

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

A.P., Appellant	)	
	)	
and	)	<b>Docket No. 24-0943</b>
	)	<b>Issued: December 10, 2024</b>
U.S. POSTAL SERVICE, PEACHTREE	)	
POSTAL & DISTRIBUTION CENTER,	)	
Atlanta, GA, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On September 27, 2024 appellant, through counsel, filed a timely appeal from an August 27, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$1,792.33 for the period October 20 through November 4, 2023, for which she was without fault, and whether she received an overpayment of compensation in the amount of

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

\$12,546.28 for the period November 5, 2023 through February 24, 2024, for which she was at fault, because she continued to receive total disability compensation after she returned to work, for a total overpayment in the amount of \$14,338.61;<sup>3</sup> (2) whether OWCP properly denied waiver of recovery of the \$1,792.33 overpayment; and (3) whether OWCP properly determined that appellant was at fault in the creation of the \$12,546.28 overpayment, thereby precluding waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On May 2, 2023 appellant, then a 52-year-old clerk/special delivery messenger, filed a traumatic injury claim (Form CA-1) alleging that on May 1, 2023 she broke her right thumb when she struck her hand on a piece of broken equipment while in the performance of duty. She stopped work on May 2, 2023. OWCP accepted the claim for unspecified injury of right wrist, hand and finger(s). It paid appellant wage-loss compensation on the supplemental rolls from June 16 through July 15, 2023 and on the periodic rolls from July 16, 2023 through February 24, 2024.

In a letter dated July 19, 2023, OWCP notified appellant that she would receive compensation payments on the periodic rolls effective July 16, 2023. It advised her of her responsibility to return to work in connection with the accepted employment injury. To minimize the possibility of an overpayment of compensation, appellant should notify OWCP immediately when she returned to work. An attached Form EN1039 advised that for payments sent by electronic funds transfer (EFT), a notification of the date and amount of payment appeared on the statement from her financial institution and that she was expected to monitor her EFT deposits carefully, at least every two weeks. If appellant worked for any portion of the period for which a deposit was made, she was to advise OWCP immediately so that the overpayment could be collected.

In a March 7, 2024 letter, appellant's counsel reported that appellant had returned to work on October 23, 2023.

OWCP terminated appellant's periodic roll payments effective February 24, 2024. In a Form CA-3, report of work status, the employing establishment indicated that she had returned to full-time duty with restrictions on October 20, 2023.

In a notice dated March 11, 2024, OWCP advised appellant of its preliminary overpayment determination that an overpayment of compensation in the amount of \$14,138.61<sup>4</sup> had been created for the period October 20, 2023 through February 24, 2024, as it paid her temporary total wage-loss compensation after she returned to full-time, modified-duty work on October 20, 2023. It found that she was with fault in the creation of the overpayment as she had accepted payments which she knew or should have known to be incorrect. OWCP noted that the first direct deposit of incorrect funds deposited into appellant's account was issued on November 4, 2023 for the period October 8 through November 4, 2023 and found that ample time had elapsed for her to have

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<sup>3</sup> OWCP found that appellant had been overpaid a total \$14,338.61 for the period October 20, 2023 through February 24, 2024.

<sup>4</sup> Within the preliminary overpayment determination, OWCP determined, through its calculations, that a total overpayment of compensation in the amount of \$14,338.61 had been created for the period October 20, 2023 through February 24, 2024.

received and reviewed either her bank statement or the benefits statement issued at the time of the payment showing details of the improper payment. It thus found that she should have reasonably known that the payment was incorrect as the dates overlapped with a period that she worked. OWCP indicated that appellant had returned to work on October 20, 2023 and received both wages from the employing establishment and workers' compensation from OWCP for temporary total disability for the period October 20, 2023 through February 24, 2024. It requested that she complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit supporting financial documentation, including tax returns, bank account statements, bills, cancelled checks, pay slips, and other records which supported income and expenses listed. Additionally, OWCP advised appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a prerecoupment hearing.

On March 18, 2024 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She indicated that the overpayment had occurred through no fault of her own and requested waiver of recovery of the overpayment. In a March 24, 2024 Form OWCP-20, appellant listed total monthly income of \$3,000.00, total monthly expenses of \$2,906.00 and available funds of \$565.00. No supporting financial information was submitted.

A telephonic hearing was held on June 13, 2024. The hearing representative noted that OWCP's preliminary overpayment determination contained a typographical error and that the amount of the overpayment of compensation was \$14,338.61. He advised appellant that financial documentation was necessary to support her testimony about her household income and expenses to consider her waiver request. The record was held open for 30 days to allow for the submission of additional evidence.

