

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

D.R., Appellant)	
)	
and)	Docket No. 23-0914
)	Issued: February 6, 2024
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE)	
Philadelphia, PA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 20, 2023 appellant filed a timely appeal from a May 19, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly denied waiver of recovery of an overpayment of compensation for the period March 10 through April 4, 2015.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On May 4, 2012 appellant, then a 43-year-old customer service representative, filed a traumatic injury claim (Form CA-1) alleging that on May 1, 2021 she sustained an injury to her left wrist when she opened an overhead cabinet to remove equipment while in the performance of duty. She did not stop work. On June 19, 2012 OWCP accepted the claim for a left wrist contusion. It later expanded the acceptance of the claim to include sprain of left wrist; left wrist triangular fibrocartilage complex tear, other acquired deformity of forearm excluding fingers, left and sprain of back, and thoracic region consequential. OWCP paid appellant wage-loss compensation on the supplemental rolls from April 2 through September 20, 2014, on the periodic rolls from September 21, 2014 through April 4, 2015, and again on the supplemental rolls from April 5 through 6, 2015.

On June 19, 2012 OWCP informed appellant that wage-loss compensation for total disability was available only if she was unable to perform the duties of her regular position and that she should notify OWCP if she returned to work or obtained new employment. It also advised that, if she received compensation payments by electronic funds transfer (EFT), she should monitor her EFT deposits carefully, at least every two weeks. OWCP explained that, if appellant worked during a period in which she received compensation, she must notify OWCP. In a letter dated October 6, 2014, it outlined her entitlement to wage-loss compensation benefits and attached EN-1049 forms advising that, if she returned to work, she should notify OWCP at once.

In a report of work status (Form CA-3) dated March 12, 2015, the employing establishment informed OWCP that appellant had returned to full-time modified-duty work on March 10, 2015.

On April 2, 2015 appellant filed a claim for compensation (Form CA-7) for disability from work for the period March 22 through April 4, 2015.

On April 4, 2015 OWCP paid appellant wage-loss compensation for total disability on the periodic rolls for the period March 8 through April 4, 2015 in the net amount of \$2,766.01. On April 17, 2015 it paid her wage-loss compensation for total disability on the supplemental rolls for April 5 and 6, 2015 in the net amount of \$201.13.

In an overpayment calculation memorandum dated April 17, 2015, OWCP noted that, for the compensation period March 10 through April 6, 2015, appellant received an overpayment of \$2,694.40. It explained that she was paid \$2,769.57 but was owed \$75.17 representing four hours of compensation for a medical appointment on April 1, 2015, for a total overpayment of \$2,694.40.

In a preliminary overpayment determination dated April 17, 2015, OWCP advised appellant of its finding that she had received an overpayment of compensation in the amount of \$2,694.40 for the period March 10 through April 6, 2015 because she received compensation for total disability after she returned to full-duty work. It also made a preliminary finding that she was

² Docket No. 21-0234 (issued November 17, 2022).

at fault in the creation of the overpayment because she had accepted payments that she knew or reasonably should have known to be incorrect. OWCP requested that appellant complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, it informed her that she could request a telephone conference, a final decision based on the written evidence, or a prerecoument hearing.

On May 4, 2015 appellant requested a final decision based on the written evidence, and she indicated that she disagreed with OWCP's April 17, 2015 preliminary determination because she believed that the overpayment occurred through no fault of her own. She requested waiver of recovery of the overpayment and submitted a Form OWCP-20 dated April 28, 2015. Appellant reported total monthly income of \$2,062.44 and total monthly expenses of \$2,107.21, which included a monthly payment of \$220.00 in relation to a bankruptcy proceeding. She also reported assets of \$2,643.58 from cash and checking and savings accounts. Appellant explained that she first became aware that the April 4, 2015 payment was made in error when she received a benefit statement on April 7, 2015.

On September 10, 2015 OWCP placed appellant's preliminary finding debt record into a suspended status due to a bankruptcy order.

