

compensation at an augmented rate, to which he was not entitled; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On October 17, 2000 appellant, then a 47-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed spondylotic stenosis at L2-3 and L3-4 due to factors of his federal employment, which included standing two to three hours per day, walking four to seven hours per day, carrying a satchel weighing up to 35 pounds four to seven hours per day, lifting up to 70 pounds, stooping, and twisting.

OWCP initially accepted appellant's claim for aggravation of lumbar degenerative disc disease. Subsequently, on April 18, 2014, it expanded the acceptance of the claim to include displacement of lumbar intervertebral disc without myelopathy, chronic venous embolism and thrombosis of deep vessels of lower extremity, and phlebitis and thrombophlebitis of superficial vessels of lower extremities. Appellant stopped working full time on November 12, 2005, and began working 5.50 hours per day. OWCP paid him wage-loss compensation on the supplemental rolls commencing November 12, 2005 and on the periodic rolls commencing January 20, 2008. It paid appellant at the augmented 3/4 rate (75 percent).

In a letter dated July 27, 2019, appellant advised OWCP that he would be legally divorced effective September 9, 2019. He requested a new healthcare application because he would no longer be covered by his wife's health insurance after September 2019. Appellant also provided his new mailing address.

By letter dated July 31, 2019, OWCP requested that appellant complete an accompanying questionnaire regarding his marital status and dependents.

In a questionnaire dated August 5, 2019, appellant advised OWCP that he no longer resided with his wife as of April 11, 2019, and that he made no regular payments for her support. He also indicated that he had no dependent child.

In an August 7, 2019 memorandum of telephone call (Form CA-110), appellant advised OWCP that he had uploaded the questionnaire.

In a June 9, 2020 manual adjustment form, OWCP determined that an overpayment of compensation occurred because appellant was paid at the augmented 3/4 rate, but did not have any dependents. The form also showed that, during the relevant period, OWCP paid appellant gross compensation of \$51,291.96 and net compensation of \$49,706.52, but that he should have been paid gross compensation of \$45,626.95 and net compensation of \$44,041.52. OWCP subtracted the net compensation of \$44,041.52 that appellant was entitled to receive from the net compensation of \$49,706.52 that he was paid, which resulted in an overpayment of \$5,665.00.

On June 25, 2020 OWCP advised appellant that it had made a preliminary overpayment determination that he received an overpayment of compensation in the amount of \$5,665.00 for the period April 11, 2019 through May 23, 2020 because he received compensation at the augmented 3/4 rate instead of the basic 2/3 (66 2/3 percent) rate as he no longer had an eligible dependent. It noted that he had separated from his spouse, that she was no longer living with him

as of April 11, 2019, and that he was not providing support payments. OWCP further noted that he had received a net compensation of \$49,706.52 for wage-loss compensation at the augmented rate based on an eligible dependent from April 11, 2019 through May 23, 2020. Appellant, however, was only entitled to receive \$44,041.52 in net compensation based on the appropriate basic 2/3 rate for lack of an eligible dependent, resulting in an \$5,665.00 overpayment. OWCP further advised appellant of its preliminary determination that he was with fault in the creation of the overpayment as he continued to receive compensation at the incorrect compensation rate and neglected to provide notification within 90 days of the dependency change. It provided an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) for his completion, and advised that, in order for it to consider the question of waiver or to determine a reasonable method for collection, he must provide a completed Form OWCP-20 and attach supporting financial documentation. Additionally, OWCP 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 prerecoumment hearing.

In an overpayment action request form dated June 30, 2020, appellant requested a pre-recoumment hearing and waiver of recovery of the overpayment. He contended that he was submitting documentation to show that he had contacted OWCP about his marital status. In a Form OWCP-20 dated June 30, 2020, appellant listed his monthly income as \$3,278.00. He listed his monthly expenses as \$1,334.00 for rent or mortgage, including property tax; \$250.00 for food; \$50.00 for clothing; \$424.00 for utilities; \$253.00 for other expenses; \$438.00 for recurring debt, for total monthly expenses of \$2,749.00. Appellant indicated that he had assets of \$3,700.00 in a checking account and \$39,000.00 in a savings account for total assets of \$42,700.00. He did not submit any supporting financial documentation. Appellant checked a box marked "Yes" indicating that he reported the change in circumstances which affected his monthly payment on August 5, 2019.

