

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$4,019.85, for the period January 12 through February 26, 2022, for which she was without fault, because she continued to receive wage-loss compensation after she returned to work; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On October 29, 2019 appellant, then a 29-year-old letter carrier, filed a traumatic injury claim alleging that on October 29, 2019 she felt pain in her left shoulder and arm while attempting to open a stuck mailbox while in the performance of duty.⁴ She stopped work on October 30, 2019. On December 5, 2019 OWCP accepted appellant's claim for left shoulder girdle strain. It advised her that:

“If you receive a compensation check which includes payment for a period you have worked, return it to us immediately to prevent an overpayment of compensation.

“If you receive compensation *via* Electronic Funds Transfer (EFT), a notification of the date and amount of payment will appear on the statement from your financial institution. You are expected to monitor your EFT deposits carefully, at least every two weeks. If you have worked for any portion of the period for which a deposit was made, advise OWCP immediately so that the overpayment can be collected.”

OWCP paid appellant wage-loss compensation on the supplemental rolls, effective December 14, 2019. It paid her wage-loss compensation *via* EFT, effective January 7, 2020.

By decision dated April 15, 2020, OWCP expanded the acceptance of appellant's claim to include left C6 cervical radiculopathy.

Appellant returned to part-time, modified-duty work for six hours per day on August 3, 2020. OWCP paid appellant wage-loss compensation on the supplemental rolls for intermittent periods of disability. On June 20, 2021 appellant stopped work again. OWCP paid appellant wage-loss compensation on the supplemental rolls as of June 21, 2021 and on the periodic rolls, as of November 7, 2021.

On January 12, 2022 appellant returned to full-time, modified-duty work. On January 25, 2022 OWCP paid her wage-loss compensation for the period January 3 through 11, 2022 in a direct deposit payment of \$972.56.

⁴ Under OWCP File No. xxxxxx365, OWCP accepted that on February 14, 2015 appellant sustained a left shoulder/upper arm/hand sprain, left hip/thigh sprain, and lumbosacral sprain when she slipped descending stairs and fell down while in the performance of duty. It has administratively combined OWCP File Nos. xxxxxx365 and xxxxxx294, with the present claim serving as the master file.

On March 1, 2022 appellant informed OWCP that she was still receiving periodic rolls payments even though she had returned to work. OWCP's representative verified that appellant had received two additional payments on January 22 and February 26, 2022, even though the case status indicated that appellant was no longer on the periodic rolls. Appellant requested information on how to continue making payments to pay back a previous overpayment debt and how to return the new compensation payments that she had received.

On January 29, 2022 OWCP paid appellant a direct deposit payment of \$1,854.87 as wage-loss compensation for the period January 2 through 29, 2022. On February 26, 2022 it paid her a direct deposit payment of \$1,854.87 as wage-loss compensation for the period January 30 through February 26, 2022.

In a preliminary overpayment determination dated March 16, 2022, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$4,019.85 because she continued to receive compensation for total disability after she returned to full-time work on January 12, 2022. It determined that she was without fault in the creation of the overpayment, because she diligently reported her return to work and receipt of payments after she returned to work. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method, provided an overpayment action request form, and advised her that she could request a waiver of the overpayment. It further requested that she provide 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, OWCP further notified her that, within 30 days of the date of the letter, appellant could request a final decision based on the written evidence, or a prerecoupment hearing.

In an overpayment action request form dated March 24, 2022, appellant requested waiver of recovery of the overpayment and a prerecoupment hearing. A telephonic hearing was held on July 20, 2022.

Appellant submitted a partially completed overpayment recovery questionnaire signed on April 7, 2022.

By decision dated September 28, 2022, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$4,019.85 for the period January 12 through February 26, 2022, because she received compensation for total disability after she returned to full-time work. It also found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment.

By decision dated September 30, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$4,019.85 for the period January 12 through February 26, 2022.⁵

⁵ While the September 30, 2022 decision indicated that the overpayment period began on January 2, 2022, this appears to be a typographical error as the case record indicates that the correct period was January 12 through February 26, 2022.

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.⁶ Section 8116 limits the right of an employee to receive compensation. It 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 circumstances.⁷ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation of \$4,019.85 for the period January 12 through February 26, 2022, because she continued to receive wage-loss compensation after she returned to work.

Appellant resumed full-time, modified-duty work on January 12, 2022. OWCP, however, continued to pay her wage-loss compensation for total disability following her return to work through February 26, 2022, which resulted in an overpayment of compensation. As noted above, appellant was not entitled to receive total disability benefits and actual earnings for the same period of time.⁹ Therefore, the fact of overpayment is established.¹⁰

OWCP calculated appellant's net compensation paid for the period January 3 through February 26, 2022 as \$4,682.30. It properly noted that she was entitled to wage-loss compensation for the period January 2 through 11, 2022, and subtracted that amount from the total net compensation paid during that period. The Board has reviewed these calculations and finds that OWCP properly determined that an overpayment of \$4,019.85 was created.¹¹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8116(a).

⁸ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.300.4g (September 2020); *see also L.T.*, Docket No. 19-1389 (issued March 27, 2020); *K.P.*, Docket No. 19-1151 (issued March 18, 2020).

⁹ *See supra* notes 5 & 6.

¹⁰ *See A.C.*, Docket No. 22-0118 (issued December 15, 2022).

¹¹ *See D.R.*, Docket No. 21-0234 (issued November 17, 2022).

recovery would defeat the purpose of FECA or would be against equity and good conscience.¹² 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 recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹³

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 the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹⁴ 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 \$50.00.¹⁵ 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.¹⁶ 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.¹⁷ Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.¹⁸

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 in 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.¹⁹ 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

¹² 5 U.S.C. § 8129(a)-(b).

¹³ *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019); *L.S.*, 59 ECAB 350 (2008).

¹⁴ 20 C.F.R. § 10.436(a)(b).

¹⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

¹⁶ *Id.* at Chapter 6.400.4a(2) (September 2020).

¹⁷ *Id.* at Chapter 6.400.4b(3).

¹⁸ *Id.* at Chapter 6.400.4b(3)(a), (b).

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

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.²⁰

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.²¹

In its preliminary determination dated March 16, 2022, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Appellant, however, did not submit a completed Form OWCP-20 or supporting financial documentation. As such, OWCP did not have the financial information necessary for it to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.²²

Consequently, as appellant did not submit sufficient information required under 20 C.F.R. § 10.438 of OWCP's regulations, which was necessary to determine her eligibility of waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.²³

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$4,019.85, for the period January 12 through February 26, 2022, 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.

²⁰ *Supra* note 14 at Chapter 6.400.4c(3) (September 2020).

²¹ 20 C.F.R. § 10.436.

²² *See P.G.*, Docket No. 22-1073 (issued December 28, 2022); *see also S.M.*, Docket No. 17-1802 (issued August 20, 2018).

²³ *See A.S.*, Docket No. 22-0281 (issued September 26, 2022); *see also J.A.*, Docket No. 19-1946 (issued July 13, 2020).

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2023
Washington, DC

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

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

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