

because he continued to receive compensation after he increased his work hours from 10 hours per week to 20 hours per week; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On August 18, 2014 appellant, then a 31-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained back and arm pain when lifting parcels and pulling a hand truck while in the performance of duty. He stopped work on the claimed date of injury. OWCP accepted the claim for cervical, lumbar and thoracic sprains. It paid appellant wage-loss compensation commencing October 2, 2014.

On January 31, 2017 appellant returned to light-duty work for 2 hours per day, or 10 hours per week.

By decision dated August 1, 2017, OWCP determined that the position of modified city carrier fairly and reasonably represented appellant's wage-earning capacity. It reduced his compensation to reflect his loss of wage-earning capacity (LWEC).

In a letter dated May 6, 2021, appellant informed OWCP that his medical restrictions had been updated by his physician, Dr. Deepika Bajaj, a specialist in neurology and emergency medicine, which he provided *via* a duty status report (Form CA-17) and a work restriction evaluation (Form OWCP-5c). He related that he accepted a new modified job from the employing establishment working 4 hours per day, or 20 hours per week, beginning May 3, 2021.

On July 27, 2021 OWCP received information from the employing establishment regarding appellant's pay rate. The employing establishment advised that his annual pay rate at that time was \$68,649.00 and that he worked part time for 20 hours per week.

In a February 8, 2022 preliminary overpayment determination, OWCP notified appellant that he received an overpayment of compensation in the amount of \$2,668.14 for the period May 3 through July 17, 2021 because he increased his work hours, but continued to receive FECA compensation for those additional hours. It determined that he was without fault in the creation of the overpayment. OWCP noted that the employing establishment provided appellant's pay rate information on July 27, 2022 and reported that his new weekly earnings were \$660.09 based on 20 hours per week. Using the *Shadrick*³ formula, it found that he was entitled to \$404.00 in weekly compensation, totaling \$4,386.79 for 76 days during the period May 3 through July 17, 2021. The difference between the compensation paid of \$7,054.43 and the compensation entitlement of \$4,386.29 for the period May 3 through July 17, 2021 was \$2,668.14. OWCP informed appellant of his appeal rights and requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable recovery method. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records which support income and expenses. Additionally, OWCP provided an overpayment action request form and notified

³ *Albert C. Shadrick*, 5 ECAB 376 (1953), codified at 20 C.F.R. § 10.403 (c)-(e).

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 a March 9, 2022 overpayment action request form, appellant requested waiver of recovery of the overpayment and requested that OWCP make a decision based on the written evidence. He provided a completed Form OWCP-20 and reported total monthly income of \$5,498.94 and total monthly expenses of \$3,910.00. Appellant indicated that he had one dependent, his 19-year-old son, and no assets. He submitted supporting financial documentation.

By decision dated April 18, 2022, OWCP finalized its preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$2,668.14 for the period May 3 through July 17, 2021 because he increased his work hours from 10 hours per week to 20 hours per week. It also found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience as he failed to submit sufficient supporting documentation regarding his waiver request.

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 duty.⁴ Section 8129(a) of FECA provides, in pertinent part, that when an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.⁵

Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.⁶ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$2,668.14 for the period May 3 through July 17, 2021, for which he was without fault, because he

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8129(a).

⁶ *Id.* at § 8116(a).

⁷ *J.R.*, Docket No. 20-0025 (issued December 13, 2021); *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *B.H.*, Docket No. 09-0292 (issued September 1, 2009); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.300.4g (September 2020).

continued to receive compensation after he increased his work hours from 10 hours per week to 20 hours per week.

Appellant increased his work hours from 10 hours per week to 20 hours per week on May 3, 2021. However, OWCP continued to pay him wage-loss compensation based upon 10 hours of work per week, which resulted in an overpayment of compensation. Appellant was not entitled to receive FECA compensation for the additional hours he worked per week and for which he received pay.⁸ OWCP, therefore, properly determined that he received an overpayment of compensation.

OWCP determined the amount of appellant's overpayment based on its proper calculation of his pay rate using the *Shadrick*⁹ formula. It advised that he was entitled to \$404.00 in weekly compensation of \$4,386.79 for the period May 3 through July 17, 2021. The difference between the compensation paid of \$7,054.43 and the compensation appellant was entitled to for the period May 3 through July 17, 2021 was \$2,668.14. The Board thus finds that OWCP properly determined that he received an overpayment of compensation in the amount of \$2,668.14 during the above-noted period.¹⁰

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of FECA states: "Adjustment or recovery [of an overpayment] by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience."¹¹

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.¹² 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 \$50.00.¹³ Also, assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a

⁸ See *J.R., id.; M.S.*, Docket No. 16-0289 (issued April 21, 2016); *J.R.*, Docket No. 08-1107 (issued June 15, 2009).

⁹ *Supra* note 3.

¹⁰ *J.R.*, *supra* note 7; *R.Q.*, Docket No. 18-0964 (issued October 8, 2019).

¹¹ 5 U.S.C. § 8129(b).

¹² 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. *Supra* note 7 at *Final Overpayment Determinations*, Chapter 6.400.4a(2) (September 2020).

¹³ *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.¹⁴ 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.¹⁵

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.¹⁶ 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.¹⁷

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.¹⁸

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.¹⁹

In its preliminary overpayment determination dated February 8, 2022, OWCP requested that appellant submit a completed Form OWCP-20 and supporting financial documentation, including copies of tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Appellant subsequently submitted a completed Form OWCP-20, wherein he reported total monthly income of \$5,498.94 and total monthly expenses of \$3,910.00. As his monthly income exceeds his monthly expenses by \$1,588.94, he does not need substantially all of his monthly income to meet current and ordinary living expenses.²⁰

¹⁴ *Id.* at Chapter 6.400.4a(2).

¹⁵ *Id.* at Chapter 6.400.4b(3).

¹⁶ *Supra* note 12 at § 10.437; *J.R.*, *supra* note 8; *E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁷ *Supra* note 7 at Chapter 6.400.4c(3).

¹⁸ 20 C.F.R. § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁹ *Id.* at 10.436.

²⁰ *Supra* note 13. *See also G.C.*, Docket No. 20-1408 (issued April 19, 2021).

The Board further finds that appellant has not established that recovery of the overpayment would be against equity and good conscience because it has not been shown, for the reasons noted above, that he would experience severe financial hardship in attempting to repay the debt, or that a valuable right had been relinquished, or that a position had been changed for the worse in reliance on the payment, which created the overpayment.²¹ Therefore, OWCP properly denied waiver of recovery of the overpayment.

Because it has not been established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP has not abused its discretion by denying waiver of recovery of the overpayment.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,668.14 for the period May 3 through July 17, 2021, for which he was without fault, because he continued to receive compensation after he increased his work hours from 10 hours per week to 20 hours per week. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

²¹ *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2024
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