

FACTUAL HISTORY

On December 30, 2017 appellant, then a 49-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that he suffered a broken left fibula when he slipped on ice on December 29, 2017 while in the performance of duty. On February 1, 2018 OWCP accepted his claim for a nondisplaced fracture of the lateral malleolus of the left fibula, closed fracture and placed appellant on the supplemental rolls. Appellant was released to work in a full-duty position on March 13, 2018.²

On June 5, 2018 appellant filed a claim for a schedule award (Form CA-7).

By decision dated October 31, 2018, OWCP granted appellant a schedule award for 10 percent permanent impairment of the left lower extremity. The award covered a period of 28.8 weeks from July 30, 2018 to February 16, 2019. Appellant's weekly pay of \$1,239.54 was multiplied by his augmented compensation rate of 75 percent for employees with an eligible dependent, yielding a weekly compensation rate of \$929.66, totaling \$3,718.62 in continuing payments every four weeks.

By notice dated April 5, 2019, OWCP informed appellant of its preliminary determination that an overpayment of compensation in the amount of \$3,724.43 had been created for the period February 3 through March 2, 2019. It explained that on March 1, 2019 the final schedule award payment, in the amount of \$1,845.66 for the period February 3 to 16, 2019, was issued. Subsequently, a second schedule award payment was inadvertently issued on March 2, 2019 for the period February 3 through March 2, 2019, resulting in an overpayment for this entire period, as a result of a glitch in the system. OWCP also made a preliminary determination that appellant was also at fault in the creation of the overpayment, as he had accepted a payment that he knew, or should have known, to be incorrect. It advised him that he could submit evidence challenging the fact and amount of the overpayment, and finding of fault. OWCP informed appellant that he could submit additional evidence in writing or at a prerecoupment hearing, but that a prerecoupment hearing must be requested within 30 days of the date of the written notice of the overpayment. It requested that he complete and return an enclosed overpayment recovery questionnaire (Form OWCP-20) within 30 days if he was unable to pay the full amount at the time.

In an overpayment action request form signed April 26, 2019, appellant requested a telephonic prerecoupment hearing with a representative of OWCP's Branch of Hearings and Review. He requested a waiver of recovery explaining that he was still experiencing pain and that his injuries affected his ability to perform his everyday activities. Appellant attached an incomplete Form OWCP-20 dated April 5, 2019, in which he provided no information on his monthly income and reported monthly expenses of \$1,734.30 and assets of \$1,050.00. He also

² In a March 13, 2018 medical note, Dr. Joseph Hoegler, a Board-certified orthopedic surgeon, indicated that appellant visited his office on March 9, 2018 and determined that he could return to work full time, with no restrictions, on March 13, 2018.

submitted a financial statement from his credit union dated March 1 to 31, 2019 providing details about transactions he made during that period.³

During the prerecoupment hearing held on August 9, 2019, appellant was represented by counsel who contended that he received his payments by direct deposit and therefore, could not have known that there was a duplicate payment at the time it had been made. She further argued that he was not at fault for the system glitch that resulted in multiple payments and that he was entitled to the payments as compensation for lost wages and as a part of his schedule award.

By decision dated October 17, 2019, OWCP finalized the preliminary overpayment determination, with modification, finding that appellant received an overpayment of compensation in the amount of \$3,724.43 because he received an improper schedule award payment for the period February 3 through March 2, 2019, and that he was not at fault in the creation of the overpayment. It denied waiver of recovery of the overpayment as section 10.304(c)(3) of FECA prohibits parallel remedies for the same injury⁴ and also explained that there was no evidence to support that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.⁵

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 his or her duty.⁶ Section 8129(a) of FECA provides, in pertinent part:

“When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.”⁷

Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.⁸

³ Appellant subsequently submitted money order payments to OWCP dated May 21 and July 5, 2019 totaling \$724.43.

⁴ See *Joseph R. Waples*, 44 ECAB 939, 939 (1993).

