

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

D.C., Appellant)	
)	
and)	Docket No. 21-0913
)	Issued: December 8, 2023
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Boston, MA, Employer)	
)	

Appearances:
Richard Heavey, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On May 24, 2021 appellant, through counsel, filed a timely appeal from January 20 and March 2, 2021 merit decisions and an April 26, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act²

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

(FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUES

The issues are: (1) whether OWCP properly determined that appellant forfeited her right to compensation for the periods February 5 through October 17, 2015, August 12, 2016, and March 1, 2017 through November 10, 2018, pursuant 5 U.S.C. § 8106(b)(2) of FECA, because she knowingly failed to report her employment activities and/or earnings; (2) whether OWCP properly found that appellant received an overpayment of compensation in the amount of \$108,277.62 for the periods February 5 through October 17, 2015, August 12, 2016, and March 1, 2017 as she forfeited her entitlement to compensation; (3) whether OWCP properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment; (4) whether OWCP properly required recovery of the overpayment by deducting \$1,000.00 from appellant's continuing compensation payments every 28 days; and (5) whether OWCP properly denied appellant's request for a preresoucement hearing as untimely filed.

FACTUAL HISTORY

On December 21, 2014 appellant, then a 59-year-old building equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her right shoulder, right upper arm, the right side of her head, and her left wrist when she slipped and fell on an escalator landing while in the performance of duty. OWCP accepted the claim for a contusion of the right humerus and elbow, right shoulder sprain, and right rotator cuff tendinitis. It subsequently expanded its acceptance of the claim to include cervicalgia. OWCP paid appellant wage-loss compensation.

On November 11, 2015 appellant signed a financial disclosure statement (Form EN-1032), which contained language advising her what type of employment activities, earnings, and volunteer activities that she was required to report for each 15-month period prior to the time she signed each form. The EN-1032 form instructed her to report all employment for which she received a salary, wages, income, sales commissions, piecework, or payment of any kind. Appellant was directed to report all self-employment or involvement in business enterprises, including (but not limited to) farming, sales work, operating a business, and providing services in exchange for money, goods, or other services. The form contained a strongly-worded certification clause informing her of the consequences of not accurately reporting her employment activities, such as being subjected to criminal penalties and losing the right to receive workers' compensation. On the EN-1032 form appellant indicated that, during the previous 15-month period covered by the form, she had worked for the employing establishment until December 21, 2014, but had not

³ The Board notes that, following the April 26, 2021 decisions, 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.*

otherwise worked for an employer or been self-employed, had not been involved in a business enterprise, and had not engaged in volunteer work.

On October 1, 2016 appellant filed a claim for compensation (Form CA-7) for disability from work on August 12, 2016. The form clearly advised that she must report any and all earnings from employment outside of her federal job, including any employment for which she received a salary, wages, income, sales commissions, or payment of any kind during the period claimed. It instructed her to include self-employment, odd jobs, and involvement in business enterprises, and warned that “[f]raudulently concealing employment or failing to report income may result in forfeiture of compensation benefits and/or criminal prosecution.” When asked if she worked outside of her federal job for the period in question, appellant checked the box marked “No.”

On April 14, 2017 OWCP expanded its acceptance of the claim to include lateral epicondylitis of the right elbow, right carpal tunnel syndrome, a right lesion of the ulnar nerve, and contracture of the left small finger proximal interphalangeal joint.

On November 20, 2017 appellant signed an EN-1032 form, wherein she reported her employment and earnings history for the preceding 15-month period. She related that she had worked for the employing establishment from April 20, 2016 through February 26, 2017. Appellant advised that she did not otherwise engage in employment activities or receive earnings from employment, did not participate in self-employment, and did not perform volunteer work.

On a Form EN-1032 signed November 10, 2018, she indicated that she had not performed any employment, engaged in self-employment, or performed volunteer work.

