



## ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,180.55 for the period February 2 through March 28, 2020 because she continued to receive wage-loss compensation to which she was not entitled; (2) whether OWCP properly determined that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$250.00 every 28 days from appellant's continuing compensation payments.

## FACTUAL HISTORY

On April 24, 2012 appellant, then a 37-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on April 6, 2012 she sustained a back injury when she lifted a bag and turned her body and felt a pull while in the performance of duty. OWCP accepted her claim for left lumbosacral radiculopathy. It paid appellant wage-loss compensation on the supplemental rolls commencing June 15, 2012 and on the periodic rolls commencing August 26, 2012.

By decision dated January 21, 2020, OWCP reduced appellant's wage-loss compensation, effective February 2, 2020, based on her capacity to earn wages in the constructed position of customer service representative. It found that she was capable of earning \$710.80 per week in this position. OWCP determined the amount of the reduction in wage-loss compensation by applying the *Shadrick* formula to calculate appellant's loss of wage-earning capacity, a formula which was derived from principles contained in the case of *Albert C. Shadrick*.<sup>3</sup> It advised her that, effective February 2, 2020, her new net amount of compensation received each four weeks would be \$582.40.

OWCP issued appellant a paper check on February 29, 2020 for \$2,648.40 in wage-loss compensation covering the period February 2 through 29, 2020. It also issued her a paper check on March 28, 2020 for \$2,710.40 in wage-loss compensation covering the period March 1 through 28, 2020. Each of the checks indicated on its face the respective period of compensation it covered.<sup>4</sup>

On April 20, 2020 OWCP issued a preliminary notice, advising appellant of its preliminary overpayment determination that she received an overpayment of compensation in the amount of \$4,180.55 for the period February 2 through March 28, 2020. It indicated, "[t]he overpayment occurred because [OWCP] failed to administratively adjust the periodic roll disbursement record to align with the reduction of compensation as stipulated in the (enclosed) finalized notice of wage-earning capacity determination released on [January 21, 2020]." OWCP then calculated the overpayment by applying the *Shadrick* formula to calculate appellant's loss of wage-earning capacity for the period February 2 through March 28, 2020. It indicated that she was only entitled to receive \$582.40 for the period February 2 through 29, 2020, and \$596.40 for the period March 1

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<sup>3</sup> 5 ECAB 376 (1953); 20 C.F.R. § 10.403(d)-(e).

<sup>4</sup> See *Order to Complete Record Within 30 Days*, Docket No. 20-1482 (issued August 12, 2021).

through 28, 2020.<sup>5</sup> OWCP noted, however, that appellant received a check on February 29, 2020 for \$2,648.40 in wage-loss compensation covering the period February 2 through 29, 2020, as well as a check on March 28, 2020 for \$2,710.40 in wage-loss compensation covering the period March 1 through 28, 2020. It also preliminarily determined that she was at fault in the creation of the overpayment as she accepted payments, which she knew or should have known were incorrect.

OWCP provided appellant with an overpayment action request form and 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 precoupment hearing. It also advised her that she could submit evidence challenging the fact, amount, or finding of fault, and request waiver of recovery of the overpayment. OWCP requested that appellant complete and return an overpayment recovery questionnaire (Form OWCP-20) within 30 days. It also requested that she submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income and expenses. No response was received.

By decision dated July 29, 2020, OWCP finalized its preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$4,180.55. It also finalized its preliminary determination that she was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

OWCP required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments every 28 days.

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

Section 8102(a) of FECA<sup>6</sup> 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 his or her duty.<sup>7</sup> Section 8129(a) of FECA provides, in pertinent part:

“When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.”<sup>8</sup>

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<sup>5</sup> OWCP indicated that the figure was higher for the latter period due to cost-of-living adjustments.

<sup>6</sup> *Supra* note 1.

<sup>7</sup> *Id.* at § 8102(a).

<sup>8</sup> *Id.* at § 8129(a).

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount \$4,180.55 for the period February 2 through March 28, 2020 because she continued to receive wage-loss compensation to which she was not entitled.

OWCP found that, in accordance with a January 21, 2020 decision, which reduced appellant's wage-loss compensation effective February 2, 2020, she was only entitled to receive \$582.40 for the period February 2 through 29, 2020, and \$596.40 for the period March 1 through 28, 2020.<sup>9</sup> However, appellant received a check on February 29, 2020 for \$2,648.40 in wage-loss compensation covering the period February 2 through 29, 2020, and another check on March 28, 2020 for \$2,710.40 in wage-loss compensation covering the period March 1 through 28, 2020. The difference between the amount of wage-loss compensation appellant received for the period February 2 through March 28, 2020, and amount to which she was entitled for this period is \$4,180.55. For these reasons, the Board finds that appellant received an overpayment of compensation in the amount of \$4,180.55 for that period. Therefore, fact and amount of overpayment have been established.

