

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

_____)	
E.C., Appellant)	
)	
and)	Docket No. 23-0089
)	Issued: June 13, 2023
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS & BORDER PROTECTION,)	
U.S. BORDER PATROL, Del Rio, TX, Employer)	
_____)	

Appearances:
Appellant, pro se
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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 25, 2022 appellant filed a timely appeal from a July 25, 2022 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.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$3,051.29 for the period December 5, 2021 through January 1, 2022, for which he was without fault, because he received schedule award compensation to which he was not entitled; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 26, 2006 appellant, then a 49-year-old supervisory border patrol agent, filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss due to factors of his federal employment. He noted that he first became aware of his condition and realized its relation to his federal employment on June 15, 1998. Appellant did not stop work. OWCP accepted the claim for five percent binaural hearing loss and authorized hearing aids.

By decision dated February 7, 2007, OWCP granted appellant a schedule award for five percent binaural hearing loss. It determined that he had reached maximum medical improvement (MMI) on October 10, 2006. The period of the award ran for 10 weeks from October 10 through December 18, 2006 and was paid *via* a lump-sum payment of \$12,010.00.

Appellant subsequently retired.

By decision dated September 2, 2021, OWCP granted appellant a schedule award for an additional 18 percent binaural hearing loss. The period of the award ran for 36 weeks, from April 8 through December 15, 2021. On December 31, 2021 OWCP paid appellant schedule award compensation of \$3,051.29 for the period December 5 through 15, 2021. On January 1, 2022 it paid him schedule award compensation of \$3,051.29 for the period December 5, 2021 through January 1, 2022.

In a preliminary overpayment determination dated January 20, 2022, OWCP notified appellant of its preliminary finding that he had received a \$3,051.29 overpayment of schedule award compensation for the period December 5, 2021 through January 1, 2022, because it had issued duplicate payments for the same period. It determined that he 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 recovery method and advised him that he could request waiver of recovery of the overpayment. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, 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, he could request a final decision based on the written evidence or a prerecoupment hearing.

On February 2, 2022 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review regarding the claimed overpayment. He disagreed that the overpayment occurred, with the amount of the overpayment and requested a waiver of recovery of the overpayment because he was found to be without fault in the creation of the overpayment. Appellant submitted a Form OWCP-20 on that same date and reported total monthly income of \$4,371.00, total monthly expenses of \$2,900.00, including monthly payments toward a \$30,000.00 mortgage. He did not list any assets. Appellant asserted that he received a letter from the Department of Labor stating that he had been underpaid and should have been compensated at the augmented rate of 75 percent. He believed the difference should have been around \$6,000.00, and he thus had no reason to doubt the amount of payment he received.

The prerecoupment hearing took place on May 17, 2022. Appellant testified that he was without fault in the creation of the overpayment and that he had a bill for \$24,000.00 for his wife's recent open-heart surgery, which insurance had not yet paid, and of which he expected to pay \$6,000.00.

Appellant also submitted a number of explanation of benefits documents from his health insurance provider. Each of the documents indicated that it was not a bill, and several of the claims had not yet been processed by the insurance provider.

By decision dated July 25, 2022, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant had received a \$3,051.29 overpayment of schedule award compensation because it paid him a duplicate schedule award payment. It noted that his schedule award ended on December 15, 2021. OWCP advised that it had issued a schedule award payment for the period December 5 through 15, 2021, but that, due to an error, it had subsequently issued a duplicate schedule award payment for the period December 5, 2021 through January 1, 2022. It found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by directing him to repay the full amount within 30 days of the date of the decision.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA² and its implementing regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. Section 10.404 of the regulations provides that compensation is provided for specified periods of time for the permanent loss or loss of use of certain members.⁴ FECA provides for 200 weeks of compensation for 100 percent loss of hearing of both ears⁵ and the implementing regulations provides that compensation for proportionate periods of time is payable for partial loss.⁶

OWCP's procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.⁷

² *Id.*

³ 20 C.F.R. § 10.404.

⁴ *Id.*

⁵ 5 U.S.C. § 8107(c)(13)(B).

⁶ *Supra* note 3.

⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1f(1)(i) (September 2020); *see V.R.*, Docket No. 22-0086 (issued May 3, 2022); *T.C.*, Docket No. 20-0302 (issued November 12, 2020).

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of schedule award compensation in the amount of \$3,051.29 for the period December 5, 2021 through January 1, 2022 for which he was without fault.

On September 2, 2021 OWCP granted appellant a schedule award for an additional 18 percent binaural hearing loss. The period of the award ran for 36 weeks from April 8 through December 15, 2021. The Board notes that 18 percent of the 200 weeks of compensation allowable for total loss of hearing of both ears equals 36 weeks of compensation. OWCP paid appellant schedule award compensation for 36 weeks, from April 8 through December 15, 2021. It subsequently issued an extra schedule award payment covering the period December 5, 2021 through January 1, 2022 in the amount of \$3,051.29. Appellant was not entitled to the \$3,051.29 payment as he had already been fully compensated for the schedule award.⁸ Consequently, he received an overpayment of compensation in the amount of \$3,051.29 for the period December 5, 2021 through January 1, 2022.⁹ The Board, thus, finds that OWCP properly determined the fact and amount of the overpayment.

LEGAL PRECEDENT -- ISSUE 2

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.¹⁰

Recovery of an overpayment will defeat the purpose of FECA if 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.¹¹ An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹²

Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial

⁸ See *T.S.*, Docket No. 19-1895 (issued September 22, 2020); *M.J.*, Docket No. 19-1665 (issued July 29, 2020).

⁹ See *S.L.*, Docket No. 21-0902 (issued December 22, 2021).

¹⁰ 5 U.S.C. § 8129.

¹¹ 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 6.400.4a(2) (September 2020).

¹² *Id.* at Chapter 6.400.4a(3); see also *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

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.¹³

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.¹⁴

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 of recovery of the overpayment 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.¹⁵

Appellant submitted a completed Form OWCP-20 on February 2, 2022. He reported total monthly income of \$4,371.00 and total monthly expenses of \$2,900.00. As his reported monthly income exceeds his reported ordinary and necessary living expenses by more than \$50.00, the Board finds that he did not need substantially all of his income for ordinary and necessary living expenses such that recovery would defeat the purpose of FECA.¹⁶

As appellant failed to establish that, recovery of the overpayment of compensation would either defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

CONCLUSION

The Board finds that appellant received an overpayment of schedule award compensation in the amount of \$3,051.29 for the period December 5, 2021 through January 1, 2022 for which he was without fault. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

¹³ 20 C.F.R. § 10.437(a)(b).

¹⁴ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁵ *Id.* at § 10.436.

¹⁶ *See A.S.*, Docket No. 22-0384 (issued March 13, 2023); *V.G.*, Docket No. 20-1520 (issued September 21, 2021); *see also M.C.*, Docket No. 19-0699 (issued February 12, 2020).

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 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