

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

D.B., Appellant

and

**U.S. POSTAL SERVICE, CHURCH STREET
STATION, New York, NY, Employer**

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**Docket No. 21-0009
Issued: June 7, 2021**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 1, 2020 appellant filed a timely appeal from a September 11, 2020 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.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$311.44 for the period July 15 through 18, 2020 for which she was without fault, as she continued to receive total disability compensation following her return to full-time modified-duty work; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 25, 2019 appellant, then a 23-year-old sales service distribution associate clerk, filed an occupational disease claim (Form CA-2) for a right wrist injury sustained as a result of her repetitive federal work duties including processing and handling mail. She stopped work on April 25, 2019. On July 26, 2019 OWCP accepted the claim for sprain and extensor tenosynovitis of the right wrist. The acceptance letter informed appellant that wage-loss compensation for total disability was available only if she was unable to perform the duties of her regular position and that she should notify OWCP immediately if she returned to work or obtained new employment. OWCP also advised appellant that, if she received compensation payments by electronic funds transfer (EFT), she should monitor her EFT deposits carefully, at least every two weeks. If appellant worked during a period in which she received compensation, she should immediately notify OWCP in order that the overpayment could be collected.

OWCP paid appellant wage-loss compensation for total disability on the supplemental rolls, effective April 26, 2019 through July 18, 2020. Appellant received wage-loss compensation by EFT payments.

An undated report of work status (Form CA-3) from the employing establishment indicated that appellant had returned to full-time modified-duty work with restrictions on July 15, 2020.

In a compensation termination calculation worksheet, OWCP terminated appellant's wage-loss compensation on July 17, 2020. Additionally, it noted that for the compensation period July 15 through 18, 2020 appellant received an overpayment of \$311.44.

On July 23, 2020 OWCP advised appellant of its preliminary overpayment determination that she had received an overpayment of compensation in the amount of \$311.44 for the period July 15 through 18, 2020 because she received compensation for total disability after she returned to full-time limited-duty work on July 15, 2020. It also made a preliminary finding that she was without fault in the creation of the overpayment because less than 30 days had elapsed since the EFT deposit was made, which did not allow her ample time to receive and review a statement from her financial institution, which showed the details of the improper payment. OWCP requested that appellant complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit supporting financial documentation. Additionally, it informed her that, within 30 days, she could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing.

On an August 4, 2020 overpayment action request form, appellant requested that OWCP make a decision based on a review of the written record. She also requested a waiver of recovery of the overpayment because she was found to be without fault in the creation of the overpayment. In an accompanying Form OWCP-20 of even date, appellant reported that her monthly income totaled zero. She also reported monthly expenses of \$2,000.00 for rent, \$250.00 for food, \$100.00 for clothing, \$200.00 for utilities, \$500.00 for other expenses, and \$40.00 for local taxes, totaling \$3,090.00. Additionally, appellant reported funds of \$150.00 from a savings account. She submitted documentation regarding cable/internet service, rent payment, and tax bill as documentation of various monthly expenses.

OWCP, by decision dated September 11, 2020, finalized the preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$311.44 for the period July 15 through 18, 2020 because she continued to receive wage-loss compensation following her return to full-time limited-duty work. It determined that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP ordered appellant to repay the \$311.44 overpayment in full within 30 days.

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.²

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.³ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁴

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$311.44 for the period July 15 through 18, 2020 for which she was not at fault, as she continued to receive total disability compensation following her return to full-time modified-duty work.

The record establishes that appellant returned to full-time modified-duty work at the employing establishment on July 15, 2020. Appellant received wage-loss compensation for total disability from July 15 through 18, 2020. As noted above, she was not entitled to receive compensation for total disability after her return to work.⁵ Thus, an overpayment of compensation was created in this case.

With regard to the amount of overpayment, the Board finds that OWCP properly calculated appellant's compensation paid for the period July 15 through 18, 2020. Thus, the Board finds that

² *Id.* at § 8102(a).

³ *Id.* at § 8116(a).

⁴ *M.P.*, Docket No. 20-1035 (issued December 1, 2020); *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *B.H.*, Docket No. 09-0292 (issued September 1, 2009); *Danny E. Haley*, 56 ECAB 393 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.300.4(g) (September 2018).

⁵ *Supra* notes 3 and 4.

appellant received an overpayment of compensation in the amount of \$311.44 for the period July 15 through 18, 2020.

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.⁶ Thus, a finding that appellant was without fault does not automatically result in waiver 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.⁷

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.⁸ 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.⁹

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.¹⁰ Failure to submit the requested information within 30 days of the request will result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹¹

ANALYSIS -- ISSUE 2

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

⁶ 5 U.S.C. § 8129(a)-(b).

⁷ See *R.Q.*, Docket No. 18-0964 (issued October 8, 2019); *S.J.*, Docket No. 09-0370 (issued August 18, 2009).

⁸ 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).

⁹ *Id.* at § 10.437(a)(b).

¹⁰ *Id.* at § 10.438(a).

¹¹ *Id.* at § 10.438(b).

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.¹² Appellant, however, had the responsibility to provide the appropriate financial information to OWCP.¹³ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.¹⁴

In its preliminary overpayment determination dated July 23, 2020, OWCP requested that appellant provide a completed overpayment recovery questionnaire and supporting financial information. It advised her that waiver of recovery would be denied if she failed to furnish the requested financial information within 30 days. Although appellant returned the overpayment recovery questionnaire, she listed her monthly income as zero even though she was working at the time, and failed to substantiate her reported monthly expenses of \$3,090.00. As a result, OWCP did not have the necessary financial information to properly determine whether recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience. 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 \$311.44.¹⁵

Further, appellant has submitted no evidence that she had relied upon the incorrect payment to her detriment or that she would experience severe financial hardship attempting to repay the debt.¹⁶ Consequently, as she did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.¹⁷

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$311.44 for the period July 15 through 18, 2020 for which she was not at fault, as she continued to receive total disability compensation following her return to full-time limited-duty work. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

¹² *Id.*; see also *supra* note 7.

¹³ *Id.*

¹⁴ See *A.H., Jr.*, Docket No. 20-0372 (issued November 19, 2020); *E.M.*, Docket No. 19-0857 (issued December 31, 2019); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.2 (September 2018).

¹⁵ See *supra* note 7; see also *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

¹⁶ See *G.G.*, Docket No. 19-0684 (issued December 23, 2019); *V.T.*, Docket No. 18-0628 (issued October 25, 2018).

¹⁷ See *G.G., id.*; *A.F.*, Docket No. 19-0054 (issued June 12, 2019); see *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 2021
Washington, DC

Alec J. Koromilas, 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