

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

_____)
K.B., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Baltimore, MD, Employer)
_____)

Docket No. 23-0139
Issued: May 18, 2023

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 25, 2022 appellant filed a timely appeal from an August 16, 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.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$1,952.39 for the period June 3 through 18, 2022, for which he was without fault,

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the August 16, 2022 decision, OWCP received additional evidence. Appellant also submitted evidence on appeal. 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.*

because he continued to receive wage-loss compensation following his return to full-time work; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On December 10, 2020 appellant, then a 60-year-old postal collect and delivery employee, filed a traumatic injury claim (Form CA-1) alleging that on December 3, 2020 he injured his left knee and shoulder when he tripped delivering a package while in the performance of duty. OWCP accepted the claim for a strain of other muscles of the fascia and tendons of the right shoulder and upper arm, a right shoulder contusion, and a strain of unspecified muscles and tendons of the lower left leg. It subsequently expanded its acceptance of the claim to include a rotator cuff tear or rupture of the right shoulder, not specified as traumatic. OWCP paid appellant wage-loss compensation for disability from work on the supplemental rolls effective March 12, 2021 and on the periodic rolls effective July 18, 2021.

In a June 21, 2022 memorandum of telephone call (Form CA-110), appellant advised OWCP that he had returned to full-time modified work on June 3, 2022.

On June 21, 2022 OWCP terminated appellant's wage-loss compensation on the periodic rolls effective June 18, 2022 as he had resumed full-time modified employment on June 3, 2022.

On July 12, 2022 OWCP advised appellant of its preliminary overpayment determination that he had received an overpayment of compensation in the amount of \$1,952.39 for the period June 3 through 18, 2022 because he received compensation for total disability after he returned to full-time work. It further notified him of its preliminary finding that he was without fault in the creation of the overpayment. OWCP requested that appellant complete an overpayment action request form and overpayment recovery questionnaire (Form OWCP-20) and submit 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 him that he could request a final decision based on the written evidence, or a prerecoupment hearing. No response was received.

By decision dated August 16, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$1,952.39 for the period June 3 through 18, 2022 because he continued to receive wage-loss compensation following his return to full-time employment. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, noting that he had not responded to its preliminary overpayment determination. OWCP required recovery of the \$1,952.39 overpayment of compensation 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

OWCP's regulations provide in pertinent part: "Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury."⁴ A claimant is not entitled to receive temporary total disability benefits and actual earnings for the same period.⁵ OWCP's procedures also provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$1,952.39 for the period June 3 through 18, 2022, for which he was without fault, because he continued to receive wage-loss compensation following his return to full-time work.

Appellant returned to full-time work on June 3, 2022 but continued to receive wage-loss compensation from OWCP for total disability from June 3 through 18, 2022. As noted above, a claimant is not entitled to receive compensation for total disability during a period in which he or she had actual earnings. Therefore, the Board finds that an overpayment of compensation was created in this case.⁷

In an overpayment memorandum dated July 12, 2022, OWCP found that appellant was overpaid \$1,952.39 for the period June 3 through 18, 2022. It explained how it calculated the amount of the overpayment. The Board has reviewed these calculations and finds that OWCP properly determined that an overpayment of compensation in the amount of \$1,952.30 was created.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA⁸ 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

³ *Supra* note 1 at § 8102(a).

⁴ 20 C.F.R. § 10.500.

⁵ *See Q.V.*, Docket No. 21-1188 (issued May 26, 2022); *J.L.*, Docket No. 18-1266 (issued February 15, 2019); *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *L.S.*, 59 ECAB 350, 352-53 (2008).

⁶ *See J.S.*, Docket No. 17-0260 (issued December 28, 2017); *B.H.*, Docket No. 09-0292 (issued September 1, 2009); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.1a (September 2020).

⁷ *Id.*

⁸ *Supra* note 1.

would defeat the purpose of FECA or would be against equity and good conscience. Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.⁹

According to 20 C.F.R. § 10.436, 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.¹⁰ An individual's liquid assets include, but are not limited to, cash on hand, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits. 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.¹¹

Section 10.437 provides that recovery of an overpayment is 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.¹²

ANALYSIS -- ISSUE 2

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

In its July 12, 2022 preliminary overpayment determination, 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 he failed to furnish the requested financial information within 30 days. Appellant, however, did not respond. OWCP, therefore, did not have the necessary current financial information to determine whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹³ As appellant did not submit the information required under section 10.438 of OWCP's regulations,

⁹ *I.R.*, Docket No. 22-0088 (issued May 5, 2022); *G.L.*, Docket No. 19-0297 (issued October 23, 2019).

¹⁰ 20 C.F.R. § 10.436. OWCP procedures provide that a claimant is deemed to need substantially all 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. Its 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. *Supra* note 6 at Chapter 6.400.4a(2) and (3) (September 2020).

¹¹ *Id.* at Chapter 6.400.4b(3)(a), (b).

¹² 20 C.F.R. § 10.437(b)(1).

¹³ *E.M.*, Docket No. 22-0081 (issued August 22, 2022); *D.C.*, Docket No. 19-0118 (issued January 15, 2020); *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁴

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,952.39 for the period June 2 through 18, 2022, for which he was without fault, because he continued to receive wage-loss compensation following his return to full-time work. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.¹⁵

ORDER

IT IS HEREBY ORDERED THAT the August 16, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2023
Washington, DC

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

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

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

¹⁴ *Id.*

¹⁵ 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. *See T.C.*, Docket No. 21-0612 (issued December 2, 2021); *R.W.*, Docket No. 18-1059 (issued February 6, 2019); *Cheryl Thomas*, 55 ECAB 610 (2004).