In a July 16, 2024 Form OWCP-20, appellant listed total monthly income of zero. She reported monthly expenses of \$4,541.00, which included \$1,543.64 for rent or mortgage, \$600.00 for food, \$150.00 for clothing, \$1,307.00 for utilities which comprised \$135.00 for television, \$212.00 for water, \$85.00 for gas, \$300.00 for telephone, \$300.00 for fuel and \$275.00 for lights, and recurring monthly installments of \$916.00 for car and \$25.00 for credit card. Appellant also reported \$312.30 in available funds. She submitted a June 1, 2024 mortgage statement in another party's name, which indicated that the party had filed bankruptcy and that no mortgage payments had been received in 2024; a June 2023 cable bill in appellant's name for \$133.08; a July 2024 water and sewer bill in another party's name which showed a balance plus a monthly payment for both current charges and arrears; a July 2024 electrical in appellant's name for \$74.54; a February 2024 statement from vehicle loan with monthly payment of \$915.79, two illegible credit card statements, a pay slip for appellant which showed a net payment of \$1,440.00, and a July 2024 utility bill in another party's name.

By decision dated August 27, 2024, an OWCP hearing representative finalized the March 11, 2024 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$14,338.61 for the period October 20, 2023 through February 24, 2024, because she returned to full-time, modified-duty work on October 20, 2023, but continued to receive wage-loss compensation for temporary total disability through February 24, 2024. The hearing representative reversed the finding of fault for the first payment issued on November 4, 2023, covering the period October 8 through November 4, 2023, as appellant would not have had the requisite knowledge that the payment was incorrect at that time. He denied waiver of recovery of the overpayment for the period October 8 through November 4, 2023 as she failed to submit a properly completed Form OWCP-20 with complete supporting

financial documentation. The hearing representative affirmed the finding of fault for the remaining periodic roll payments issued on December 2, 20, 30, 2023 and January 27 and February 24, 2024, 2023, covering the period November 5 through February 24, 2024, which precluded waiver of recovery. In assessing a repayment schedule, the hearing representative found that appellant was not entitled to compromise of the charges or principle and determined she should submit a monthly repayment amount of \$398.30 until the debt was repaid in full.

### **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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,792.33 for the period October 20 through November 4, 2023, for which she was without fault, and an overpayment of \$12,546.28 for the period November 5, 2023 through February 24, 2024, for which she was at fault, because she continued to receive total disability compensation after she returned to work, for a total overpayment in the amount of \$14,338.61.

The record establishes that appellant returned to full-time work with restrictions at the employing establishment on October 20, 2023. OWCP, however, continued to pay her wage-loss compensation for total disability through February 24, 2024. As noted above, appellant was not

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Id.* at § 8129(a).

<sup>7</sup> *Id.* at § 8116(a).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.300.4g (September 2020); *see also D.L.*, Docket No. 20-1522 (issued July 27, 2023); *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *K.P.*, Docket No. 19-1151 (issued March 18, 2020).

entitled to receive total disability benefits and actual earnings for the same time period.<sup>9</sup> Thus, an overpayment of compensation was created in this case.<sup>10</sup>

With regard to the amount of the overpayment, the Board finds that OWCP calculated appellant's net wage-loss compensation paid for the 16-day period of October 20 through November 4, 2023 as \$1,792.33. OWCP properly noted that on November 4, 2023 she was issued an EFT for \$3,136.57 for the period October 8 through November 4, 2023, a total of 28 days. It divided the amount received, \$3,136.57, by 28 days to equal a daily rate of \$112.02, which it then multiplied by 16 (the days of no entitlement) resulting in the \$1,792.33 overpayment for the period October 20 through November 4, 2023. OWCP also properly calculated appellant's net wage-loss compensation of \$12,546.28 for the period November 5, 2023 through March 8, 2024. Appellant received \$3,136.57 for each of the periods from November 5 to December 2, 2023, December 3 to 30, 2023, December 31, 2023 to January 27, 2024, and January 28 to February 24, 2024, for a total of \$12,546.28. OWCP explained that on December 2 and 30, 2023 and January 27 and February 24, 2024 it had issued a direct deposit payment of \$3,136.57 as wage-loss compensation. The Board has reviewed these calculations and finds that OWCP properly determined that overpayments of \$1,792.33 for the period October 20 through November 4, 2023 and \$12,546.28 for the period November 5, 2023 through March 8, 2024 were created, for a total overpayment in the amount of \$ 14,338.61.<sup>11</sup>

### **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."<sup>12</sup>

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 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>13</sup>

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<sup>9</sup> See *supra* note 7; 20 C.F.R. § 10.500(a); see *V.J.*, Docket No. 20-1335 (issued March 11, 2021); *D.L.*, *id.*; *K.K.*, Docket No. 19-0978 (issued October 21, 2019); *E.V.*, Docket No. 17-1328 (issued December 11, 2017).

