



## **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,305.57 during the period June 16, 2002 through October 28, 2006, for which she was not at fault, because she improperly received wage-loss compensation at an augmented rate to which she was not entitled; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$100.00 every 28 days from appellant's continuing compensation payments.

## **FACTUAL HISTORY**

On June 14, 1986 appellant, then a 46-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her back when lifting a trash can while in the performance of duty. OWCP accepted the claim for acute lumbar strain and lumbar disc displacement at L4-5. Appellant lost intermittent time from work after her injury. She stopped work on April 3, 1989 and OWCP paid appellant wage-loss compensation on the periodic rolls commencing April 9, 1989.

In EN1032 forms dated January 28, 2003, February 4, 2004, January 31, 2005, and February 7, 2006, appellant indicated that she was married, but her spouse did not live with her and she did not make regular direct payments for his support. She noted that they separated in the summer of 2002. In EN1032 forms from 2007 to 2017, appellant indicated that she was not married, that she had divorced, that her spouse did not live with her, and she did not make regular payments for his support. She noted no other dependents on the EN1032 forms.

In a letter dated January 16, 2018, OWCP requested that appellant complete an EN1032 form, which included questions regarding her dependents in order to verify that her compensation was paid at the proper rate. It specifically indicated that compensation at the augmented rate of 75 percent of the applicable pay rate may be paid for a spouse who lives with appellant. If the spouse does not live with appellant, appellant may claim compensation for such spouse if appellant makes regular payments for that person's support. OWCP noted that appellant could not claim or receive augmented compensation for an ex-spouse even if she had been ordered to provide support in the form of alimony. Appellant completed the form on January 26, 2018 and indicated that her spouse had not resided with her since May 2002 and that she did not make regular payments for his support. On January 15, 2019 she completed a subsequent EN1032 form and again indicated that her spouse had not resided with her since May 2002 and that she did not make regular payments for his support.

On September 26, 2019 OWCP advised appellant that it had made a preliminary determination that she received an overpayment of compensation in the amount of \$8,305.57 for the period June 16, 2002 through October 28, 2006 because she received compensation at the augmented (three-fourths) rate instead of the basic (two-thirds) rate when she had no dependents. It noted that appellant's spouse was no longer living with her as of May 2002 and she was not providing support payments. OWCP noted that, as it was not possible to determine the exact date appellant's spouse no longer lived with her, the start date of the overpayment would begin on June 16, 2002 the start date of the next payment cycle. It noted that she had received a

total of \$67,765.89 for wage-loss compensation at the augmented rate based on an eligible dependent from June 16, 2002 to October 28, 2006. Appellant, however, was only entitled to receive \$59,460.32 in compensation based on the appropriate basic (two-thirds) rate for lack of an eligible dependent, resulting in an \$8,305.57 overpayment.<sup>4</sup> OWCP found that she was without fault in the creation of the overpayment as there was no evidence of file to demonstrate that she knew or should have known the proper course of action to be followed and that she relied on misinformation provided by OWCP that she had reason to believe was connected with the administration of benefits. It provided an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) for her completion and advised that, in order for it to consider the question of waiver or to determine a reasonable method for collection, she must provide a completed Form OWCP-20 and attach supporting financial documentation. OWCP notified appellant 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 prerecoumpment hearing. No response to the preliminary determination was received. By decision dated October 28, 2019, OWCP finalized the preliminary determination, finding that an overpayment in the amount of \$8,305.57 had occurred because appellant continued to receive compensation at the augmented rate after her spouse was no longer living with her as of May 2002. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, noting that she had not responded to the September 26, 2019 preliminary determination. OWCP required recovery by deducting \$100.00 every 28 days from appellant's continuing FECA compensation payments.

### **LEGAL PRECEDENT -- ISSUE 1**

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from a personal injury sustained while in the performance of duty.<sup>5</sup> 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 percent of his or her monthly pay. A disabled employee is entitled to an augmented compensation rate of 75 percent if he or she has one or more dependents.<sup>6</sup>

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/her support; or (c) the employee has been ordered by a court to contribute spousal support.<sup>7</sup>

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

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<sup>4</sup> The record contains a manual adjustment form and worksheets outlining the dates and calculations of the overpayment of compensation.

<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *R.G.*, Docket No. 18-1251 (issued November 26, 2019); *O.R.*, 59 ECAB 432, 436 (2008); *id.* at § 8105(a) and 8110(b).

<sup>7</sup> *Id.* at 8110(a)(2); *see O.B.*, Docket No. 19-0034 (issued April 22, 2019); *K.S.*, Docket No. 15-0940 (issued September 9, 2015).

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.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,305.57 during the period June 16, 2002 through October 28, 2006, for which she was not at fault, because she improperly received wage-loss compensation at the augmented compensation rate to which she was not entitled.