In a report of investigation dated June 17, 2019, A.V., a special agent with the employing establishment’s Office of Inspector General (OIG), advised that appellant owned a dog rescue, Donna Doggy Rescue (DDR), which she had registered with the state on January 1, 2014. Appellant also belonged to the New England English Springer Spaniel Rescue (NEESSR) beginning in March 2013 and the Eastern English Springer Spaniel Club (EESSC) beginning in November 2015. She appeared in a photograph taken at an NEESSR event held in another state on June 22 and 23, 2017. A.V. related that appellant had submitted a charity registration form to the state for DDR in 2013. He advised that she had submitted annual charity filing public charity (PC) forms for DDR each year advising that the organization’s mission was to rescue animals, take them to a veterinarian, and rehome them.

A.V. related that he had interviewed E.H., the president of NEESSR, on December 14, 2018. E.H. advised that beginning in 2013 appellant fostered dogs. Appellant was also on a fundraising committee, participated in adoption of events that were out of state, transported dogs, conducted home visits, made dog beds, and took fostered dogs to the veterinarian. A.V. advised that he had additionally interviewed F.R. and A.F., who work at a local animal hospital. F.R. and A.F. related that appellant was a member of NEESSR and found her name associated with five dogs who had received veterinary care. A person at another animal hospital indicated that she thought that appellant had brought a dog that appellant was fostering to her residence around February 2016.

In a memorandum dated December 14, 2018, A.V. noted that he interviewed E.H., the recently elected president of NEESSR. E.H. related that appellant had joined the organization in 2013 and also volunteered with another fostering group. E.H. advised that appellant had frequently fostered dogs over the past few years. Appellant currently had three dogs of her own, but no foster dogs. NEESSR sold merchandise on its website to raise money, and she was on a committee that focused on the merchandise sold to the public. NEESSR attended two events sponsored by the EESSC that lasted three days. Appellant sold merchandise at tables at these events and spoke to adoptive families. She also helped NEESSR transport dogs and had organized a rescue parade. E.H. provided the names of six dogs fostered by appellant. She identified appellant sitting with people on the ground in a photograph taken at an NEESSR event held in June 2017.

In another December 14, 2018 memorandum, A.V. noted that he had interviewed A.F. and F.R. at a local animal hospital. F.R. related that appellant belonged to NEESSR and provided the names of five dog-patients who had appellant's name associated with them. He noted that the NEESSR paid for the veterinary treatment. F.R. provided the printed veterinary records for the five dogs. The records indicate that appellant fostered dogs who were treated at the animal hospital, and that she was consulted with regarding their treatment.

In a January 2, 2019 memorandum of interview, A.V. advised that he had interviewed J.R. and N.C. at a local animal hospital. J.R. related that in February 2016 appellant brought an animal that she was fostering to her residence.

A November 2015 newsletter for the EESSC indicated that appellant had joined the organization as a new member. A screenshot of the NEESSR website showed a photograph from an event held from June 22 to 23, 2017 with one of the members circled. Another page from the website requested that members email appellant if they are attending the June 23 rescue parade.

A charity registration form for DDR provides that the organization was formed on January 1, 2013. The organization's purpose was to rescue animals, provide veterinary care, and rehome the animals after a home visit. The record also contains the bylaws of DDR.

In an annual charity filing with the state, covering the period January 1 to December 31, 2015, appellant indicated that she received contributions of approximately \$100.00 and had expenses of the same amount. She asked family and friends to donate the money to pay for rescue expenses. Appellant listed herself as the owner of the charity and her husband as a volunteer.

On a 2015 Internal Revenue Service (IRS) organization income tax exemption form, appellant indicated that DDR had not received any revenue.

In a 2016 state form, appellant advised that she had received no contributions during this period. A state form covering the period January 1 through December 31, 2017 did not specify any contributions received.

In a state form covering the period January 1 through December 31, 2018, appellant indicated that she had received contributions of \$194.62 and had expenses of \$154.62. She indicated on the form that she had received the money from family and friends after asking them for assistance with veterinary bills. Appellant listed her husband as an unpaid volunteer.