<sup>10</sup> See *A.N.*, Docket No. 23-0350 (issued April 8, 2024); *T.H.*, Docket No. 23-0194 (issued July 17, 2023); *A.C.*, Docket No. 22-0118 (issued December 15, 2022).

<sup>11</sup> See *K.L.*, Docket No. 23-0149 (issued July 13, 2023); *T.H.*, *id.*; *D.R.*, Docket No. 21-0234 (issued November 17, 2022).

<sup>12</sup> 5 U.S.C. § 8129(a)-(b); see *D.D.*, Docket No. 20-1522 (issued July 27, 2023); *R.Q.*, Docket No. 18-0964 (issued October 8, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

<sup>13</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. 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 8 at Chapter 6.400.4a(2) and (3) (September 2020).

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.<sup>14</sup>

Section 10.438 of 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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant was not entitled to waiver of recovery of the \$1,792.33 overpayment for the period October 20 through November 4, 2023. As OWCP found her without fault in the creation of the \$1,792.33 overpayment for the period October 20 through November 4, 2023, 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.<sup>16</sup>

In its preliminary overpayment determination dated March 11, 2024, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial information. It advised her that waiver of recovery would be denied if she failed to furnish the requested financial information within 30 days. Appellant returned the initial Form OWCP-20 without supporting financial information. Following the prerecoupment hearing where she was advised of the deficiencies of her Form OWCP-20, she submitted an incomplete Form OWCP-20 and some financial information. The hearing representative specifically noted that some of the financials submitted were in another person's name and that appellant had failed to disclose her income or provide any evidence of her asset base. He further found that since appellant had not submitted a properly completed Form OWCP-20 and her bills submitted were inadequate to support the expenses listed on her Form OWCP-20, a determination of the appropriateness for waiver could not be made. Appellant did not submit a completed Form OWCP-20, or otherwise submit the financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

Appellant had the responsibility to provide financial information to OWCP but failed to do so.<sup>17</sup> As she did not submit the information required under 20 C.F.R. § 10.438 of OWCP's

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<sup>14</sup> *Id.* at § 10.437.

<sup>15</sup> *Id.* at § 10.438.

<sup>16</sup> *Id.* at § 10.436.

<sup>17</sup> *Id.* at § 10.438; *C.B.*, Docket No. 24-0285 (issued April 24, 2024); *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

regulations to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.<sup>18</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

Section 8129(b) of FECA provides as follows that adjustment or recovery 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.<sup>19</sup> No waiver of recovery of an overpayment is possible if the claimant is at fault in the creation of the overpayment.<sup>20</sup>

On the issue of fault, 20 C.F.R. § 10.433(a) provides that an individual is with fault in the creation of an overpayment who: (1) made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; (2) failed to furnish information which the individual knew or should have known to be material; or (3) with respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.<sup>21</sup>

With respect to whether an individual is without fault, section 10.433(b) of OWCP regulations provides that whether OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.<sup>22</sup>

The Board has held that an employee who receives payments from OWCP in the form of a direct deposit may not be at fault the first time incorrect funds are deposited into his or her account, as the acceptance of the resulting overpayment lacks the requisite knowledge.<sup>23</sup> The Board has also held in cases involving a series of incorrect payments, where the requisite knowledge is established by a letter or telephone call from OWCP, or simply with the passage of time and a greater opportunity for discovery, the claimant will be at fault for accepting the payments subsequently deposited.<sup>24</sup>

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<sup>18</sup> See *E.A.*, Docket No. 24-0810 (issued September 26, 2024).

<sup>19</sup> 5 U.S.C. § 8129(b).

<sup>20</sup> *S.S.*, Docket No. 20-0776 (issued March 15, 2021); *B.W.*, Docket No. 19-0239 (issued September 18, 2020); *R.G.*, Docket No. 18-1251 (issued November 26, 2019); *C.L.*, Docket No. 19-0242 (issued August 5, 2019).

<sup>21</sup> 20 C.F.R. § 10.433(a).

