



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 4, 2015 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 2, 2015 he sustained neck, shoulder, and back strains/sprains when his long-life vehicle was rear-ended in a motor vehicle accident while in the performance of duty. He stopped work on the date of injury. OWCP accepted appellant's claim for neck and bilateral shoulder sprains. It paid him wage-loss compensation on the supplemental rolls from June 17 through July 25, 2015, and on the periodic rolls from July 26, 2015 through December 7, 2019.

By decision dated April 11, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective April 28, 2019, finding that the special weight of the medical evidence rested with Dr. John H. Chaglassin, a Board-certified orthopedic surgeon serving as an impartial medical examiner, who concluded in his June 2, 2017 report that appellant had no residuals or disability due to his accepted May 2, 2015 employment injury.

On May 25, 2019 appellant received compensation *via* direct deposit in the amount of \$2,718.72 for the period April 28 through May 25, 2019. On June 22, 2019 he received compensation *via* direct deposit in the amount of \$2,718.72 for the period May 26 through June 22, 2019. Appellant continued to receive compensation *via* direct deposit in the amount of \$2,718.72 through December 7, 2019 on the periodic rolls.

In a preliminary determination dated December 19, 2019, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$21,749.76 because he continued to receive compensation payments on the periodic rolls *via* direct deposit through December 7, 2019, after his FECA wage-loss compensation was terminated on April 28, 2019. It determined that he was at fault in the creation of the overpayment because he accepted a payment that he knew or reasonably should have known was incorrect. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. It further notified him 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. OWCP mailed the preliminary determination to appellant's address of record. No response was received.

By decision dated January 24, 2020, OWCP finalized its determination that an overpayment of compensation was created in the amount of \$21,749.76 for the period April 28 through December 7, 2019, and that he was at fault in its creation. It required that the overpayment be recovered in full.

On January 27, 2020 OWCP received an overpayment action request form, dated January 17, 2020 and postmarked January 22, 2020, in which appellant requested a prerecoupment hearing. Appellant contested the fact of overpayment and requested waiver of recovery of the

---

<sup>2</sup> Docket No. 20-0824 (issued May 24, 2021).

overpayment. He contended that he remained totally disabled and that his oral hearing regarding the termination of his compensation benefits was still pending before OWCP. As such, appellant believed that he would continue to receive compensation benefits during the appeal process. He also contended that he did not have the financial means to repay the overpayment. Appellant submitted an undated and incomplete Form OWCP-20, wherein he provided no information regarding his monthly income, monthly expenses, and assets.

By decision dated February 18, 2020, OWCP denied appellant's request for a prerecoumpment hearing, finding that it was untimely filed and that the final overpayment decision was not subject to a hearing, pursuant to 5 U.S.C. § 8124(b).

Appellant appealed to the Board, and by decision dated May 24, 2021,<sup>3</sup> the Board found that OWCP, in its January 24, 2020 decision, properly determined that appellant received an overpayment of compensation in the amount of \$21,749.76 for the period April 28 through December 7, 2019, but reversed the finding of fault in the creation of the overpayment for the period April 28 through May 25, 2019 and remanded the case for OWCP to consider waiver of recovery of the overpayment for that period. Additionally, the Board affirmed the finding of fault in the creation of the remainder of the overpayment period, and thus, appellant was precluded from waiver of recovery for the remaining period. The Board also affirmed OWCP's February 18, 2020 decision, finding that it properly denied appellant's request for a prerecoumpment hearing as untimely filed.

On remand, in a letter dated August 9, 2021, OWCP requested that appellant again complete and return an enclosed Form OWCP-20. It also requested that he attach financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records, supporting the reported income and expenses. OWCP advised that, under 20 C.F.R. § 10.438, the failure to submit the requested information within 30 days would result in denial of waiver of recovery of the overpayment.

In a completed Form OWCP-20 dated September 3, 2021, appellant reported monthly income of \$13,750.00. He also reported monthly expenses totaling \$6,407.00, which included \$600.00 for rent; \$1,000.00 for food; \$500.00 for clothing; \$3,500.00 for other expenses that included transportation, insurance, and an auto loan; and \$807.00 for a credit union loan payment. Appellant further reported that he had \$300.00 cash on hand; \$5,000.00 in a checking account; \$6,000.00 in a savings account; and \$5,000.00 in stocks and bonds, totaling \$16,300.00 in assets.<sup>4</sup>

In a September 22, 2021 decision, OWCP denied waiver of recovery of the \$2,718.72 overpayment, for the period April 28 through May 25, 2019. It found that appellant's assets exceeded the allowable resource base of \$10,300.00 for an individual with a spouse and, therefore, he would not experience financial hardship in repaying the overpayment. OWCP required recovery of the overpayment in full within 30 days.

