

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

C.F., Appellant	)	
	)	
and	)	<b>Docket No. 20-1279</b>
	)	<b>Issued: March 3, 2021</b>
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, North Reading, MA, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 17, 2020 appellant filed a timely appeal from a January 17, 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.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly denied waiver of recovery of the overpayment for the period July 1, 2013 through September 16, 2016 because appellant received wage-loss

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

<sup>2</sup> The Board notes that, following the January 17, 2020 decision, appellant submitted additional evidence to OWCP. 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.*

compensation at an improper rate; and (2) whether OWCP properly required recovery of the overpayment by deducting \$175.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 2, 2003 appellant, then a 37-year-old part-time flexible mail handler, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right foot injury when she fell down while in the performance of duty. OWCP accepted her claim for right foot fracture and right lower limb mononeuritis. It paid wage-loss compensation on the supplemental rolls beginning October 5, 2003 and placed appellant on the periodic rolls effective August 8, 2004.

By letter dated August 3, 2007, OWCP requested that appellant complete and return an enclosed Form CA-1032. The CA-1032 form also informed her that a claimant who has no eligible dependents was paid compensation at 66 2/3 percent of the applicable pay rate and a claimant who has one or more eligible dependents is paid compensation at 75 percent of the applicable pay rate. It advised appellant that she may claim compensation for a dependent if she had on or more of the following:

“(a) a husband or wife who lives with you; (b) an unmarried child, including an adopted child or stepchild, who lives with you and is under 18 years of age; (c) an unmarried child who is 18 or over, but who cannot support himself or herself because of mental or physical disability; (d) an unmarried child under 23 years of age who is a full-time student and has not completed four years of school beyond the high school level; and (e) a parent who totally depends on you for support.”

On October 11, 2007 OWCP received a Form CA-1032 dated September 21, 2007, in which appellant indicated that she was claiming dependency status on account of her two sons, J.F., Jr., date of birth May 16, 1989 and L.F., date of birth September 21, 1992, who were still in high school. Appellant provided subsequent CA-1032 forms received on July 8, 2009, November 5, 2010, and January 11, 2012, in which she continued to indicate that she was claiming dependency status on account of her son, L.F.

In a January 12, 2012 letter, OWCP requested that appellant provide verification of full-time student status or incapacity for self-support with respect to her son L.F. It provided her with a student dependency form to complete and return with respect to full time student status. OWCP also advised appellant that if her son L.F. was incapable of self-support, she may claim continuing compensation by submitting a medical report from the attending physician.

On January 23, 2012 appellant responded to OWCP's letter. She checked a box marked “Yes” indicating that her son, L.F., was attending school on a full time basis. Appellant noted that

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<sup>3</sup> Docket No. 18-1344 (issued August 22, 2019).

her son was still in high school and had special needs. A school official completed Part B of the form and reported that her son attended a local high school.

Appellant continued to submit Forms CA-1032 dated August 8, 2012, August 21, 2013, September 13, 2014, and September 3, 2015, in which she indicated that she was claiming dependency status on account of her son, L.F. In the September 3, 2015 Form CA-1032, she noted that her son had a mental illness and was not capable of self-support.

On September 9, 2016 OWCP received a Form CA-1032 dated August 31, 2016, in which appellant indicated that she was no longer claiming dependency status on account of her son, L.F. OWCP adjusted her wage-loss compensation rate from 75 percent to 66 2/3 percent, effective September 18, 2016.

In a preliminary overpayment determination dated February 1, 2017, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$13,983.86 for the period July 1, 2013 through September 17, 2016 because she was not entitled to receive compensation at the augmented rate of 75 percent for one dependent. It provided a calculation of the overpayment. OWCP also found that appellant was at fault in the creation of the overpayment because she accepted a payment that she knew or reasonably should have known was incorrect. It provided appellant an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). Additionally, OWCP 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 prerecoupment hearing.

On March 6, 2017 appellant requested a telephone conference with the district office regarding the issues of fault and possible waiver. She alleged that the overpayment occurred at no fault of her own because her son had special needs and a mental disability, which required psychiatric care. Appellant also submitted a completed Form OWCP-20, signed on February 27, 2017, in which she provided figures for her monthly income, monthly expenses, and assets. OWCP received bank account statements, billing statements, utility bills, and credit card statements.