By decision dated October 13, 2020, an OWCP hearing representative performed a preliminary review and found that the case was not in posture for a hearing as OWCP did not discuss appellant's multiple contacts with OWCP advising of his impending divorce and failed to explain why appellant was at fault in creation of the overpayment. Thus, the hearing representative set aside the June 25, 2020 preliminary overpayment determination and remanded the case to OWCP to issue a new preliminary overpayment determination which considered the documentation submitted concerning appellant's divorce and a clear explanation of its fault determination.

On February 10, 2021 OWCP advised appellant that it had made a preliminary overpayment determination that he received an overpayment of compensation in the amount of \$5,665.00 for the period April 11, 2019 through May 23, 2020 because he received compensation at the augmented 3/4 rate instead of the basic 2/3 rate when he had no eligible dependent. It noted that his spouse was no longer living with him as of April 11, 2019 and he was not providing support payments. OWCP also noted that appellant had received net compensation in the amount of \$49,706.52 for wage-loss compensation at the augmented 3/4 rate based on an eligible dependent from April 11, 2019 through May 23, 2020. Appellant, however, was only entitled to receive \$44,041.52 in net compensation based on the appropriate basic 2/3 rate for lack of an eligible dependent, resulting in an \$5,665.00 overpayment. OWCP further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment as he

promptly notified it of the change in his dependency status. It requested that he complete an overpayment action request form and a Form OWCP-20 and advised that, in order for it to consider the question of waiver or to determine a reasonable payment method, he should submit supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and other records to support his reported income and expenses. Additionally, OWCP 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.

In a February 22, 2021 letter, appellant requested waiver of recovery of the overpayment as he timely reported the change in his dependency status. In a Form OWCP-20 of even date, he listed his monthly income as \$2,990.34 in FECA benefits, \$270.00 in veterans' disability benefits, and \$57.00 in other benefits, resulting in total monthly income of \$3,317.34. Appellant listed his monthly expenses as \$1,334.00 for rent or mortgage, including property tax; \$300.00 for food; \$50.00 for clothing; \$376.00 for utilities; \$150.00 for other expenses; \$150.00 for Medicare; \$450 for recurring debt, for total monthly expenses of \$2,810.00. He indicated he had assets of \$1,631.00 in a checking account; \$39,384.00 in a savings account, and \$15,000.00 for truck and personal property for total assets of \$56,015.00. Appellant did not submit any supporting financial documentation.

The record reflects that appellant elected to receive retirement benefits from the Office of Personnel Management effective April 1, 2022.

By decision dated December 5, 2022, OWCP finalized the preliminary overpayment determination, finding that an overpayment in the amount of \$5,665.00 had occurred during the period April 11, 2019 through May 23, 2020 because appellant continued to receive compensation at the augmented rate after he no longer had an eligible dependent. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP noted that appellant had not provided any supporting documentation in response to the preliminary overpayment determination. It required recovery of the overpayment in full.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from a personal injury sustained while in the performance of duty.³ If the disability is total, the United States shall pay the employee during the period of total disability the basic compensation rate of 66 2/3 percent of his or her monthly pay. A disabled employee is entitled to an augmented compensation rate of 75 percent if he or she has one or more dependents.⁴

Under FECA a dependent includes a husband or wife if: (a) he or she is a member of the same household as the employee; (b) the spouse is receiving regular contributions from the

³ *Supra* note 1 at § 8102(a).

