

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

D.P., Appellant	)	
	)	
and	)	<b>Docket No. 21-0327</b>
	)	<b>Issued: July 1 2021</b>
	)	
U.S. POSTAL SERVICE, ATLANTA-	)	
NORTHSIDE CARRIER ANNEX, Atlanta, GA,	)	
Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 5, 2021 appellant filed a timely appeal from a September 15, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$3,759.87 for the period September 6, 2018 through July 18, 2020 for which she was not at fault because she received wage-loss compensation and schedule award compensation due to an incorrect pay rate; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether it properly required recovery of the overpayment by deducting \$588.00 from appellant's continuing schedule award compensation payments, every 28 days.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On April 28, 2016 appellant, then a 32-year-old city carrier assistant, filed a traumatic injury claim alleging that on that date she injured both knees when her knee gave out and she fell while in the performance of duty. She did not stop work. OWCP accepted the claim for right knee tear of the medial meniscus.

By decision dated March 14, 2017, OWCP granted appellant's claim for wage-loss compensation for disability from work during the period December 9 through 19, 2016, but denied her claim for wage-loss compensation for disability from work during the period December 20 through 23, 2016 because she was released to return to full-duty work, effective December 20, 2016. It paid her wage-loss compensation for temporary total disability for the period December 9 through 19, 2016 on the supplemental rolls.

On August 22, 2017 appellant returned to limited-duty work.

On September 5, 2017 appellant requested reconsideration of the March 14, 2017 decision. In an October 11, 2017 decision, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

By decision dated March 5, 2020, OWCP granted appellant a schedule award for 23 percent permanent impairment of her right lower extremity (leg). The period of the award ran for 66.24 weeks from February 1, 2020 to May 9, 2021. OWCP used September 6, 2018 for the effective date of pay rate and utilized a weekly pay rate of \$813.58, multiplied by a compensation rate of 75 percent, resulting in an award of \$610.19 per week.

In an April 27, 2020 letter, appellant requested a lump-sum payment of her schedule award.

In a lump-sum schedule award calculation dated June 16, 2020, OWCP determined that appellant would receive a lump sum in the amount of \$28,137.65 for the period February 1, 2020 to May 9, 2021 in settlement of her schedule award. On June 25, 2020 appellant elected to receive the lump-sum payment. OWCP, on July 21, 2020, informed her that the schedule award payment she had received during the previous week would be deducted from her lump-sum payment. By letter dated July 24, 2020, it requested that appellant complete an attached form to indicate whether she wished to proceed with the lump-sum payment of \$26,207.14 for the remainder of the period from July 19, 2020 to May 9, 2021 in settlement of her schedule award.

On July 30, 2020 OWCP reissued the schedule award decision with a corrected pay rate. It used August 29, 2017 for the effective date of pay rate and utilized a weekly pay rate of \$752.85, multiplied by a compensation rate of 75 percent, resulting in an award of \$564.64 per week.

OWCP, in a preliminary overpayment determination dated August 5, 2020, notified appellant that she had received an overpayment of compensation in the amount of \$3,759.87 because she was paid wage-loss compensation during the period September 6, 2018 through January 24, 2020 and schedule award compensation during the period February 1 through July 18, 2020 at an incorrect pay rate. It explained that she should have received compensation based on a weekly pay rate of \$752.85 that was effective August 29, 2017 instead of \$813.58 that was effective September 6, 2018 during the above-noted periods. OWCP calculated that, from September 6, 2018 through January 24, 2020, appellant had received a total of \$41,767.03 in wage-

loss compensation based on the weekly pay rate of \$813.58. Appellant should have been paid \$38,878.96 for the period September 6, 2018 through January 24, 2020 at the correct weekly pay rate of \$752.85. OWCP subtracted the \$38,878.96 amount appellant should have received for the period September 6, 2018 through January 24, 2020 from the \$41,767.03 amount she incorrectly received to calculate a total overpayment of \$2,888.07 for this period. It also calculated that, from February 1 through July 18, 2020, appellant had received a total of \$15,012.91 in schedule award compensation based on the weekly pay rate of \$813.58. Appellant should have been paid \$14,141.11 for the period February 1 through July 18, 2020 at the correct weekly pay rate of \$752.85. OWCP subtracted the \$14,141.11 amount she should have received for the period February 1 through July 18, 2020 from the \$15,012.91 amount she incorrectly received to calculate a total overpayment of \$871.80 for this period. It added the \$2,888.07 overpayment in wage-loss compensation and the \$871.80 overpayment in schedule award compensation to calculate a total overpayment of \$3,759.87. OWCP further advised appellant of its preliminary determination that she was not at fault in the creation of the overpayment and requested that she complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). Additionally, it notified her 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 preresoupment hearing.

Included in the record were copies of OWCP's manual adjustment forms for the period September 6, 2018 through July 18, 2020 and copies of appellant's wage-earning capacity calculations. Overpayment for the period September 6, 2018 to January 24, 2020 was calculated as \$2,888.07 and overpayment for the period February 1 through July 18, 2020 was calculated as \$871.80 for a total overpayment amount of \$3,759.87.

On September 4, 2020 appellant submitted the overpayment action request form. She requested that OWCP waive recovery of the overpayment because she was found without fault in creation of the overpayment. No financial documentation was received.

By decision dated September 15, 2020, OWCP finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$3,759.87 for the period September 6, 2018 through January 24, 2020, as it paid her wage-loss compensation and schedule award compensation at an incorrect pay rate.

