

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

K.A., Appellant	)	
	)	
and	)	<b>Docket No. 25-0127</b>
	)	<b>Issued: December 11, 2024</b>
DEPARTMENT OF THE ARMY, U.S. ARMY	)	
CORPS OF ENGINEERS, Huntington, WV,	)	
Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. McGINLEY, Alternate Judge

**JURISDICTION**

On November 20, 2024 appellant filed a timely appeal from an October 29, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</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 OWCP properly determined that appellant received an overpayment of compensation in the amount of \$48,057.55, for the period July 23, 2023 through June 15, 2024, because he continued to receive wage-loss compensation for total disability following his return to full-time work; and (2) whether OWCP properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On September 29, 2022 appellant, then a 44-year-old general equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on September 22, 2022, he struck his head on concrete after falling from a cart while in the performance of duty. He stopped work on that date.

OWCP accepted the claim for diffuse traumatic brain injury (TBI) with loss of consciousness of unspecified duration; laceration without foreign body of other part of head; postconcussional syndrome intracranial access; granuloma nontraumatic intracerebral hemorrhage; and epilepsy, unspecified, not intractable.

OWCP paid appellant wage-loss compensation on the supplemental rolls effective November 7, 2022 and on the periodic rolls from December 4, 2022 to June 15, 2024.

In a letter dated December 5, 2022, OWCP advised appellant that he would receive a net compensation payment of \$4,046.32 for the period December 4 through December 31, 2022, and for every 28-day period effective January 1, 2023. An attached EN-1049 instructed that, if appellant worked during any portion of the covered period and compensation payments were received by paper check he was to return the payment to OWCP even if he had already advised OWCP that he was working. OWCP noted that each payment would show the period for which payment was made.

Appellant returned to full-time work on July 23, 2023. He completed a Form EN-1032 on June 12, 2024 wherein he indicated that he had been employed as a welder/mechanic from July 23, 2023 to the present date, with actual earnings of \$1,490.80 per week.

In a letter dated June 26, 2024, OWCP notified appellant that he had returned to work on July 23, 2023, as a welder/mechanic working 40 hours a week with wages of \$1,490.80 per week. It explained that his wages met or exceeded the wages of the job he held when injured and it had therefore terminated his compensation effective July 23, 2023, as he no longer had any disability as defined in 20 C.F.R. §10.5(f).

The record indicates that paper checks were issued to appellant on August 12, 2023, for the period July 16 through August 12, 2023, in the net amount of \$4,046.32 (of which \$3,034.74 was the prorated amount he received for the period July 23 to August 12, 2023); on September 9, 2023, for the period August 13 through September 9, 2023, in the net amount of \$4,046.32; on October 7, 2023, for the period September 10 through October 7, 2023, in the net amount of \$4,046.32; on November 4, 2023, for the period October 8 through November 4, 2023, in the net amount of \$4,046.32; on December 2, 2023, for the period November 5 through December 2, 2023, in the net amount of \$4,046.32; on December 30, 2023, for the period December 3 through December 30, 2023, in the net amount of \$4,046.32; on January 27, 2024, for the period December 31, 2023 through January 27, 2024, in the net amount of \$4,046.32; on February 24, 2024, for the period January 28 through February 24, 2024, in the net amount of \$4,046.32; on March 23, 2024, for the period February 25 through March 23, 2024, in the net amount of \$4,156.65; on April 20, 2024, for the period March 24 through April 20, 2024, in the net amount of \$4,180.64; on May 18, 2024, for the period April 21 through May 18, 2024, in the net amount of \$4,180.64; and on June 15, 2024, for the period May 19 through June 15, 2024, in the net amount of \$4,180.64. The record contains a copy of the front and back of the checks which are

endorsed on the back by appellant. Each check identified the time period for which the compensation was paid.

OWCP completed a manual adjustment form on June 26, 2024, and found that appellant had received an overpayment in the amount of \$48,057.55, for the period July 23, 2023 through June 15, 2024.

On June 26, 2024 OWCP issued a preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$48,057.55, for the period July 23, 2023 through June 15, 2024, because he returned to full-time employment on July 23, 2023, but continued to receive wage-loss compensation through June 15, 2024. It further notified him of its preliminary finding that he was at fault in the creation of the overpayment as he had accepted payments that he knew or reasonably should have known to be incorrect. Additionally, OWCP provided an overpayment action request form and informed appellant that, within 30 days, he could request a final decision based on the written evidence or a precoupment hearing. It requested that he complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation.

No response was received.

By decision dated October 29, 2024, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$48,057.55, for the period July 23, 2023 through June 15, 2024, because he continued to receive compensation following his return to work. It determined that he was at fault in the creation of the overpayment and required to repay the full amount of the overpayment.

### **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.<sup>2</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>3</sup>

A claimant is not entitled to receive temporary total disability benefits and actual earnings for the same time period.<sup>4</sup> OWCP regulations provide that 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.<sup>5</sup>

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<sup>2</sup> *Id.* at § 8102(a).

<sup>3</sup> *Id.* at § 8129(a).

