states that compensation is provided for specified periods of time for the permanent loss or loss of use of certain members.⁴

OWCP procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$1,753.79, for the period February 3 through March 2, 2019, as she received an improper payment after the expiration of her schedule award for which she was without fault.

OWCP's records substantiate that appellant received a direct deposit in the amount of \$516.55 for the period February 3 through 11, 2019 on March 1, 2019, which she was owed. However, it erroneously issued a second direct deposit payment in the amount of \$1,753.79 on March 2, 2019 for the period February 3 through March 2, 2019. The Board therefore finds that OWCP properly determined that an overpayment in the amount of \$1,753.79 was created.⁶

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA⁷ 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." Thus, a finding that appellant was without fault does not automatically result in waiver of recovery 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.⁸

Section 10.438 of OWCP's 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 of 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.⁹

³ 5 U.S.C. § 8102(a).

⁴ 20 C.F.R. § 10.404.

⁵ *R.J.*, Docket No. 17-1974 (issued March 23, 2018); Federal (FECA) Procedure Manual, Part 6 -- *Initial Overpayment Actions*, Chapter 6.200.2(c) (May 2004).

⁶ *Id.* at Chapter 2.1601.8 (October 2011).

⁷ 5 U.S.C. § 8129(1)-(b); *see N.C.*, Docket No. 18-1070 (issued January 9, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

⁸ *See V.T.*, Docket No. 18-0628 (issued October 24, 2018).

⁹ 20 C.F.R. § 10.438.

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$1,753.79 overpayment of compensation.

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 conscience.¹⁰ In its preliminary determination dated March 22, 2019, it clearly explained the importance of providing the completed overpayment recovery questionnaire (Form OWCP-20) and financial information. OWCP advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days.¹¹

Appellant did not submit a completed overpayment recovery questionnaire or otherwise submit financial information regarding monthly income and expenses. As a result, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.¹² Consequently, the Board finds that OWCP properly denied waiver of recovery of the overpayment under section 10.438 of OWCP's regulations.¹³

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,753.79, for the period February 3 through March 2, 2019, as she received an improper payment after the expiration of her schedule award for which she was without fault. The Board further finds that OWCP properly denied her request for waiver of recovery of the overpayment.

¹⁰ See *T.J.*, Docket No. 19-1242 (issued January 13, 2020); see *N.C.*, Docket No. 18-1070 (issued January 9, 2019); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

¹¹ Under 20 C.F.R. 10.438(b), failure to submit the requested information within 30 days of the request for information about income, expenses, and assets shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished. See *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

¹² See *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

¹³ See *N.C.*, *supra* note 10; *C.Y.*, *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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