By decision dated June 24, 2020, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$2,694.40 for the period March 10 through April 6, 2015 because she continued to receive wage-loss compensation following her return to full-duty work. It determined that she was at fault in the creation of the overpayment as she accepted compensation payments which she knew or should have known were incorrect. OWCP required recovery of the \$2,694.40 overpayment in full within 30 days.

Appellant thereafter submitted an updated Form OWCP-20 dated September 26, 2020. She reported total monthly income of \$4,728.80, total monthly expenses of \$2,215.01, and assets of \$4,574.00 from cash and checking and savings accounts.

On December 1, 2020 appellant appealed to the Board. By decision dated November 17, 2022, the Board affirmed that she had received an overpayment of compensation in the amount of \$2,694.40 for the period March 10 through April 6, 2015 because she received wage-loss compensation following her return to work. The Board also affirmed that appellant was at fault in the creation of the overpayment for the period April 5 through 6, 2015 because she accepted payments which she knew or should have known to be incorrect after she returned to work on March 10, 2015. The Board further found, however, that she was without fault in accepting the initial compensation payment covering the period March 10 through April 4, 2015 and remanded the case for OWCP to determine whether she was entitled to waiver of recovery of the overpayment covering that period, to be followed by a *de novo* decision on that issue.³

On remand, OWCP, by letter dated February 27, 2023, requested that appellant complete an updated Form OWCP-20 and submit financial documentation so that it could evaluate her

³ *Id.*

current financial situation and determine whether she was entitled to waiver of recovery of the overpayment for the period March 10 through April 4, 2015. It afforded her 30 days to respond. No response was received.

By decision dated May 19, 2023, OWCP denied waiver of recovery of the overpayment covering the period March 10 through April 4, 2015, noting that appellant had not responded to its February 27, 2023 request for updated financial information. It required recovery of the \$2,694.40 overpayment of compensation in full within 30 days.

LEGAL PRECEDENT

Section 8129 of FECA⁴ 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. Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.⁵

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 or her 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.⁶ An individual's liquid assets include, but are not limited to, cash on hand, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits. Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.⁷

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

⁴ *Supra* note 1.

⁵ *IR.*, Docket No. 22-0088 (issued May 5, 2022); *G.L.*, Docket No. 19-0297 (issued October 23, 2019).

⁶ 20 C.F.R. § 10.436. OWCP procedures provide that a claimant is deemed to need substantially all 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.400.4a(2) and (3) (September 2020).

⁷ *Id.* at Chapter 6.400.4b(3)(a), (b) (September 2020).

notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.⁸

ANALYSIS

Preliminarily, the Board notes that it is unnecessary for it to consider the evidence appellant submitted prior to the issuance of OWCP's June 24, 2020 decision because the Board considered that evidence in its November 17, 2022 decision. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.⁹

The Board finds that OWCP properly denied waiver of recovery of the overpayment for the period March 10 through April 4, 2015.

In its February 27, 2023 letter, OWCP requested that appellant complete an updated Form OWCP-20 and provide current financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses within 30 days. It advised her that this updated information was necessary for it to evaluate her current financial situation and determine whether she was entitled to waiver of recovery of the overpayment for the period March 10 through April 4, 2015. Although appellant did previously submit a completed Form OWCP-20 dated September 26, 2020 following OWCP's June 24, 2020 decision, appellant did not respond to OWCP's February 27, 2023 request for updated and current financial information.

OWCP, therefore, did not have the necessary current financial information to determine whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁰ As appellant did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹¹

CONCLUSION

The Board finds that OWCP properly denied waiver of recovery of the overpayment for the period March 10 through April 4, 2015.¹²

⁸ 20 C.F.R. § 10.437(b)(1).

⁹ *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

¹⁰ *K.B.*, Docket No. 23-0139 (issued May 18, 2023); *E.M.*, Docket No. 22-0081 (issued August 22, 2022); *D.C.*, Docket No. 19-0118 (issued January 15, 2020); *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

¹¹ *Id.*

¹² 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 *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).

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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