⁴ *Id.* at §§ 8105(a) and 8110(b); *P.M.*, Docket No. 20-1262 (issued October 15, 2021); *B.A.*, Docket No. 20-0947 (issued July 15, 2021); *O.B.*, Docket No. 19-0034 (issued April 22, 2019); *O.R.*, 59 ECAB 432, 436 (2008).

employee for his/her support; or (c) the employee has been ordered by a court to contribute spousal support.⁵

If a claimant received compensation at the augmented rate during a period when he or she did not have an eligible dependent, the difference between the compensation that was disbursed at the 75 percent augmented rate and the compensation that should have been disbursed at the 66 2/3 percent basic rate constitutes an overpayment of compensation.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,665.00 for the period April 11, 2019 through May 23, 2020, for which he was without fault, because he improperly received wage-loss compensation at the augmented compensation rate, to which he was not entitled.

Appellant initially received compensation payments at the augmented 3/4 rate, as he was married and lived in the same household as his spouse. He later separated from his spouse on April 11, 2019, and was divorced effective September 9, 2019. They no longer lived together, and appellant denied making regular direct payments for her support effective April 11, 2019. Appellant, however, continued to receive compensation at the augmented rate after he no longer had an eligible dependent. OWCP has therefore established fact of overpayment.

The record supports that OWCP erroneously paid appellant compensation based on the augmented rate for the period April 11, 2019 through May 23, 2020. As appellant reported the date of his separation as April 11, 2019 on the August 5, 2019 OWCP questionnaire, OWCP properly determined that date as the start date of the overpayment.⁷ OWCP paid appellant \$49,706.52 in FECA compensation for that period at the augmented rate but, was entitled to only \$44,041.52 at the basic rate. OWCP properly determined that the difference yielded an overpayment of compensation in the amount of \$5,665.00. The Board thus finds that OWCP properly determined the fact, period, and amount of the overpayment in this case.⁸

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment of compensation shall be recovered by OWCP unless “incorrect payment has been made to an individual who is without fault and

⁵ *Id.* at 8110(a)(2); *see P.M., id.; B.A., id.; O.B., id.*

⁶ *P.M., id.; B.A., id.; O.B., id.; E.B., Docket No. 19-1571 (issued December 31, 2020); S.D., Docket No. 17-0309 (issued August 7, 2018); Ralph P. Beachum, Sr., 55 ECAB 442, 445 (2004).*

⁷ *B.A., supra* note 4.

⁸ *P.M., id.; B.A., id.; O.B., id.; W.A., Docket No. 18-0070 (issued May 14, 2018); see D.S., Docket No. 17-1224 (issued August 28, 2017).*

when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.”⁹

Section 10.438 of OWCP’s regulations provides 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 on an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.¹⁰

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.¹¹ Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.¹²

In its preliminary overpayment determination dated February 10, 2021, OWCP explained the importance of providing the completed overpayment recovery questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support appellant’s reported income and expenses. It advised him that waiver of recovery would be denied if he failed to furnish the requested financial information within 30 days. Appellant responded to the preliminary overpayment determination; however, he did not submit any supporting financial documentation prior to the December 5, 2022 decision. As a result, OWCP did not have the necessary financial information to determine whether recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.¹³ Consequently, as appellant did not submit the financial information required under 20 C.F.R. § 10.438 of OWCP’s regulations, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁴

⁹ 5 U.S.C. § 8129.

¹⁰ 20 C.F.R. § 10.438.

¹¹ *Id.* at § 10.436; *see also B.F.*, Docket No. 22-0857 (issued December 9, 2022); *B.A.*, *supra* note 4; *S.A.*, Docket No. 20-0279 (issued June 8, 2021).

¹² *Id.* at § 10.438; *see also id.*

¹³ *B.F.*, *supra* note 11.

¹⁴ 20 C.F.R. § 10.438; *see B.F.*, *supra* note 11; *M.D.*, Docket No. 19-1500 (issued February 24, 2020); *L.D.*, Docket No. 19-0606 (issued November 21, 2019).

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,665.00 for the period April 19, 2019 through May 23, 2020, for which he was without fault, because he improperly received wage-loss compensation at an augmented rate, to which he was not entitled. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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