By decision dated January 20, 2021, OWCP found that appellant forfeited her entitlement to wage-loss compensation for the periods February 5 through October 17, 2015, August 12, 2016, and March 1, 2017 through November 10, 2018. It determined that she had completed CA-7 forms covering the periods February 5 through October 17, 2015, August 12, 2016, and February 18 through April 14, 2017, wherein she failed to report earnings/employment activity. OWCP further found that appellant had completed EN-1032 forms on November 11, 2015, November 20, 2017, and November 10, 2018 in which she failed to report her employment activities or earnings from DDR. It noted that the OIG's office had found that she was associated with the EESSC and NEESSR and that there was a picture of her on the NEESSR website at an event held June 22 to 23, 2017. OWCP found that annual state public charity forms from 2014 through 2017 indicated that appellant was the owner of DDR and solicited contributions to pay for veterinary bills, food, and other expenses. It further noted that the IRS had designated DDR as a public charity and provided an identification number, and that the 2016 bylaws listed her as president of DDR. OWCP concluded that the documents and appellant's activities showed that she performed employment that she would have had to pay someone else to perform and that she had purposefully formed a business organization. It therefore found that she knowingly failed to report her earnings and employment activities.

On January 20, 2021 OWCP advised appellant of its preliminary determination that she had received an \$108,277.62 overpayment of compensation for the periods February 5 through October 17, 2015, August 12, 2016, and March 1, 2017 through November 10, 2018 as she had forfeited her entitlement to compensation. It calculated the overpayment by determining the net compensation amount that she had received for the periods in question, \$108,277.62. OWCP further notified appellant of its preliminary finding that she was at fault in the creation of the overpayment. It provided her with an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). Additionally, OWCP notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a precoupment hearing. No response was received.

By decision dated March 2, 2021, OWCP finalized the finding that appellant received an overpayment of compensation in the amount of \$108,277.62 for the periods February 5 through October 17, 2015, August 12, 2016, and March 1, 2017 through November 10, 2018 as she had forfeited her entitlement to compensation. It further found that she was at fault in the creation of the overpayment. It noted that she had not responded to its preliminary overpayment determination. OWCP required recovery of the overpayment by deducting \$1,000.00 from appellant's continuing compensation payments every 28 days.

On March 23, 2021 appellant, through counsel, requested a precoupment hearing.

By decision dated April 26, 2021, OWCP's Branch of Hearings and Review denied appellant's request for a precoupment hearing as untimely filed.

LEGAL PRECEDENT -- ISSUE 1

Section 8106(b) of FECA⁴ provides that an employee who “fails to make an affidavit or report when required or knowingly omits or understates any part of his or her earnings, forfeits his or her right to compensation with respect to any period for which the affidavit or report was required.”⁵

An employee, however, can only be subjected to the forfeiture provision of 5 U.S.C. § 8106 if he or she knowingly failed to report employment or earnings. It is not enough to merely establish that there were unreported earnings. The Board has recognized that, forfeiture is a penalty, and, as a penalty provision, it must be narrowly construed.⁶ The term knowingly is defined within OWCP’s regulations as with knowledge, consciously, willfully, or intentionally.⁷

OWCP regulations define earnings from employment or self-employment as: (1) gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses and any other goods or services received in kind as remuneration; or (2) a reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration.⁸ Neither lack of profits nor the characterization of the duties as a hobby removes an unremunerated individual’s responsibility to report the estimated cost to have someone else perform his or her duties.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant forfeited her right to compensation for the periods February 5 through October 17, 2015, August 12, 2016, and March 1, 2017 through November 10, 2018, pursuant 5 U.S.C. § 8106(b)(2) of FECA, because she knowingly failed to report her employment activities and earnings

OWCP based its finding of forfeiture on appellant’s failure to report employment earnings and/or activities as the owner of the nonprofit organization DDR on EN-1032 and CA-7 forms covering these periods.

The EN-1032 forms sent by OWCP to appellant advised her of her responsibility to complete the forms and provide all relevant information concerning her employment status and earnings during the 15-month period covered by the forms. The forms she signed noted that she must report all employment, self-employment, or involvement in business enterprises. This included such activities as overseeing a business of any kind, including involvement in any

⁴ *Supra* note 2.

⁵ 5 U.S.C. § 8106(b).

⁶ *J.T.*, Docket No. 20-1563 (issued April 9, 2021); *P.H.*, Docket No. 17-1362 (issued March 13, 2018).

⁷ 20 C.F.R. § 10.5(n); *R.A.*, Docket No. 18-0406 (issued January 28, 2019).

