



## **FACTUAL HISTORY**

On February 14, 2020 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 13, 2020 she sprained her left leg, ankle, and foot when she slipped and fell off a porch. She stopped work on February 14, 2020. OWCP accepted the claim for metatarsophalangeal left great toe joint sprain, left foot sprain, and left upper and lower end fibula fracture, which was expanded to include left foot hallux rigidus, left ankle and foot synovitis and tenosynovitis, sprain of ribs, and lumbar spine ligament sprain. It paid her wage-loss compensation by electronic funds transfer on the supplemental rolls beginning April 11, 2020 and on the periodic rolls from August 16, 2020 through December 4, 2021.

Appellant accepted a modified job offer<sup>2</sup> and returned to work on November 23, 2021.

In an April 28, 2022 preliminary overpayment determination, OWCP notified appellant of its preliminary finding that she had received an overpayment of compensation in the amount of \$1,507.88 because she returned to full-time work on November 23, 2021, but continued to receive wage-loss compensation for total disability on the periodic rolls through December 4, 2021. It further advised her of its preliminary determination that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method, and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records supporting income and expenses. Additionally, OWCP provided an overpayment action request form and notified appellant 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.

In an overpayment action request form dated May 8, 2022, appellant requested a decision based on the written evidence. She contended that the recovery of the overpayment should be waived, asserting that her pay with the employing establishment had been miscalculated. On an accompanying OWCP-20 form, appellant listed monthly income of \$304.00 in other benefits, her earnings were unknown, and \$1,700.00 in earnings for her spouse, resulting in total monthly income of \$2,305.00 plus whatever appellant earned. Her monthly expenses included \$800.00 for rent or mortgage, \$350.00 for food; \$125.00 for clothing; \$475.00 for utilities; \$1,141.00 for other expenses; for a total of \$2,991.00. Appellant indicated that she had funds on hand of \$40.00, \$300.00 in a checking account, and \$400.00 in a savings account. No supporting financial documentation was received.

By decision dated June 1, 2022, OWCP finalized its determination that appellant received an overpayment of \$1,507.88 for the period November 23 through December 4, 2021 because it had paid her wage-loss compensation for total disability after she returned to work. It calculated the overpayment by finding that she received net compensation in the amount of \$3,518.38 from November 7 to December 4, 2021. OWCP divided \$3,518.38 by 28 days and multiplied by 12 days, the number of days of the overpayment, to find a total overpayment of \$1,507.88. It further

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<sup>2</sup> The date on the acceptance of the modified job is November 24, 2021.

finalized its finding that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as she had not provided the necessary financial information.

### **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 duty.<sup>3</sup> Section 8129(a) of FECA provides, in pertinent part, that 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>4</sup>

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.<sup>5</sup> OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.<sup>6</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,507.88 for the period November 23 through December 4, 2021, for which she was without fault because she continued to receive wage-loss compensation for total disability after she returned to full-time modified work.

Appellant accepted a modified job offer and returned to full-time modified employment on November 23, 2021. OWCP, however, continued to pay her wage-loss compensation for total disability following her return to work through December 4, 2021 which resulted in an overpayment of compensation. Appellant was not entitled to receive temporary total disability benefits and actual earnings for the same time period.<sup>7</sup> Thus the Board finds that the fact of overpayment has been established.

In determining the amount of the overpayment, OWCP calculated the net amount of disability compensation that appellant had received for the period November 7 through December 4, 2021, \$3,518.38 divided this amount by 28, and multiplied the remainder by the 12

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *Id.* at § 8129.

<sup>5</sup> *Id.* at § 8116(a).

<sup>6</sup> *T.P.*, Docket No. 21-1271 (issued April 21, 2022); *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *K.P.*, Docket No. 19-1151 (issued March 18, 2020); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.300.4(g) (September 2020).

<sup>7</sup> *H.R.*, Docket No. 22-0003 (issued March 3, 2022); *J.R.*, Docket No. 20-0025 (issued December 13, 2021); *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *S.N.*, Docket No. 19-1018 (issued November 12, 2019).

days that she worked during this period to find an overpayment of \$1,507.88. Thus, the Board finds that appellant received an overpayment of \$1,507.88 during the above-noted period.<sup>8</sup>

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

Section 8129 of FECA provides that an overpayment must be recovered 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.<sup>9</sup>

Recovery of an overpayment will defeat the purpose of FECA when such recovery would cause hardship to a currently or formerly entitled beneficiary 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 the beneficiary's assets do not exceed a specified amount as determined by OWCP.<sup>10</sup> An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>11</sup> Also, 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.<sup>12</sup> An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.<sup>13</sup>

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 in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>14</sup> OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.<sup>15</sup>

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<sup>8</sup> *H.R., id.; J.R.; id.*

<sup>9</sup> 5 U.S.C. § 8129.

<sup>10</sup> 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400(2)(3) (September 2020).

<sup>11</sup> *Id.* at Chapter 6.400.4(a)(3); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

<sup>12</sup> *Id.* at Chapter 6.400.4(a)(2).

<sup>13</sup> *Id.* at Chapter 6.400.4(a)(3).

<sup>14</sup> 20 C.F.R. § 10.437(a)(b); *E.H.*, Docket No. 18-1009 (issued January 29, 2019).

<sup>15</sup> *Supra* note 10 at Chapter 6.400.4c(3).

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. 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.<sup>16</sup> Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>17</sup>

### ANALYSIS -- ISSUE 2

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

The fact that a claimant is without fault in the creation of an overpayment does not preclude OWCP from recovering the overpayment.<sup>18</sup> 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.<sup>19</sup> Appellant, however, has the responsibility to provide the appropriate financial information and documentation to OWCP.<sup>20</sup>

In its April 28, 2022 preliminary overpayment determination, OWCP explained the importance of providing the completed Form OWCP-20 and supporting financial information. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. In response, appellant submitted a completed Form OWCP-20 dated May 8, 2022 wherein she requested waiver asserting her pay had been miscalculated. However, she did not include any financial documentation in support of her reported assets, income, and expenses as requested by OWCP in its May 8, 2022 preliminary overpayment determination. As such, OWCP 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.<sup>21</sup>

As appellant did not submit the information required under 20 C.F.R. § 10.438, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>22</sup>

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<sup>16</sup> *Supra* note 14 at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>17</sup> *Id.* at § 10.438.

<sup>18</sup> *See W.H.*, Docket No.21-0490 (issued July 12, 2022); *George A. Rodriguez*, 57 ECAB 224 (2005); *Joyce O. Diaz*, 51 ECAB 124 (1999).

<sup>19</sup> 20 C.F.R. § 10.436.

<sup>20</sup> *Id.* at § 10.438; *see also N.J.*, Docket No. 19-1170 (issued January 10, 2020); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

<sup>21</sup> *W.H.*, *supra* note 18; *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

<sup>22</sup> *Id.*

**CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,507.88 for the period November 23 through December 4, 2021, for which she was without fault, because she continued to receive wage-loss compensation after she returned to work. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 1, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 17, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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