

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

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| S.S., Appellant |) | |
| |) | |
| and |) | Docket No. 20-0800 |
| |) | Issued: November 4, 2021 |
| U.S. POSTAL SERVICE, BROOKSHIRE POST |) | |
| OFFICE, Brookshire, TX, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 28, 2020 appellant filed a timely appeal from a December 13, 2019 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.²

ISSUE

The issue is whether OWCP properly required recovery of the overpayment by deducting \$423.52 from her continuing compensation payments every 28 days.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 13, 2019 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

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

On April 15, 2002 appellant, then a 50-year-old postmaster, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition due to factors of her federal employment. By decision dated December 19, 2002, OWCP accepted that she sustained a brief period of aggravation of depression that had resolved. It found that appellant was entitled to wage-loss compensation and medical benefits only for the period January 19, 2000 to December 19, 2002.

Appellant filed a claim for compensation (Form CA-7) for disability from work during the period January 19, 2000 to July 16, 2001. On February 14, 2003 OWCP paid her wage-loss compensation totaling \$6,920.70 for the period January 19, 2000 through July 16, 2001.

In a July 28, 2005 letter, appellant requested 164 hours of leave buy back. By decision dated June 13, 2007, OWCP denied her claim for leave buy back.

In a preliminary determination also dated June 13, 2007, OWCP found that an overpayment of compensation in the amount of \$4,666.20 had been created because appellant was paid for 368 hours for the period January 19, 2000 through July 16, 2001 when she was only entitled to 120 hours. On July 12, 2007 appellant submitted a partially completed overpayment recovery questionnaire (Form OWCP-20) and an overpayment action request in which she requested a prerecoupment hearing. Following a preliminary review, by decision dated December 31, 2007, an OWCP hearing representative set aside the June 13, 2007 preliminary overpayment determination and remanded the case to OWCP.

On May 14, 2008 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$4,142.76 was created, for which appellant was without fault. It explained that, based on pay rate information beginning January 31, 2001, it had recomputed the amount of compensation appellant was entitled to for the period May 8 through July 13, 2001 and determined that she was entitled to 148 hours of LWOP using the recurrent pay rate of \$1,126.19 per week which resulted in the amount of \$2,777.94. OWCP noted that on February 14, 2003 it had paid appellant \$6,920.70 in compensation for 348 hours of LWOP when she was only entitled to \$2,777.94 for 148 hours of LWOP. Therefore, an overpayment of compensation in the amount of \$4,142.76 had been created.

On June 14, 2008 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. On November 25, 2008 OWCP provided her with another Form OWCP-20 for her completion, noting that updated information was needed.

By decision dated January 29, 2009, an OWCP hearing representative finalized the May 14, 2008 preliminary overpayment determination that an overpayment of compensation in

³ Docket No. 07-2336 (issued April 14, 2008).

the amount of \$4,142.76 had been created because appellant had erroneously been paid FECA compensation for the period May 8 through July 15, 2001 when she had also received sick leave for this period. She found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because she had not completed a Form OWCP-20 or provided financial documentation to support waiver. The hearing representative required recovery of the overpayment in full.

By decision dated December 13, 2019, OWCP found that an overpayment of compensation with a current balance of \$5,437.41 existed regarding debt No. xxxxxx243 in which she was concurrently paid FECA compensation for the period May 8 through July 13, 2001. It noted that a preliminary overpayment was issued on May 14, 2008 and that a final determination was issued on January 29, 2009.⁴ OWCP had referred the debt to the Department of the Treasury for servicing on July 31, 2009, and additional payments had been received. It explained that appellant was currently in receipt of wage-loss compensation payments on the automated periodic rolls under OWCP File No. xxxxxx135 in the amount of \$423.52 every 28 days. OWCP noted that section 10.441 of its regulations provided that, when an overpayment had been made to an individual who was entitled to further payments, the overpaid individual should refund the amount of the overpayment as soon as the error was discovered, and that if no refund was made, OWCP should decrease later payments, taking into consideration financial circumstances. It indicated that appellant had failed to provide a requested overpayment recovery questionnaire and set recovery at \$423.52 every 28 days from appellant's continuing compensation payments, effective January 4, 2020.

LEGAL PRECEDENT

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.⁵

Section 10.441 of OWCP's regulations provides that, when an overpayment of compensation 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

⁴ OWCP noted in its December 13, 2019 decision that "A preliminary finding of fault was issued on May 14, 2008 and a final determination was issued on January 29, 2009." However, this appears to be a typographical error as appellant was found without fault in the May 14, 2008 and January 29, 2009 decisions.

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

compensation, the financial circumstances of the individual, and any other relevant factors so as to minimize hardship.⁶

ANALYSIS

The Board finds that OWCP properly required recovery of the overpayment by deducting \$423.52 from appellant's continuing compensation payments every 28 days.

Although appellant submitted a partially-completed overpayment recovery questionnaire in response to the June 13, 2007 preliminary overpayment determination, she had not submitted a completed questionnaire or supporting financial documentation prior to the December 13, 2019 decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.⁷ When an individual fails to provide the necessary financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.⁸ The record supports that, in requiring recovery of the overpayment, OWCP took into consideration the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize resulting hardship. Therefore, OWCP properly required recovery of the overpayment by deducting \$423.52 from his continuing compensation every 28 days.⁹

CONCLUSION

The Board finds that OWCP properly required recovery of the overpayment by deducting \$423.52 from appellant's continuing compensation payments every 28 days.

⁶ *Id.*

⁷ 20 C.F.R. § 10.438; *see also* A.F., Docket No. 19-0054 (issued June 12, 2019).

⁸ *See* B.A., Docket No. 20-0947 (issued July 15, 2021); A.S., Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

⁹ *See* B.A., *id.*

ORDER

IT IS HEREBY ORDERED THAT the December 13, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 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