

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

C.P., Appellant)	
)	
and)	Docket No. 24-0019
)	Issued: February 12, 2024
U.S. POSTAL SERVICE, GILMER POST OFFICE, Gilmer, TX, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 9, 2023 appellant filed a timely appeal from July 13 and September 20, 2023 merit decisions 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.²

ISSUES

The issues are: (1) whether OWCP properly suspended appellant's compensation benefits, effective July 13, 2023, for failure to submit a Form EN-1032 as requested; (2) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,434.08, for the period June 5 through July 15, 2023, for which she was without fault, because

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the September 20, 2023 decision OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

she continued to receive wage-loss compensation for total disability after she returned to full-time work; and (3) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On September 29, 2022 appellant, then a 38-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 31, 2022 she sprained her ankle as she stepped out of her vehicle and into a hole while in the performance of duty. She stopped work on August 31, 2022 and returned to work on September 21, 2022. On November 22, 2022 OWCP accepted the claim for sprains of the right ankle anterior talofibular ligament and deltoid ligament. It paid appellant wage-loss compensation on the supplemental rolls beginning October 17 through December 31, 2022 and on the periodic rolls from January 1 through July 15, 2023.

On May 15 and June 13, 2023 OWCP informed appellant that federal regulations required that she execute an affidavit relative to any earnings or employment during the previous year and that a financial reporting form (Form EN-1032) was enclosed for that purpose. It notified her that she must fully answer all questions on the enclosed Form EN-1032 and return it within 30 days or her benefits would be suspended. OWCP mailed the letters to appellant's last known address of record. No response was received.

By decision dated July 13, 2023, OWCP suspended appellant's wage-loss compensation, effective that date, due to her failure to submit the Form EN-1032, as requested. It noted that, if she completed and returned an enclosed copy of the Form EN-1032, her compensation would be restored retroactively to the date it was suspended. A July 13, 2023 compensation termination worksheet indicated that appellant's wage-loss benefits were terminated July 16, 2023.

In an undated work status report (Form CA-3) received on July 13, 2023 the employing establishment reported that appellant had returned to work full-time regular duty on June 5, 2023. On July 13, 2023 appellant confirmed her return to work.

On July 14, 2023 appellant reported that she had received a disability payment to her checking account on July 13, 2023.

On July 18, 2023 OWCP reported appellant's compensation payment history. On June 17, 2023 appellant received, by electronic funds transfer (EFT), a net wage-loss compensation payment in the amount of \$3,028.15 for the period May 21 through June 17, 2023. On July 15, 2023 she received by EFT a net wage-loss compensation payment in the amount of \$3,028.15 for the period June 18 through July 15, 2023.

On July 18, 2023 OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$4,434.08 for the period June 5 through July 15, 2023, because she returned to full-time work on June 5, 2023, but continued to receive wage-loss compensation for total disability through July 15, 2023. Noting her net compensation, it found that she had received an overpayment of \$1,405.93 and \$3,028.15 for the periods June 5 through 17, 2023 and June 18 through July 15, 2023 respectively, to find a total overpayment of \$4,434.08. OWCP further notified appellant of its preliminary finding that she was without fault in the creation of the overpayment. It provided an overpayment action request form and informed her that, within 30 days, she could request a final decision based on the written evidence, or a prerecoupment hearing. OWCP requested that appellant complete an

enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. No response was received.

By decision dated September 20, 2023, OWCP finalized its preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$4,434.08 for the period June 5 through July 15, 2023. It found her without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as appellant had not responded to the preliminary overpayment notice. OWCP required recovery of the overpayment by payment in full.

LEGAL PRECEDENT -- ISSUE 1

FECA authorizes the Secretary of Labor to require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.³

Under section 10.528 of OWCP's implementing federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work, which the employee has performed for the prior 15 months.⁴ If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to suspend appellant's compensation, effective July 13, 2023, for failing to submit a Form EN-1032 as requested.

On May 15 and June 13, 2023 OWCP provided appellant with a Form EN-1032 and notified her that federal regulations required that she complete the form and answer all questions concerning her employment or earnings. It properly notified her that, if she did not fully complete and return the form within 30 days, her benefits would be suspended.