⁵ OWCP noted that appellant failed to provide any information regarding his monthly income and only reported his monthly expenses and assets. It also found that he demonstrated a willingness and ability to undertake a payment plan as he already submitted payments to OWCP. Therefore, OWCP set repayment at \$100.00 per month.

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8129(a).

⁸ *Id.* at § 8116(a).

The schedule award provisions of FECA⁹ and its implementing regulations¹⁰ 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 provides that compensation is awarded for specified periods of time for the permanent loss or loss of use of certain members.¹¹

OWCP's procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.¹²

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,724.43 for the period February 3 through March 2, 2019 due to an improper schedule award payment.

OWCP granted appellant a schedule award for 10 percent permanent impairment of the left lower extremity on October 31, 2018 for the period July 30, 2018 to February 16, 2019, for a total of 28.8 weeks. The evidence of record establishes that on March 1, 2019 he received a schedule award payment for the final period of the schedule award for the period February 3 to 16, 2019 in the amount of \$1,845.66. Subsequently, on March 2, 2019 appellant received a second improper schedule award payment in the amount of \$3,724.43 for the period February 3 through March 2, 2019 due to a system glitch. Consequently, the \$3,724.43 payment constituted an overpayment as he had already received compensation accounting for the schedule award payment for the period February 3 to 16, 2019. Further the payment also improperly included a period after February 16, 2019, the date the schedule award expired.¹³

Appellant has not contested the amount of the overpayment.¹⁴ The Board accordingly affirms OWCP's findings as to the fact and amount of the overpayment.¹⁵

⁹ *Supra* note 1.

¹⁰ 20 C.F.R. § 10.404.

¹¹ *Id.* Effective May 1, 2009, OWCP began determining schedule awards in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6 (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *A.B.*, Docket No. 18-0922 (issued January 3, 2019); *E.V.*, Docket No. 17-2026 (issued July 11, 2018).

¹² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1f (1)(i) (September 2018).

¹³ *A.B.*, Docket No. 18-0922 (issued January 3, 2019); *R.S.*, Docket No. 17-1985 (issued March 23, 2018).

¹⁴ *Id.*

¹⁵ *Supra* note 6.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁶ The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.¹⁷

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹⁸ Additionally, 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 in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁹

OWCP regulations provide 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. The information is also used to determine the repayment schedule, if necessary.²⁰ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery of the overpayment, and no further request for waiver shall be considered until the requested information is furnished.²¹

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

¹⁶ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see A.F.*, Docket No. 19-0054 (issued June 12, 2019).

¹⁷ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁸ 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(2) (September 2018).

¹⁹ *Id.* at § 10.437(a)(b).

²⁰ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²¹ *Id.* at § 10.438(b).

would defeat the purpose of FECA or be against equity and good conscience.²² Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.²³

In its preliminary overpayment determination dated April 5, 2019, OWCP clearly explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver if he failed to furnish the requested financial information within 30 days. Appellant submitted an April 5, 2019 Form OWCP-20 in which he reported his expenses and assets, but provided no information concerning his monthly income. The only financial documentation he submitted in support of his reported expenses and assets was a credit union statement detailing transactions he made during the period March 1 to 31, 2019. As appellant did not complete his Form OWCP-20 or submit sufficient supporting financial documentation, 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.²⁴ It was, therefore, required to deny waiver of recovery of the overpayment.²⁵

Consequently, the Board finds that OWCP properly denied waiver of recovery of the overpayment.²⁶

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,724.43, for which he was not at fault, for the period February 3 through March 2, 2019 due to an improper schedule award payment. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

²² *Supra* note 9.

²³ 20 C.F.R. § 10.438.

²⁴ *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

²⁵ *Supra* note 12; *see L.D.*, Docket No. 19-0606 (issued November 21, 2019).

²⁶ *See T.E.*, Docket No. 19-0348 (issued December 11, 2019).

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 6, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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