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

Section 8129(a) of FECA provides that where an overpayment of compensation has been made "because of an error of fact or law," adjustment shall be made by decreasing later payments to which an individual is entitled.<sup>10</sup> The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): "[a]djustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience."<sup>11</sup> No waiver of payment is possible if the claimant is not "without fault" in helping to create the overpayment.<sup>12</sup>

In determining whether an individual is not "without fault" or alternatively "at fault" in the creation of an overpayment, section 10.433(a) of OWCP's regulations provides in relevant art:

"A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment:

- (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or

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<sup>9</sup> OWCP indicated that the figure was higher for the latter period due to cost-of-living adjustments.

<sup>10</sup> 5 U.S.C. § 8129(a).

<sup>11</sup> *Id.* at § 8129(b).

<sup>12</sup> *L.J.*, 59 ECAB 264 (2007).

(2) Failed to provide information which he or she knew or should have known to be material; or

(3) Accepted a payment which he or she knew or should have known to be incorrect....”<sup>13</sup>

Section 10.433(b) of OWCP’s regulations provides:

“Whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual’s capacity to realize that he or she is being overpaid.”<sup>14</sup>

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

The Board finds that OWCP properly determined that appellant was at fault in the creation of the overpayment of compensation, thereby precluding waiver of recovery of the overpayment.

As noted above, OWCP issued appellant a check on February 29, 2020 for \$2,648.40 in wage-loss compensation covering the period February 2 through 29, 2020. It also issued her a check on March 28, 2020 for \$2,710.40 in wage-loss compensation covering the period March 1 through 28, 2020. Given that appellant had received the January 21, 2020 OWCP decision explicitly delineating the reduction of her wage-loss compensation effective February 2, 2020, and each of the checks indicated on its face the respective period of compensation it covered, appellant accepted payments which she knew or should have known were incorrect. Thus, OWCP is required by law to recover the overpayment.<sup>15</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

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>16</sup> Section 10.441 of Title 20 of the Code of Federal Regulations provides that if an overpayment of compensation has been made to one entitled to future payments, proper adjustment shall be made by decreasing subsequent payments of compensation, “taking into account the probable extent of future

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<sup>13</sup> 20 C.F.R. § 10.433(a).

<sup>14</sup> *Id.* at 10.433(b).

<sup>15</sup> *Id.* at § 10.421(d); *see L.J.*, 50 ECAB 264 (2007).

<sup>16</sup> *R.W.*, Docket No. 19-0451 (issued August 7, 2019); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Albert Pintero*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”<sup>17</sup>

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

The Board finds that OWCP improperly required repayment of the overpayment by deducting \$250.00 every 28 days from appellant’s compensation payments.

While appellant requested waiver of recovery of the overpayment, she did not complete the Form OWCP-20 or otherwise provide financial information. OWCP’s regulations provide that the overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>18</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>19</sup> The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.<sup>20</sup>

OWCP advised appellant that her new net FECA wage-loss compensation payments would be \$582.40, effective February 2, 2020. The Board however notes that 25 percent of \$582.40 is \$145.60. The Board therefore finds that OWCP improperly required recovery of the overpayment by deducting \$250.00 every 28 days from appellant’s compensation payments.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,180.55 for the period February 2 through March 28, 2020 because she continued to receive wage-loss compensation to which she was not entitled. The Board further finds that OWCP properly determined that appellant was at fault in the creation of the overpayment of compensation, thereby precluding waiver of recovery of the overpayment. However, the Board also finds that OWCP improperly required recovery of the overpayment by deducting \$250.00 every 28 days from appellant’s compensation payments.

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<sup>17</sup> 20 C.F.R. § 10.441; *see A.F.*, Docket No. 19-0054 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>18</sup> 20 C.F.R. § 10.438. *See also F.B.*, Docket No. 21-0680 (issued February 23, 2022); *A.F.*, *id.*

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

<sup>20</sup> *See* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.500.8c(1) (September 2018); *F.B.*, *supra* note 18; *D.H.*, Docket No. 20-1064 (issued December 14, 2020); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 29, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: September 23, 2022  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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