In a February 27, 2017 statement, appellant indicated that her son had been on medication for a number of years due to mental illness, was in special classes, and saw a psychiatrist at a Children's Hospital in Boston, MA. She provided psychiatric progress notes and medical reports and submitted various documents regarding appellant's eligibility for special education services.

In a development letter dated April 26, 2017, OWCP advised appellant that it needed verification of student status in order to determine her son's eligibility for dependency and provided her with a student dependency form to complete and return.

In a student dependency form received by OWCP on May 7, 2017 a school official completed Part B of the form and noted that appellant's son attended vocational school from September 2016 to February 2017.

By decision dated February 22, 2018, OWCP finalized the February 1, 2017 preliminary determination, finding that appellant had received an overpayment of compensation in the amount of \$13, 983.86, for the period July 1, 2013 through September 17, 2016, because she received

wage-loss compensation at an improper rate for one dependent. It noted that she did not submit sufficient evidence to demonstrate that she had a qualified dependent during this period which would entitle her to receive augmented compensation at the 75 percent rate. OWCP also found that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

Appellant filed an appeal to the Board.

By decision dated August 22, 2019, the Board affirmed the February 22, 2018 decision in part and remanded it in part. The Board found that OWCP had properly determined that appellant had received an overpayment of compensation in the amount of \$13,983.86 for the period July 1, 2013 through September 16, 2016 because she received wage-loss compensation at an improper rate. The Board also found that OWCP did not properly determine that she was at fault in the creation of the overpayment. The Board explained that the evidence of the record was insufficient to establish that at the time that appellant completed the CA-1032 forms covering the period July 1, 2013 to September 16, 2016, she knew or should have known that her son was not an eligible dependent under FECA. The case was remanded for OWCP to consider waiver of recovery of the amount of overpayment.

OWCP subsequently issued an August 30, 2019 letter to appellant requesting that she complete the enclosed Form OWCP-20 and include three months of financial statements in order to determine whether she was entitled to waiver of recovery of the overpayment for the period July 1, 2013 to September 17, 2016.

On September 27, 2019 OWCP received a Form OWCP-20 completed by appellant on September 13, 2019. She reported a total monthly income of \$2,701.00. Appellant also indicated total monthly expenses of \$2,763.35 including \$1,856.35 for her mortgage, \$350.00 for food, \$50.00 for clothing, \$297.00 for utilities, and \$210.00 for "other expenses." She reported that she had monthly payments totaling \$80.00 to credit companies. Appellant noted that she had cash on hand of \$15.00 and a checking account balance of \$3,360.46.

In a handwritten statement, appellant listed her expenses, including mortgage, water, trash, real estate tax, electricity bill, dental, prescriptions, medical bills, credit cards, and internet/television/cable bill for the past three months.

Appellant submitted bank statements dated June, July, and August 2019, mortgage billing statements dated June, July, and August 2019, water and trash bills for May and August 2019, a preliminary real estate tax bill for the fiscal year 2020, electricity utility billing statements for July, August, and September 2019, medical bills dated June 17, July 15 and 31, and September 9, 2019, health insurance explanation of benefit documents that covered dates of service in June and August 2019, an internet/telephone and cable bill dated July 22, 2019, and retail credit card statements dated July, August, and September 2019.

In an October 18, 2019 letter, OWCP requested information from appellant regarding her Thrift Savings Plan (TSP) account or other retirement savings account.

On November 5, 2019 OWCP received appellant's response to its October 28, 2019 letter. Appellant responded "Yes" indicating that she had a TSP account. She submitted a letter from TSP, which demonstrated that she had a current account balance of \$13,768.94.

In a January 17, 2020 decision, OWCP denied waiver of recovery of the overpayment for the period July 1, 2013 through September 17, 2016. It noted that appellant's asset base exceeded the amount of \$6,200.00 for an individual and that she had not established that recovery would be against equity and good conscience. OWCP determined that recovery of the overpayment would require deducting \$175.00 from her continuing compensation payments every 28 days.

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

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>4</sup> 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.<sup>5</sup>

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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>6</sup> An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>7</sup> Also, assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.<sup>8</sup> An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.<sup>9</sup> Non liquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home,

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<sup>4</sup> 5 U.S.C. § 8129(a)-(b).

