

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

W.L., Appellant)

and)

U.S. POSTAL SERVICE, CENTRAL CITY)
POST OFFICE, Atlanta, GA, Employer)
_____)

Docket No. 21-0486
Issued: January 3, 2023

Appearances:
Appellant, pro so
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 9, 2021 appellant filed a timely appeal from a February 1, 2021 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

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,686.85, for the period November 10 through December 5, 2020, for which she was without fault, because she continued to receive FECA

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the February 1, 2021 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.*

wage-loss compensation following her return to work; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On October 1, 2017 appellant, then a 54-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on October 10, 2017 she sustained injuries to her left foot and leg when she fell after twisting her leg and foot pushing a cart while in the performance of duty. She stopped work that day.

On January 11, 2018 OWCP accepted the claim for a strain of unspecified muscle and tendon of the left foot and ankle, and a sprain of the left knee. The acceptance letter informed appellant that wage-loss compensation for total disability was available only if she was unable to perform the duties of her regular position, and that she should notify OWCP if she returned to work or obtained new employment. On January 11, 2019 OWCP expanded its acceptance of the claim to include a tear of the lateral meniscus of the left knee.

OWCP paid appellant wage-loss compensation for partial disability on the supplemental rolls effective December 30, 2017 and for total disability on the periodic rolls effective March 20, 2019.

On April 24, 2019 OWCP again informed appellant that wage-loss compensation for total disability was available only if she was unable to perform the duties of her regular position and that she should notify OWCP if she returned to work or obtained new employment. It also advised that, if she received compensation payments by electronic funds transfer (EFT), she should monitor her EFT deposits carefully, at least every two weeks. OWCP explained that, if appellant worked during a period in which she received compensation, she must notify OWCP.

On December 7, 2020 appellant notified OWCP that she had returned to work effective November 10, 2020. In a December 9, 2020 preliminary overpayment determination, OWCP advised her of its finding that she had received an overpayment of compensation in the amount of \$1,686.85 for the period November 10 through December 5, 2020 because she received compensation for total disability after she returned to full-duty work on November 10, 2020. It also made a preliminary finding that appellant was without fault in the creation of the overpayment. OWCP requested that she complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) with supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, it informed appellant that she could request a final decision based on the written evidence, or a precoupment hearing.

On January 11, 2021 OWCP received an incomplete Form OWCP-20.

By decision dated February 1, 2021, OWCP finalized the preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$1,686.85 for the period November 10 through December 5, 2020 because she continued to receive wage-loss compensation following her return to work. It determined that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment finding that she

had not submitted sufficient evidence for it to consider a waiver of recovery. OWCP ordered appellant to repay the \$1,686.85 overpayment in full within 30 days.

LEGAL PRECEDENT -- ISSUE 1

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.³

Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.⁴

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for the period November 10 through December 5, 2020, for which she was without fault, because she received wage-loss compensation for temporary total disability after returning to full-time work.

OWCP paid appellant wage-loss compensation for total disability following her injury during the period November 10 through December 5, 2020. The evidence of record establishes that appellant returned to full-time work for the employing establishment on November 10, 2020 and continued in that capacity through December 7, 2020. As noted above, a claimant is not entitled to receive compensation for total disability during a period in which she had actual earnings. Therefore, an overpayment of compensation was created in this case.⁵

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that adjustment 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 FECA or would be against equity and good conscience.⁶ 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

³ *Supra* note 1 at § 8102(a).

⁴ *Id.* at § 8116(a).

⁵ *Id.*

⁶ 5 U.S.C. § 8129(b).

recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.⁷

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, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.⁸

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.⁹

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁰ This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.¹¹ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery of the overpayment, and no further request for waiver shall be considered until the requested information is furnished.¹²

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹³ Appellant,

⁷ 20 C.F.R. § 10.436.

⁸ *Id.*; OWCP's procedures provide that the 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2018).

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

¹⁰ *Id.* at 10.438(a).

¹¹ *Id.*; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹² *Id.* at § 10.438(b); *see G.S.*, Docket No. 20-1580 (issued March 19, 2021).

¹³ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

however, had the responsibility to provide the appropriate financial information and documentation to OWCP.¹⁴

In its preliminary overpayment determination dated December 9, 2020, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver if she failed to furnish the requested financial information in a timely manner.

On January 11, 2021 OWCP received an incomplete Form OWCP-20, which did not list any monthly income, expenses, or assets, and did not include any supporting financial documentation. It, therefore, did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.¹⁵

Consequently, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁶

On appeal appellant argues that OWCP incorrectly identified the time period for overpayment of \$1,686.85 as November 10 to December 5, 2020, and alleged that she had not received compensation for the time period September 13 through November 8, 2020. A review of the payment history for her claim in the Integrated Federal Employees' Compensation System (iFECS) establishes that she received compensation for total disability beginning on September 13 through December 5, 2020. For this and the aforementioned reasons, the Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,686.85 for which she was without fault.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,686.85, for the period November 10 through December 5, 2020, for which she was without fault, because she received FECA wage-loss compensation after returning to full-time work. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

¹⁴ 20 C.F.R. § 10.438; *V.B.*, Docket No. 20-0976 (issued January 26, 2021).

¹⁵ *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

¹⁶ The Board's jurisdiction over recovery of an overpayment is limited to those cases where OWCP seeks recovery from continuing compensation under FECA. 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018). As appellant is not receiving wage-loss compensation, the Board lacks jurisdiction over OWCP's recovery of the overpayment. *L.C.*, Docket No. 19-1094 (issued February 25, 2020); *D.R.*, 59 ECAB 148 (2007).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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