

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 28, 2005 appellant, then a 34-year-old program assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries on April 19, 1995 when the Alfred P. Murrah Federal Building in Oklahoma City was destroyed by a bomb. OWCP accepted the claim for open back wound with complications and nonpsychotic mental disorder. It paid appellant wage-loss compensation on the periodic rolls for temporary total disability.

Appellant completed Form EN-1032 on November 27, 2020 wherein she checked “Yes” to the question of whether she had been convicted of any fraud-related offense in connection with the application for or receipt of workers’ compensation benefits. She also indicated that she had been incarcerated during the past 15 months for a felony conviction under state or federal law. Appellant noted the date of conviction as July 16, 2020 and date of incarceration as September 11, 2020.

In a letter dated December 9, 2020, OWCP requested that appellant provide a copy of the indictment, a copy of the plea agreement, if any, a copy of the document containing the guilty verdict, and/or a copy of the court’s docket sheet.

In response to OWCP’s request, appellant submitted a copy of the information requested. She stated that the offense was unrelated to her workers’ compensation case; rather, she pled guilty to the charges of possession of a controlled dangerous substance with intent to distribute -- cocaine, possession of proceeds, and felon in possession of a firearm. Appellant was incarcerated from July 21 to November 23, 2020.

On February 4, 2021 OWCP issued a preliminary overpayment determination that appellant was overpaid compensation in the amount of \$9,830.45 for the period July 21 through November 23, 2020 because she was incarcerated for a felony conviction during that period. It determined that she was without fault in the creation of the overpayment as she could not have reasonably known that she was not entitled to receive compensation payments while incarcerated for a felony. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised her that she was entitled to request waiver of recovery of the overpayment. It requested financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income and expenses. OWCP further notified appellant that, within 30 days of the date of the letter, she could contest the overpayment and request a final decision based on the written evidence, or a precoupment hearing.

In response, appellant requested waiver of recovery of the overpayment in an overpayment request form dated March 2, 2021. In a letter dated March 3, 2021, she again requested waiver indicating that she was not at fault in the creation of the overpayment. Appellant also alleged that recovery of the overpayment would create severe hardship. She did not submit a completed Form OWCP-20 or any information regarding her income, assets, and expenses or supporting documentation.

By decision dated March 17, 2021, OWCP determined that appellant had received an overpayment of compensation in the amount of \$9,830.45 for the period July 21 through

November 23, 2020, during which she was incarcerated for a felony conviction. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery because she had not submitted a completed Form OWCP-20 or supporting financial documentation. OWCP required recovery of the overpayment by deducting \$400.00 from appellant's continuing compensation payments beginning March 28, 2021. The appeal rights attached to the decision explained that appellant's only right of appeal was to the Board.

On July 21, 2021 OWCP received appellant's July 16, 2021 request for reconsideration of OWCP's March 17, 2021 final overpayment decision. In an accompanying July 15, 2021 statement, appellant contended that she was financially unable to repay the overpayment and submitted a completed Form OWCP-20 signed on July 16, 2021 together with financial documentation.

By decision dated August 11, 2021, OWCP informed appellant that a reconsideration appeal was not an avenue of appeal for a final overpayment decision. It noted that the appeal rights accompanying the March 17, 2021 decision specified that, if she disagreed with the decision, her only right of appeal was to the Board. OWCP informed appellant that no further action would be taken on her request for reconsideration.

LEGAL PRECEDENT

Section 10.440(b) of OWCP's regulations specifically provides that the only review of a final overpayment determination of OWCP is to the Board and that section 8128(a) of FECA does not apply to such a final overpayment determination.²

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of a final overpayment determination, finding that the only appeal option was to the Board.

On July 21, 2021 appellant requested reconsideration of the March 17, 2021 final overpayment determination. By decision dated August 11, 2021, OWCP denied her request for review of a final overpayment determination pursuant to 20 C.F.R. § 10.440(b). It noted that the appeal rights attached to the March 17, 2021 decision specifically explained that appellant's only right of appeal was to the Board, and that 5 U.S.C. § 8128(a) does not apply to such a final overpayment determination.³ The Board finds that OWCP properly denied her request for reconsideration of a final overpayment determination as 5 U.S.C. § 8128(a) does not apply to a final overpayment determination of OWCP.⁴

² 20 C.F.R. § 10.440(b).

³ *Id.*

⁴ See *J.B.*, Docket No. 20-0923 (issued February 12, 2021); *E.H.*, Docket No. 19-0016 (issued October 20, 2020); *P.J.*, Docket No. 19-1479 (issued May 8, 2020). See also *Charles E. Nance*, 54 ECAB 447 (2003).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of a final overpayment determination, finding that the only appeal option was to the Board.

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board