⁸ *Id.* at § 10.5(g).

⁹ *Id.*

enterprise she owned. The forms further requested that appellant indicate whether she had performed volunteer work for any form of monetary or in-kind compensation.

In EN-1032 forms signed November 11, 2015, November 20, 2017, and November 10, 2018, appellant responded that she had not engaged in any employment, self-employment, engaged in any business enterprise, or performed volunteer work for any form of compensation during the 15-month period covered by each form. However, state public charity forms dated 2014 to 2017 list appellant as the owner of DDR and indicated that she solicited contributions for expenses. A description of DDR advised that its purpose was to rescue animals, provide veterinary care, and rehome the animals. The IRS designated DDR as a charity and provided a number for identification purposes. Bylaws dated 2016 listed appellant as the president and the location of DDR as her residence. Appellant was also a member of the EESSC and NEESSR and the NEESSR website had a picture of her at an event that took place from June 22 to 23, 2017. Her actions constitute employment activities as she would have had to pay someone else to perform had she not done the work and as the documentary evidence supported that she had purposefully formed an organization to perform charity work.

On October 1, 2016 appellant filed a Form CA-7 claim for disability from work on August 12, 2016. The form clearly advised that she must report any and all earnings from employment outside of her federal job, including any employment for which she received a salary, wages, income, sales commissions, or payment of any kind during the period claimed. It instructed her to include self-employment, odd jobs, and involvement in business enterprises, and warned that “[f]raudulently concealing employment or failing to report income may result in forfeiture of compensation benefits and/or criminal prosecution.” When asked if she worked outside of her federal job for the period in question, appellant checked the box marked “No.”

The OIG submitted a report noting that appellant was a member of two animal charities, the NEESSR and the EESSC, and that she had formed her own charity, the DDR, in 2013. A.V., an agent with the OIG’s office, interviewed E.H., the president of NEESSR, on December 14, 2018. In a memorandum of interview, E.H. related that starting in 2013 appellant performed numerous activities for the charity, including fostering dogs, participating in adoption events, and transporting dogs. E.H. identified appellant as in a photograph at an event held in June 2017.

A.V. also interviewed employees at a local veterinary clinic, who advised that appellant was a member of NEESSR and had five foster dogs with her name associated with their visits. F.R. noted that NEESSR had paid for the medical treatment. Records from the veterinary clinic relevant to the period covered by the forfeiture indicate that Jake, a dog whose name was associated with appellant, received a diagnosis on August 29 and 30 and September 11, 25, and 27, 2018. The records further support that on four dates from August to October 2018 an individual with the clinic verbally conveyed information to appellant about Jake’s medical condition

In a state public charity form covering the period January 1 through December 31, 2015, appellant advised that DDR received \$100.00 in donations from her family and friends and had \$100.00 in expenses. A 2015 IRS organization income tax exemption form reflected that DDR had no revenue for that period. A state public charity form covering 2016 showed no contributions

received. In a state public charity form covering the period January 1 through December 31, 2018, appellant advised that she received \$194.64 from family and friends and had expenses of \$154.62.

The totality of the evidence establishes that appellant, as the owner of DDR, received contributions and conducted the business of DDR. As noted, when a Form EN-1032 is improperly completed resulting in a finding of forfeiture, the period of the forfeiture is the entire 15-month period covered by the form in question.¹⁰ The Board thus finds that appellant forfeited her entitlement to compensation for the periods February 5 through October 17, 2015, and March 1, 2017 through November 10, 2018. The record also contains an October 1, 2016 Form CA-7, wherein appellant falsely reported that she had not worked outside of her federal job on the claimed date of disability, including any involvement in a business enterprise. The Board thus finds that appellant also forfeited her entitlement to compensation for August 12, 2016.

Appellant can be subject to the forfeiture provision of section 8106(c) only if she knowingly failed to report earnings or employment. OWCP has the burden of proof to establish that a claimant did, either with knowledge, consciously, willfully, or intentionally, fail to report earnings from employment.¹¹ The Board finds that her signing of a strongly-worded certification clause on EN-1032 forms and CA-7 form demonstrates that she was aware of the materiality of her failure to report her employment activity.¹² Therefore, appellant knowingly failed to comply with the reporting requirements for the periods February 5 through October 17, 2015, August 12, 2016, and March 1, 2017 through November 10, 2018. OWCP, consequently, properly found that she forfeited her entitlement to compensation for these periods.