<sup>22</sup> *Id.* at § 10.433(b); *R.G.*, *supra* note 20; *C.L.*, *supra* note 20; *D.M.*, Docket No. 17-0983 (issued August 3, 2018); *see also supra* note 8 at Chapter 6.300.4(d) (September 2020).

<sup>23</sup> *M.T.*, Docket No. 20-1353 (issued May 9, 2022); *R.S.*, Docket No. 20-0177 (issued September 3, 2021); *M.J.*, Docket No. 19-1665 (issued July 29, 2020); *C.H.*, Docket No. 19-1470 (issued January 24, 2020); *Tammy Craven*, 57 ECAB 689 (2006); *see also A.B.*, Docket No. 18-0922 (issued January 3, 2019).

<sup>24</sup> *Id.*

Previous cases have held that receiving one or two erroneous direct deposit payments does not necessarily create the requisite knowledge to find that a claimant was at fault in the creation of the overpayment.<sup>25</sup>

### ANALYSIS -- ISSUE 3

The Board finds that OWCP properly determined that appellant was at fault in the creation of the \$12,546.28 overpayment for the period November 5, 2023 through February 24, 2024, thereby precluding waiver of recovery of the overpayment.

OWCP's hearing representative determined that appellant was without fault in the creation of the \$1,792.33 overpayment for the period October 20 through November 4, 2023 because the record did not establish that she had clear knowledge that the first direct deposit she received after she returned to work was incorrect. The hearing representative, however, determined that appellant was at fault in the creation of the overpayment resulting from the subsequent direct deposit payments in the amount of \$3,136.57 for each of the periods from November 5 to December 2, 2023, December 3 to 30, 2023, December 31, 2023 to January 27, 2024, and January 28 to February 24, 2024, a total of \$12,546.28. The hearing representative found that over 30 days had elapsed since the EFT deposits and her return to work, which allowed ample time for her to receive and review a statement from her financial institution showing the details of the improper payment.

In a July 19, 2023 Form EN-1049, OWCP notified appellant that, to avoid an overpayment of compensation, she must immediately notify it of her return to work and that she was required to reimburse OWCP for compensation paid during a period which she worked. It further informed her that she should monitor her EFT deposits carefully. Although OWCP may have been negligent in making incorrect payments, this does not excuse a claimant from accepting payments he or she knew or should have known to be incorrect.<sup>26</sup> In cases involving a series of incorrect payments, where the requisite knowledge is established by documentation from OWCP or simply with the passage of time and opportunity for discovery, the claimant will be at fault for accepting the payments subsequently deposited.<sup>27</sup> By the time she received the payment covering the period November 5 to December 2, 2023, appellant knew or should have known that she was not entitled to receive wage-loss compensation for temporary total disability following her return to work. As she accepted payments which she knew or should have known to be incorrect for the period November 5, 2023 through February 24, 2024, the Board finds that OWCP properly found that she was at fault in the creation of the overpayment for this period.<sup>28</sup>

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<sup>25</sup> *L.G.*, Docket No. 20-1342 (issued September 3, 2021); *V.S.*, Docket No. 13-1278 (issued October 23, 2013).

<sup>26</sup> *See G.H.*, Docket No. 22-0890 (issued January 9, 2023); *M.T.*, *supra* note 23; *C.G.*, Docket No. 15-0701 (issued December 9, 2015).

<sup>27</sup> *See G.H.*, *id.*; *C.W.*, Docket No. 19-1653 (issued March 23, 2021); *S.D.*, Docket No. 17-0309 (issued August 7, 2018).

<sup>28</sup> *See A.N.*, *supra* note 10; *G.H.*, *id.*; *L.G.*, *supra* note 25; *V.S.*, *supra* note 25; *J.K.*, Docket No. 20-0606 (issued March 11, 2021).



**CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$1,792.33 for the period October 20 through November 4, 2023, for which she was without fault, and an overpayment of compensation in the amount of \$12,546.28 for the period November 5, 2023 through February 24, 2024, for which she was at fault, because she continued to receive total disability compensation after she returned to work, for a total overpayment in the amount of \$14,338.61.<sup>29</sup> The Board finds that OWCP properly denied waiver of recovery of the \$1,792.33 overpayment and the \$12,546.28 overpayment.<sup>30</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 27, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>29</sup> OWCP found that appellant had been overpaid \$14,338.61 for the period of October 20, 2023 through February 24, 2024.

<sup>30</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. *See D.P.*, Docket No. 24-0482 (issued September 4, 2024); *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).