### **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.<sup>2</sup> Pay rate for compensation purposes is defined in section 8101(4) as the monthly pay at the time of injury, the time disability begins, or the time disability recurs, if the recurrence is more than six months after returning to full-time work, whichever is greater.<sup>3</sup>

Section 8129(a) of FECA provides, in pertinent part, that when an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Id.* at § 8101(4).

made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.<sup>4</sup>

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

The Board finds that appellant received an overpayment of compensation in the amount of \$3,759.87 for the period September 6, 2018 through July 18, 2020 for which she was not at fault, because she received wage-loss compensation and schedule award compensation due to an incorrect pay rate.

OWCP found that appellant received an overpayment of compensation because she received wage-loss and schedule award compensation at an inaccurate pay rate for the period September 6, 2018 through July 18, 2020. It paid her wage-loss and schedule award compensation beginning September 6, 2018 using a weekly pay rate of \$813.58, effective that date, when the correct weekly pay rate was \$752.85, effective August 29, 2017. As appellant received compensation based on the incorrect date-of-injury weekly pay rate for the period September 6, 2018 through July 18, 2020, she received an overpayment of compensation.<sup>5</sup> The Board has reviewed OWCP's calculation of benefits received by appellant for the period September 6, 2018 through July 18, 2020 and finds that an overpayment of compensation in the amount of \$3,759.87 was created.

### **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.<sup>6</sup>

Recovery of an overpayment will defeat the purpose of FECA when 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.<sup>7</sup> 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

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<sup>4</sup> *Id.* at § 8129(a).

<sup>5</sup> *See C.G.*, Docket No. 18-1655 (issued June 14, 2019); *N.C.*, Docket No. 18-1070 (issued January 9, 2019); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *E.E.*, Docket No. 14-1908 (issued April 22, 2015).

<sup>6</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see A.S.*, Docket No. 17-0606 (issued December 21, 2017).

<sup>7</sup> 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).

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.<sup>8</sup>

OWCP's 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.<sup>9</sup> Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.<sup>10</sup>

### **ANALYSIS -- ISSUE 2**

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

The fact that a claimant is without fault in the creation of an overpayment does not preclude OWCP from recovering the overpayment.<sup>11</sup> Waiver is only possible if recovery would defeat the purpose of FECA or be against equity and good conscience.<sup>12</sup> Appellant, however, did not provide the requested financial documentation to OWCP.<sup>13</sup>

In its preliminary overpayment determination dated August 5, 2020, OWCP explained the importance of providing the completed Form OWCP-20 and supporting financial documentation. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. On September 4, 2020 appellant submitted the overpayment action request form. However, no additional evidence was received prior to OWCP's September 15, 2020 final overpayment determination. OWCP, therefore, did not have the necessary financial information to determine whether waiver of recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience within 30 days of the preliminary overpayment determination.<sup>14</sup> It was, therefore, required to deny waiver of recovery of the overpayment.<sup>15</sup>

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<sup>8</sup> *Id.* at § 10.437(a)(b).

<sup>9</sup> *Id.* at § 10.438(a).

<sup>10</sup> *Id.* at § 10.438(b).

<sup>11</sup> *See M.W.*, Docket No. 20-1107 (issued March 17, 2021); *L.M.*, Docket No. 19-1197 (issued January 8, 2020); *M.D.*, Docket No. 19-1500 (issued February 24, 2020); *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *R.B.*, Docket No. 15-0808 (issued October 26, 2015).

<sup>12</sup> 20 C.F.R § 10.436; *J.C.*, Docket No. 19-0122 (issued June 11, 2019).

<sup>13</sup> *Id.* at § 10.438(b); *T.J.*, Docket No. 19-1242 (issued January 13, 2020).

<sup>14</sup> *See D.B.*, Docket No. 20-0592 (issued September 21, 2020); *R.M.*, Docket No. 19-1570 (issued June 1, 2020); *E.M.*, Docket No. 19-0857 (issued December 31, 2019); *G.G.*, Docket No. 19-0684 (issued December 23, 2019).

<sup>15</sup> *Supra* note 12.

For the foregoing reasons, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

### **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 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 any hardship.<sup>16</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$588.00 from appellant's continuing schedule award compensation payments, every 28 days.

OWCP provided a Form OWCP-20 to appellant with the August 5, 2020 preliminary overpayment determination. Appellant did not complete the Form OWCP-20 or provide any financial information to support that she was financially unable to repay the debt prior to the final September 15, 2020 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>17</sup> When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>18</sup> The Federal (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>19</sup> Further, the Board has held that OWCP may properly collect an overpayment from the amount of compensation owed a claimant through a schedule award.<sup>20</sup> While appellant did not submit the financial information requested, the record reflects that her continuing 28-day compensation as of July 19, 2020 was \$2,352.00. Therefore, deducting \$588.00 every 28 days from her continuing compensation is not in excess of the 25 percent repayment rate.<sup>21</sup>

As appellant did not submit the financial documentation to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in directing recovery of the \$3,759.87 overpayment at the rate of \$588.00 every 28 days from her continuing compensation payments.

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<sup>16</sup> 20 C.F.R. § 10.441(a).

<sup>17</sup> *Id.* at § 10.438. See also *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>18</sup> See *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

<sup>19</sup> *Supra* note 7 at Chapter 6.500.8(c)(1) (September 2018).

<sup>20</sup> *W.L.*, Docket No. 16-0037 (issued June 23, 2016); *M.O.*, Docket No. 14-1133 (issued September 22, 2014)

<sup>21</sup> *D.B.*, *supra* note 14; *E.M.*, *supra* note 14.

**CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$3,759.87 for the period September 6, 2018 through July 18, 2020 for which she was not at fault, because she received wage-loss compensation and schedule award compensation due to an incorrect pay rate. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$588.00 from her continuing schedule award compensation payments.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 15, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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