LEGAL PRECEDENT -- ISSUE 2

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 his or her duty.¹³ 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.”¹⁴

¹⁰ *S.H.*, Docket No. 21-1349 (issued February 17, 2023); *J.C.*, Docket No. 16-1058 (issued July 10, 2017); *R.B.*, Docket No. 15-1946 (issued September 2, 2016); *Martin James Sullivan*, 50 ECAB 158 (1998).

¹¹ *See S.M.*, Docket No. 16-1612 (issued April 11, 2018).

¹² *C.W.*, Docket No. 18-1557 (issued June 25, 2019); *M.O.*, Docket No. 18-0686 (issued January 25, 2019).

¹³ 5 U.S.C. § 8102(b).

¹⁴ *Id.* at § 8129(a).

Section 10.529 (b) of OWCP's implementing regulations provides as follows:

“(b) Where the right to compensation is forfeited, OWCP shall recover any compensation already paid for the period of forfeiture pursuant to 5 U.S.C. § 8129 and other relevant statutes.”¹⁵

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly found that appellant received an overpayment of compensation for the periods February 5 through October 17, 2015, August 12, 2016, and March 1, 2017 through November 10, 2018 in the amount of \$108,277.62.

OWCP's regulations provide that OWCP must declare an overpayment of compensation for any compensation already paid for the period of a given forfeiture of compensation.¹⁶ As found above, appellant forfeited her entitlement to compensation for the periods February 5 through October 17, 2015, August 12, 2016, and March 1, 2017 through November 10, 2018, pursuant to 5 U.S.C. § 8106(b)(2) of FECA. Therefore, fact of overpayment has been established.

If a claimant has any employment, including self-employment or involvement in a business enterprise, during a period covered by a Form CA-1032 or CA-7, which he or she fails to report, a claimant is not entitled to compensation for any portion of the period covered by the report, even though he or she may not have had earnings during a portion of that period.¹⁷ OWCP determined that it paid appellant net compensation in the amount of \$108,277.62 during the periods in question. The Board, accordingly, finds that the \$108,277.62 constitutes an overpayment of compensation.

LEGAL PRECEDENT -- ISSUE 3

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless “incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.”¹⁸ No waiver of recovery of an overpayment is possible if the claimant is at fault in the creation of the overpayment.¹⁹

On the issue of fault, 20 C.F.R. § 10.433(a) provides that an individual is with fault in the creation of an overpayment who: (1) made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; (2) failed to furnish information which the individual knew or should have known to be material; or (3) with respect to the overpaid individual

¹⁵ 20 C.F.R. § 10.529.

¹⁶ *Id.*

¹⁷ *Id.*; see also *M.S.*, Docket No. 22-0505 (issued October 18, 2022); *J.H.* Docket No. 20-1588 (issued June 16, 2021); *G.G.*, Docket No. 14-1848 (issued August 4, 2016).

¹⁸ 5 U.S.C. § 8129; see *Linda E. Padilla*, 45 ECAB 768 (1994).

¹⁹ See *L.C.*, Docket No. 19-1094 (issued February 25, 2020); *M.O.*, Docket No. 18-0686 (issued January 25, 2019).

only, accepted a payment which the individual knew or should have been expected to know was incorrect.²⁰

With respect to whether an individual is without fault, section 10.433(b) of OWCP regulations provides that whether 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.²¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly determined that appellant was at fault in the creation of the overpayment which occurred due to her forfeiture of compensation, thereby precluding waiver of recovery of the overpayment.

As noted above, appellant signed EN-1032 and CA-7 forms covering the periods February 5 through October 17, 2015, August 12, 2016, and March 1, 2017 through November 10, 2018 in which she falsely reported that she had not engaged in employment activity, including any involvement in a business enterprise.