<sup>4</sup> *See T.L.*, Docket No. 23-0424 (issued December 28, 2023); *S.S.*, Docket No. 20-0776 (issued March 15, 2021); *C.H.*, Docket No. 19-1470 (issued January 24, 2020); *L.S.*, 59 ECAB 350 (2008).

<sup>5</sup> *T.L.*, *id.*; *S.S.*, *id.*; *C.H.*, *id.*; Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1a (September 2020).

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

The Board finds that appellant received an overpayment of compensation in the amount of \$48,057.55, during the period July 23, 2023 through June 15, 2024, because he continued to receive wage-loss compensation for total disability following his return to full-time work.

Appellant returned to full-time work on July 23, 2023, while continuing to receive wage-loss compensation through June 15, 2024. As noted, a claimant is not entitled to receive temporary total disability benefits and actual earnings for the same time period.<sup>6</sup> Accordingly, the Board finds that appellant received an overpayment of compensation.<sup>7</sup>

OWCP calculated appellant's net compensation as \$48,057.55, for the period July 23, 2023 through June 15, 2024. It explained how it calculated the amount of the overpayment. The Board has reviewed OWCP's calculations and finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$48,057.55, for the period July 23, 2023 through June 15, 2024.

### **LEGAL PRECEDENT -- ISSUE 2**

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>8</sup> No waiver of recovery of an overpayment is possible if the claimant is at fault in the creation of the overpayment.<sup>9</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>10</sup>

With respect to whether an individual is without fault, section 10.433(b) of OWCP regulations provides that whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the

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<sup>6</sup> *Supra* note 4.

<sup>7</sup> *See T.H.*, Docket No. 23-0194 (issued July 17, 2023); *A.C.*, Docket No. 22-0118 (issued December 15, 2022).

<sup>8</sup> 5 U.S.C. § 8129(b).

<sup>9</sup> *See S.R.*, Docket No. 24-0338 (issued May 10, 2024); *T.L.*, *supra* note 4; *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>10</sup> 20 C.F.R. § 10.433(a).

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>11</sup>

Even if 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>12</sup>

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

The Board finds that OWCP properly determined that appellant was at fault in the creation of the overpayment of \$48,057.55, for the period July 23, 2023 through June 15, 2024, thereby precluding waiver of recovery of the overpayment.<sup>13</sup>

As noted above, an overpaid individual is found at fault if they accepted a payment which the individual knew, or should have been expected to know, was incorrect.<sup>14</sup> The Board has explained that when a claimant returns to work and subsequently receives a compensation check in the mail covering a period of employment, if he or she knows or should have known that they were not entitled to such compensation, but decides nonetheless to cash or deposit the check, the cashing or depositing of the check establishes fault.<sup>15</sup>

The case record establishes that in a December 5, 2022 letter, OWCP advised appellant that, to avoid an overpayment of compensation, he must immediately notify OWCP of his return to work. It also advised him that, if he continued to receive wage-loss compensation, but had worked during the covered period, he had to return the check, even if he had reported his return to work to OWCP. Appellant returned to work on July 23, 2023, but continued to receive paper checks identifying the period of the payment, through June 15, 2024. As OWCP had previously warned appellant to return any checks received following a return to work, appellant should have known that the FECA compensation checks he received following July 23, 2023 until June 15, 2024 were incorrect.

The record contains images of the front and back of the checks that were issued to appellant as compensation payments during the relevant time period. The images reveal that appellant counter-signed the back of each check for deposit. As such, the Board finds that appellant was aware that he was receiving compensation payments that he knew or should have known that he was not entitled to receive because he had returned to work.

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<sup>11</sup> *Id.* at § 10.433(b); *see also T.L., supra* note 4; *R.G.*, Docket No. 18-1251 (issued November 26, 2019); *D.M.*, Docket No. 17-0983 (issued August 3, 2018).

<sup>12</sup> *See L.G.*, Docket No. 20-1342 (issued September 3, 2021); *C.G.*, Docket No. 15-0701 (issued December 9, 2015).

<sup>13</sup> *See M.R.*, Docket No. 24-0200 (issued March 28, 2024); *S.R.*, Docket No. 23-1050 (issued October 16, 2023); *K.P.*, Docket No. 19-1151 (issued March 8, 2020); *D.W.*, Docket No. 15-0229 (issued April 17, 2014).

<sup>14</sup> 20 C.F.R. § 10.433(a).

<sup>15</sup> *W.E.*, Docket No. 22-1284 (issued November 14, 2024); *J.H., id.*; *William F. Salmonson*, 54 ECAB 152 (2002).

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>16</sup> The Board therefore finds that OWCP properly determined that appellant was at fault in the creation of the overpayment for the period July 23, 2023 through June 15, 2024. He is thereby precluded from waiver of recovery of the overpayment.

**CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$48,057.55, during the period July 23, 2023 through June 15, 2024, because he continued to receive wage-loss compensation for total disability following his return to full-time work. The Board further finds that OWCP properly determined that he was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 29, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 11, 2024  
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

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<sup>16</sup> *P.B.*, Docket No. 19-0329 (issued December 31, 2019); *C.G.*, Docket No. 15-0701 (issued December 9, 2015).