---

<sup>3</sup> *Id.*

<sup>4</sup> The Board notes that it appears that appellant inadvertently calculated \$19,000.00 rather than \$16,300.00 in total assets.

## LEGAL PRECEDENT

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>5</sup> Thus, a finding that appellant was without fault does not automatically result in waiver of recovery 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.<sup>6</sup>

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her 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.<sup>7</sup> An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits.<sup>8</sup>

Section 10.437 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.<sup>9</sup> To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained, and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.<sup>10</sup>

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

---

<sup>5</sup> 5 U.S.C. § 8129(a)-(b).

<sup>6</sup> *See J.S.*, Docket No. 21-0097 (issued May 16, 2022); *T.C.*, Docket No. 21-0612 (issued December 2, 2021).

<sup>7</sup> 20 C.F.R. § 10.436. OWCP's procedures provide that a claimant is deemed to need substantially all of his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020). OWCP's procedures further provide that, 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. *Id.* at Chapter 6.400.4a(2).

<sup>8</sup> *Id.*

<sup>9</sup> 20 C.F.R. § 10.437(a)-(b).

<sup>10</sup> *Id.* at § 10.437(b)(1).

the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.<sup>11</sup>

### ANALYSIS

The Board finds that OWCP properly denied waiver of recovery of an overpayment of wage-loss compensation in the amount of \$2,718.72 for the period April 28 through May 25, 2019.

The Board preliminarily notes that in its May 24, 2021 decision, it affirmed the fact and amount of the \$21,749.76 overpayment received by appellant. The Board also found, however, that appellant was without fault in the creation of the overpayment for the period April 28 through May 25, 2019. The Board also found that appellant was at fault in creation of the overpayment for the remaining period. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.<sup>12</sup>

On remand, appellant submitted a completed Form OWCP-20 outlining his income, expenses, and assets. He indicated that he had monthly income of \$13,750.00 and monthly expenses of \$6,407.00. Appellant also indicated that he had assets totaling \$16,300.00.

The Board finds that appellant's assets of \$16,300.00 exceed the resource base of \$10,300.00 for an individual with a spouse, as provided in OWCP's procedures.<sup>13</sup> Because he has not met the second prong of the two-prong test, of whether recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider the first prong of the test, *i.e.*, whether he needs substantially all of his current income to meet ordinary and necessary living expenses.<sup>14</sup> Appellant has not established that he was eligible for waiver on the basis of defeating the purpose of FECA.<sup>15</sup>

Additionally, the evidence does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant has not submitted evidence to substantiate that he would experience severe financial hardship in attempting to repay the debt, or that in reliance on such payment he gave up a valuable right or changed his position for the worse. Therefore,

---

<sup>11</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>12</sup> *See supra* note 6; *T.W.*, Docket No. 20-0836 (issued July 21, 2021); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998). *See also* 20 C.F.R. § 501.6(d).

<sup>13</sup> *Supra* note 7.

<sup>14</sup> *See T.C.*, *supra* note 6; *S.W.*, Docket No. 20-0363 (issued November 23, 2020); *M.H.*, Docket No. 19-1497 (issued September 9, 2020).

<sup>15</sup> *T.C.*, *id.*; *N.B.*, Docket No. 20-0727 (issued January 26, 2021); *R.D.*, Docket No. 19-1598 (issued April 17, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020).

OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.<sup>16</sup>

Because appellant has not established that recovery of the overpayment would 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.<sup>17</sup>

**CONCLUSION**

The Board finds that OWCP properly denied waiver of recovery of an overpayment of wage-loss compensation in the amount of \$2,718.72 for the period April 28 through May 25, 2019.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 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

---

<sup>16</sup> *T.C., id.; N.J.*, Docket No. 19-1170 (issued January 10, 2020); *V.T.*, Docket No. 18-0628 (issued October 25, 2018).

<sup>17</sup> With respect to recovery of the overpayment of compensation, the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA. As appellant is no longer receiving wage-loss compensation, the Board does not have jurisdiction with respect to the recovery of the overpayment under the Debt Collection Act. *T.C., id.; R.W.*, Docket No. 18-1059 (issued February 6, 2019); *Cheryl Thomas*, 55 ECAB 610 (2004).