The explicit language of the EN-1032 and CA-7 forms demonstrate that appellant knew or should have known that the nature of her activities with DDR would require her to report such employment activities and earnings on the forms.²² Her failure to accurately report her earnings and employment activities on the EN-1032 and CA-7 forms constitutes a failure to provide information which she knew or should have known to be material in the creation of the overpayment.²³ Consequently, appellant is precluded from waiver of recovery of the overpayment.

LEGAL PECEDEDENT -- ISSUE 4

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.²⁴

Section 10.411 of OWCP's regulations 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 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

²⁰ 20 C.F.R. § 10.433(a).

²¹ *Id.* at § 10.433(b).

²² *M.O.*, *supra* note 19; *J.A.*, Docket No. 14-1863 (issued July 7, 2015).

²³ *B.K.*, Docket No. 17-0406 (issued December 12, 2017).

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

circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”²⁵

ANALYSIS -- ISSUE 4

The Board finds that OWCP properly required recovery of the overpayment by deducting \$1,000.00 from appellant’s continuing compensation payments every 28 days.

OWCP gave due regard to the financial information submitted, as well as the facts set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize resulting hardship. OWCP’s hearing representative considered appellant’s monthly income, expenses, and assets and determined that she was able to repay \$1,000.00 every 28 days. The Board finds that OWCP properly required recovery of the overpayment by deducting \$1,000.00 from appellant’s continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 5

OWCP’s regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.²⁶ The date of the request is determined by the postmark or other carrier’s date marking.²⁷ Failure to request the prerecoupment hearing within 30 days shall constitute a waiver of the right to a hearing.²⁸ The only right to a review of a final overpayment decision is with the Board.²⁹ The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.³⁰

ANALYSIS -- ISSUE 5

The Board finds that OWCP properly denied appellant’s request for a prerecoupment hearing as untimely filed.

OWCP issued its preliminary overpayment determination on January 20, 2021. It advised appellant that she had 30 days to request a prerecoupment hearing. In a letter dated March 23, 2021 and received March 31, 2021, counsel requested a prerecoupment hearing before a representative of OWCP’s Branch of Hearings and Review. There is no provision in FECA or its regulations which allows an exception to the 30-day time limitation for requesting a prerecoupment

²⁵ *Id.* at § 10.441(a).

²⁶ *Id.* at § 10.432.

²⁷ *Id.* at §§ 10.439, 10.616(a).

²⁸ *Id.* at § 10.432; *see also C.L.*, Docket No. 22-0349 (issued August 20, 2022); *C.R.*, Docket No. 15-0525 (issued July 20, 2015); *Willie C. Howard*, 55 ECAB 564 (2004).

²⁹ *Id.* at § 10.440(b).

³⁰ *Id.*

hearing.³¹ Since the March 23, 2021 request for a prerecoupment hearing was made more than 30 days after the January 20, 2021 preliminary overpayment determination, it was untimely.³² OWCP thus properly denied appellant's request for a prerecoupment hearing.³³

CONCLUSION

The Board finds that OWCP properly determined that appellant forfeited her right to compensation for the periods February 5 through October 17, 2015, August 12, 2016, and March 1, 2017 through November 10, 2018, pursuant 5 U.S.C. § 8106(b)(2) of FECA. The Board further finds that appellant received an overpayment of compensation in the amount of \$108,277.62 for the periods February 5 through October 17, 2015, August 12, 2016, and March 1, 2017 as she forfeited her entitlement to compensation. The Board also finds that OWCP properly determined appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. The Board further finds that OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

³¹ *Supra* note 29; *D.R.*, Docket No. 19-1885 (issued April 24, 2020).

³² 20 C.F.R. §§ 10.439, 10.616(a); *see S.G.*, Docket No. 22-0476 (issued August 11, 2022); *A.B.*, Docket No. 18-1172 (issued January 15, 2019).

³³ *See E.G.*, Docket No. 19-0176 (issued February 23, 2021); *E.V.*, Docket No. 17-1328 (issued December 11, 2017). *See also R.U.*, Docket No. 16-0027 (issued March 24, 2017); *Ronald E. Morris*, Docket No. 05-1553 (issued November 23, 2005).

ORDER

IT IS HEREBY ORDERED THAT the January 20, March 2, and April 26, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 8, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board