<sup>5</sup> *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019); *L.S.*, 59 ECAB 350 (2008).

<sup>6</sup> 20 C.F.R. § 10.436(a)(b).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(3) (September 2018).

<sup>8</sup> *Id.* at Chapter 6.400.4(a)(2) (September 2018).

<sup>9</sup> *Id.* at Chapter 6.400.4(b)(3).

furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.<sup>10</sup>

Section 10.437 of OWCP's implementing regulations provides that 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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>11</sup> OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.<sup>12</sup>

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

The Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation.<sup>13</sup>

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered. As noted above, even if a claimant is found without fault in the creation of the overpayment, recovery of the overpayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>14</sup>

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not shown both that she needs substantially all of her current income to meet ordinary and necessary living expenses and that her assets do not exceed the allowable resource base. In the Form OWCP-20, appellant indicated that she had \$3,360.46 in her checking account. She also provided a letter dated October 23, 2019 from TSP, which confirmed that she had \$13,768.94 in her TSP account balance. As noted above, in determining whether recovery of the overpayment would defeat the purpose of FECA, OWCP considers whether assets exceed a resource base of \$6,200.00 for an individual.<sup>15</sup> Accordingly, the Board finds that appellant, who reported a total of \$17,129.40 in liquid and non-liquid assets, has not met the standard for waiver of recovery of the overpayment because her assets exceed the allowable resource base.<sup>16</sup> Because appellant has not met the second prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to

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<sup>10</sup> *Id.* at Chapter 6.400.4(b)(3)(a), (b).

<sup>11</sup> 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

<sup>12</sup> *Supra* note 7 at Chapter 6.400.4(c)(3) (September 2018).

<sup>13</sup> *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>14</sup> *Supra* note 5.

<sup>15</sup> *Supra* note 8.

<sup>16</sup> *L.L.*, Docket No. 19-0097 (issued March 20, 2020); *H.F.*, Docket No. 17-0101 (issued September 5, 2017).

consider the first prong of the test, *i.e.*, whether she needs substantially all of her current income to meet ordinary and necessary living expenses.<sup>17</sup>

On appeal, appellant argues that denial of waiver of recovery would cause her severe financial hardship. She contends that she was living at the poverty level and had to apply for food stamps and fuel assistance, had multiple medical bills due to her life-long neurological disease, and she was unable to pay for basic necessities. The Board notes, however, that appellant had sufficient assets that could be used for repayment of the debt and to fund her budget shortfalls.<sup>18</sup>

The Board also finds that appellant did not establish that she was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience. Appellant has not shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt or that she has relinquished a valuable right or changed her position for the worse in reliance on the payments which created the overpayment.<sup>19</sup>

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly refused to waive recovery of the overpayment.<sup>20</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.<sup>21</sup>

Section 10.441(a) of OWCP's regulations<sup>22</sup> provides in pertinent part:

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 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>23</sup>

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<sup>17</sup> *M.H.*, Docket No. 19-1497 (issued September 9, 2020).

<sup>18</sup> *Id.*

<sup>19</sup> *See B.C.*, Docket No. 19-0629 (issued June 2, 2020); *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

<sup>20</sup> *S.W.*, Docket No. 20-0363 (issued November 23, 2020).

<sup>21</sup> 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

<sup>22</sup> *Id.* at § 10.441(a).

<sup>23</sup> *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

## **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$175.00 from appellant's continuing compensation payments every 28 days.

In determining whether appellant could repay the overpayment through deductions of \$175.00 from her continuing compensation payments, OWCP took into consideration the financial information she submitted as well as factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize any resulting hardship, while at the same time liquidating the debt in a reasonably prompt fashion.<sup>24</sup> Therefore, the Board finds that OWCP properly required recovery of the overpayment by deducting \$175.00 from her compensation payments every 28 days.<sup>25</sup>

## **CONCLUSION**

The Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation and properly required recovery of the overpayment by deducting \$175.00 from appellant's continuing compensation payments every 28 days.

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<sup>24</sup> *J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.F.*, Docket No. 15-0489 (issued May 11, 2015).

<sup>25</sup> *J.B.*, Docket No. 19-1734 (issued November 5, 2020).



**ORDER**

**IT IS HEREBY ORDERED THAT** the January 17, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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