

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

F.R., Appellant)	
)	
and)	Docket No. 22-0827
)	Issued: October 23, 2023
U.S. POSTAL SERVICE, DALLAS NETWORK)	
DISTRIBUTION CENTER, Dallas, TX,)	
Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 5, 2022 appellant filed a timely appeal from a March 30, 2022 merit decision and an April 20, 2022 nonmerit decision¹ of the Office of Workers' Compensation Programs OWCP).²

¹ Appellant sought appeal from a purported March 23, 2022 decision of OWCP. Although the case record does contain a letter from OWCP dated March 23, 2022, it is informational in nature and does not constitute a final adverse OWCP decision. See 20 C.F.R. §§ 501.2(c) and 501.3(a); *Order Dismissing Appeal, K.S.*, Docket No. 20-1401 (issued March 17, 2021); *Order Dismissing Appeal, S.U.*, Docket No. 20-0636 (issued December 3, 2020) (correspondence that is purely informational in nature does not constitute a final adverse decision of OWCP from which appellant may properly appeal). *Id.* at §§ 501.2(c) and 501.3(a).

² The Board notes that following the April 20, 2022 decision, OWCP received additional evidence. 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.*

Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,825.50 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; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

FACTUAL HISTORY

On January 19, 2018 appellant, then a 67-year-old tractor driver, filed an occupational disease claim (Form CA-2) alleging that he developed a complete tear of his right rotator cuff and impingement of the right shoulder on December 3, 2017 pushing open the batwing doors of a trailer which had been tied down with wire while in the performance of duty. OWCP accepted the claim for a sprain of the right rotator cuff capsule. Appellant stopped work on April 25, 2018 and underwent an OWCP authorized right shoulder arthroscopy on August 3, 2018. OWCP subsequently expanded its acceptance of the claim to include right shoulder bicipital tendinitis, complete rotator cuff tear, and superior glenoid labrum lesion of the right shoulder. It paid appellant wage-loss compensation on the supplemental rolls beginning May 1, 2018 and on the periodic rolls beginning August 19, 2018. Appellant returned to modified duty on March 17, 2021. He retired from the employing establishment in September 2021.

By decision dated September 7, 2021, OWCP granted appellant a schedule award for 12 percent permanent impairment of the right upper extremity (right arm). The period of the award ran for 37.44 weeks from April 4 through December 22, 2021.

Appellant received a schedule award payment of \$1,825.50 for the period December 5 through 22, 2021 through a check dated December 31, 2021. He also received a duplicate schedule award payment of \$1,825.50 for the period December 5 through January 1, 2022 through a check dated January 1, 2022.

In a preliminary overpayment determination dated January 20, 2022, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$1,825.50 for the period December 5, 2021 through January 1, 2022 because "duplicate payments were erroneously issued during the last payment cycle." It explained that he received \$1,825.50 in error because "more than one payment was issued to [him] for the period December 5, 2021 through January 1, 2022." OWCP also made a preliminary determination that he was without fault in the creation of this overpayment. It advised appellant that he could submit evidence contesting the fact or amount of the overpayment. OWCP instructed him to complete an overpayment recovery questionnaire (Form OWCP-20) to determine whether waiver should be granted, and if not, a reasonable repayment schedule. It informed appellant that he should provide supporting financial

³ 5 U.S.C. § 8101 *et seq.*

documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP provided an overpayment action request form and 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 prerecoumment hearing. No response was received.

By decision dated March 30, 2022, OWCP finalized the preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$1,825.50 for the period December 5, 2021 through January 1, 2022, for which he was without fault. It denied waiver of recovery of the overpayment. OWCP required recovery of the overpayment by lump-sum payment of \$1,825.50.

On April 5, 2022 OWCP received a completed overpayment action request form dated March 28, 2022 and requested a prerecoumment hearing. Appellant also provided a partially-completed Form OWCP-20.

By decision dated April 20, 2022, OWCP denied appellant's request for a prerecoumment hearing, finding that the final decision of overpayment of compensation was not subject to the hearing provision of 5 U.S.C. § 8124(b).

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA⁴ and its implementing regulations⁵ 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.⁶ FECA provides for 312 weeks of compensation for 100 percent loss or loss of use of an upper extremity⁷ and the implementing regulations provides that compensation for proportionate periods of time is payable for partial loss.⁸

OWCP's procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.⁹

⁴ *Supra* note 2.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.*

⁷ 5 U.S.C. § 8107(2).

⁸ *Supra* note 5.

⁹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1f (1)(i) (September 2020); *see T.C.*, Docket No. 20-0302 (issued November 12, 2020).

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$1,825.50 for the period December 5, 2021 through January 1, 2022, for which he was without fault.