Appellant initially received compensation payments at the augmented rate (three-fourths), as she was married and lived in the same household as her spouse. She later separated from her spouse in the summer of 2002, but she did not provide an exact date. They no longer lived together and appellant denied making regular direct payments for his support. Appellant, however, continued to receive compensation at the augmented rate after she no longer had eligible dependents. As appellant reported the date of her separation as May 2002 on two EN1032 forms, OWCP properly determined that the start date of the overpayment was the beginning of the next 28-day payment cycle following May or June 16, 2002.

The record supports that OWCP erroneously paid appellant compensation based on the augmented rate (three-fourths) for the period June 16, 2002 through October 28, 2006. Appellant was paid \$67,765.89 in FECA compensation for that period at the augmented rate, but was entitled to only \$59,460.32 at basic rate. OWCP properly determined that the difference yielded an overpayment of compensation in the amount of \$8,305.57. The Board thus finds that OWCP properly determined the fact and amount of the overpayment in this case.<sup>9</sup>

### **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 when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.”<sup>10</sup>

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 on an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure

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<sup>8</sup> *E.B.*, Docket No. 19-1571 (issued December 31, 2020); *S.D.*, Docket No. 17-0309 (issued August 7, 2018); *Ralph P. Beachum, Sr.*, 55 ECAB 442, 445 (2004).

<sup>9</sup> *O.B.*, *supra* note 7; *W.A.*, Docket No. 18-0070 (issued May 14, 2018); *see D.S.*, Docket No. 17-1224 (issued August 28, 2017).

<sup>10</sup> 5 U.S.C. § 8129.

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.<sup>11</sup>

### **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.<sup>12</sup> Appellant, however, had the responsibility to timely provide financial information to OWCP, but did not do so.<sup>13</sup>

In its preliminary determination dated September 26, 2019, OWCP requested that appellant provide a completed overpayment recovery questionnaire and supporting financial information. It advised her that waiver would be denied if she 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 October 28, 2019. 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.<sup>14</sup> 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.<sup>15</sup>

Consequently, as appellant did not submit the financial information required under section 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation in the amount of \$8,305.57.<sup>16</sup>

### **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

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<sup>11</sup> 20 C.F.R. § 10.436.

<sup>12</sup> *Id.*; *see also* *B.G.*, Docket No. 20-0541 (issued April 28, 2021); *R.H.*, Docket No. 15-0392 (issued February 3, 2016).

<sup>13</sup> *Id.* at § 10.438; *see N.J.*, Docket No. 19-1170 (issued January 10, 2020).

<sup>14</sup> *B.G.*, *supra* note 12; *G.G.*, Docket No. 19-0684 (issued December 23, 2019).

<sup>15</sup> *Supra* note 13.

<sup>16</sup> 20 C.F.R. § 10.438; *see L.D.*, Docket No. 19-0606 (issued November 21, 2019); *S.A.*, Docket No. 15-0592 (issued April 9, 2015).

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.<sup>17</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by withholding \$100.00 every 28 days from appellant's continuing compensation payments.

Although OWCP provided appellant an overpayment recovery questionnaire with the September 26, 2019 preliminary determination, as noted, she did not submit a completed questionnaire or other financial information prior to the October 28, 2019 final overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>18</sup> When an individual failed to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>19</sup> The FECA procedure manual provides that, in these instances, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.<sup>20</sup> While appellant did not submit the financial information requested, the record reflects that her continuing 28-day compensation payments amount to \$1,331.00. Therefore, deducting \$100.00 every 28 days from her continuing compensation is not in excess of the 25 percent repayment rate.<sup>21</sup>

As appellant has not submitted the financial documentation to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in requiring recovery of the \$8,305.57 overpayment by deducting \$100.00 every 28 days from her continuing compensation payments.<sup>22</sup>

On appeal, appellant's representative argues that the decrease in her monthly benefits results in hardship for appellant. To determine whether or not recovery on an overpayment would defeat the purpose of FECA or be against equity and good conscience, it requested information about her income, expenses, and assets; however she did not provide the necessary documentation.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,305.57 for the period June 16, 2002 through October 28, 2006. The Board further finds that OWCP properly denied waiver of recovery of the

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<sup>17</sup> *Id.* at § 10.441; *see Steven R. Cofrancesco*, 57 ECAB 662 (2006).

<sup>18</sup> *Id.* at § 10.438; *see also A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>19</sup> *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

<sup>20</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.500.8(c)(1) (September 2018).

<sup>21</sup> *B.G.*, *supra* note 12; *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

<sup>22</sup> *M.D.*, Docket No. 19-1500 (issued February 24, 2020).

overpayment, and required recovery by deducting \$100.00 every 28 days from her continuing compensation payments.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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