On September 7, 2021 OWCP granted appellant a schedule award for 12 percent permanent impairment of the right upper extremity (right arm). The period of the award ran for 37.44 weeks from April 4 through December 22, 2021. The Board notes that 12 percent of the 312 weeks of compensation allowable for total loss of use of an upper extremity equals 37.44 weeks of compensation. OWCP paid appellant schedule award compensation for 37.44 weeks or 262.08 days, from April 4 through December 22, 2021. It subsequently issued another payment for the period December 5 through January 1, 2022 through a check dated January 1, 2022 in the amount of \$1,825.50. Appellant was not entitled to the additional \$1,825.50 payment as he had already been fully compensated for the schedule award.¹⁰ Consequently, he received an overpayment of compensation in the amount of \$1,825.50 for the period December 5, 2021 through January 1, 2022.¹¹ 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 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.¹²

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.¹³ 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 \$50.00.¹⁴ Also, assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a

¹⁰ See *T.S.*, Docket No. 19-1895 (issued September 22, 2020); *M.J.*, Docket No. 19-1665 (issued July 29, 2020).

¹¹ See *V.R.*, Docket No. 22-0086 (issued May 3, 2022); *S.L.*, Docket No. 21-0902 (issued December 22, 2021).

¹² 5 U.S.C. § 8129.

¹³ 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 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2)(3) (September 2020).

¹⁴ *Id.* at Chapter 6.400.4a(3); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

spouse or dependent plus \$1,200.00 for each additional dependent.¹⁵ 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.¹⁶

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.¹⁷ 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.¹⁸

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 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.¹⁹ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.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 Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.²²

In its preliminary overpayment determination dated January 20, 2022, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including

¹⁵ *Id.* at Chapter 6.400.4a(2).

¹⁶ *Id.* at Chapter 6.400.4b(3).

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

¹⁸ *Supra* note 13 at Chapter 6.400.4c(3).

¹⁹ *Id.* at § 10.438(a); *P.M.*, Docket No. 22-1059 (issued April 28, 2023); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²⁰ *Id.* at § 10.438(b); *P.M.*, *id.*

²¹ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

²² 20 C.F.R. § 10.438; *V.B.*, Docket No. 20-0976 (issued January 26, 2021).

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 of recovery if he failed to furnish the requested financial information within 30 days. Appellant did not provide an OWCP-20 form and did not provide any information about his income, expenses, or assets. OWCP, therefore, 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.²³

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

LEGAL PRECEDENT -- ISSUE 3

OWCP's regulations provide that a claimant may requested a prerecoupment hearing with respect to an overpayment.²⁴ The date of the request is determined by the postmark or other carrier's date marking.²⁵ Failure to request the prerecoupment hearing within 30 days constitutes a waiver of the right to a hearing.²⁶ Section 10.440(b) of OWCP's regulations provides that the only review of a final decision concerning an overpayment is to the Board. The provisions of 5 U.S.C. § 8124(b) (concerning hearings) and 5 U.S.C. § 8128(a) (concerning reconsiderations) do not apply to such a decision.²⁷ The Board has found that the implementation of this regulation is a proper exercise of the Director's discretion and that a claimant has no further right to review by OWCP once a final decision on the issue of overpayment has been issued.²⁸

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

OWCP issued a final overpayment decision in this case on March 30, 2022. Appellant requested a prerecoupment hearing in an overpayment action request form received by OWCP on April 5, 2022. By decision dated April 20, 2022, OWCP denied his request for a prerecoupment hearing.

²³ *G.F.*, Docket No. 20-0217 (issued March 30, 2023); *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

²⁴ 20 C.F.R. § 10.432; *see S.O.*, Docket No. 20-0753 (issued October 28, 2020); *E.M.*, Docket No. 19-0857 (issued December 31, 2019); *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

²⁵ *Id.* at § 10.439, 10.616(a); *see A.B.*, Docket No. 18-1172 (issued January 15, 2019); *see also B.W.*, Docket No. 18-1004 (issued October 24, 2018); *C.R.*, Docket No. 15-0525 (issued July 20, 2015).

²⁶ *Id.*; *F.P.*, Docket No. 20-1646 (issued August 3, 2021).

²⁷ 20 C.F.R. § 10.440(b). *See also J.M.*, Docket No. 08-1615 (issued June 3, 2009); *Jan K. Fitzgerald*, 51 ECAB 659 (2000).

²⁸ *Charles E. Nance*, 54 ECAB 447 (2003); *Philip G. Feland*, 48 ECAB 485 (1997).

Section 10.440(b) of OWCP's regulations specifically provides that the only review of a final overpayment determination of OWCP is to the Board and that 5 U.S.C. § 8128(a) does not apply to such a final overpayment determination.²⁹ As appellant was not entitled to a prerecoumment hearing following the final overpayment decision of March 30, 2022, OWCP properly denied his request on April 20, 2022.³⁰

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,825.50 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 and properly denied appellant's request for a prerecoumment hearing as untimely filed.

ORDER

IT IS HEREBY ORDERED THAT the March 30 and April 20, 2022 decisions of Office of Workers' Compensation Programs are affirmed.

Issued: October 23, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁹ *Id.*

³⁰ *Id.*; see *J.B.*, Docket No. 20-0923 (issued February 12, 2021); *E.H.*, Docket No. 19-0016 (issued October 20, 2020); *P.J.*, Docket No. 19-1479 (issued May 8, 2020) (finding that following a final overpayment decision, the only option for review is the Board).