The record indicates that appellant failed to timely submit the Form EN-1032 within 30 days of OWCP's request. She was receiving wage-loss compensation, and she was, therefore, required to complete the Form EN-1032. Appellant's failure to file a Form EN-1032 within 30 days supports the suspension of compensation. Thus, the Board finds that OWCP properly suspended her compensation benefits, effective July 13, 2023, pursuant to 20 C.F.R. § 10.528.

³ 5 U.S.C. § 8106(b).

⁴ 20 C.F.R. § 10.528.

⁵ *Id.* at § 10.525.

LEGAL PRECEDENT -- ISSUE 2

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.⁶ 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.⁷

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.⁸ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant received an overpayment of compensation in the amount of \$4,434.08 for the period June 5 through July 15, 2023, because she continued to receive wage-loss compensation after she returned to full-time work.

Appellant resumed full-time work on June 5, 2023. OWCP, however, continued to pay her wage-loss compensation for total disability from work through July 15, 2023, resulting in an overpayment of compensation. Appellant was not entitled to receive total disability benefits and actual earnings for the same period.¹⁰ Fact of overpayment is therefore established.

In determining the amount of the overpayment, OWCP calculated the net amount of wage-loss compensation that appellant had received from June 5 through July 15, 2023 to find an overpayment of \$4,434.08. Appellant received \$3,028.15 net wage-loss compensation every 28 days on the periodic compensation rolls. For the period May 21 through June 3, 2023, OWCP properly noted that she was entitled to wage-loss compensation for the period May 21 through June 4, 2023, but not entitled to wage-loss compensation for the 13-day period from June 5 through June 17, 2023 as she returned to work on June 5, 2023. For the 13-day period from June 5 through

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8129(a).

⁸ *Id.* at § 8116(a).

⁹ *G.H.*, Docket No. 22-0890 (issued January 9, 2023); *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *K.P.*, Docket No. 19-1151 (issued March 18, 2020); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.300.4g (September 2020).

¹⁰ *D.P.*, Docket No. 23-0590 (issued September 13, 2023); *G.H.*, *id.*; *J.R.*, Docket No. 20-0025 (issued December 13, 2021); *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *S.N.*, Docket No. 19-1018 (issued November 12, 2019).

June 17, 2023, OWCP calculated that appellant was overpaid \$1,405.93.¹¹ Appellant received \$3,028.15 for the period June 18 through July 15, 2023. OWCP then added the net wage-loss compensation appellant received for the period June 5 through July 15, 2023 (\$1,405.93 plus \$3,028.15) to find the total overpayment amount of \$4,434.08. The Board has reviewed OWCP's calculations and finds that she received an overpayment of compensation in the amount of \$4,434.08 during the above-noted period.¹² The period and amount of overpayment is therefore established.

LEGAL PRECEDENT -- ISSUE 3

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹³ Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹⁴

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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.¹⁵ 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 \$50.00.¹⁶ Also, 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.¹⁷ 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.¹⁸ Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat,

¹¹ OWCP divided the total payment of \$3,028.15 by 28 days for the daily payment of \$108.15 which it then multiplied by 13 days for a total of \$1,405.93.

¹² *Id.*

¹³ 5 U.S.C. § 8129(a)-(b).

¹⁴ *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019); *L.S.*, 59 ECAB 350 (2008).

¹⁵ 20 C.F.R. § 10.436(a)(b).

¹⁶ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

¹⁷ *Id.* at Chapter 6.400.4a(2) (September 2020).

¹⁸ *Id.* at Chapter 6.400.4b(3).

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.¹⁹

Section 10.437 of OWCP's implementing regulations provides that 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; 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.²⁰ 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.²¹

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. The information is also used to determine the repayment schedule, if necessary.²² Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.²³

ANALYSIS -- ISSUE 3

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.²⁴

In its preliminary determination dated July 18, 2023, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Appellant, however, did not submit a completed Form OWCP-20 or supporting financial documentation. As such, OWCP did not have the financial information

¹⁹ *Id.* at Chapter 6.400.4b(3)(a), (b).

²⁰ 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

²¹ *Supra* note 16 at Chapter 6.400.4c(3) (September 2020).

²² *Supra* note 20 at § 10.438(a); *P.M.*, Docket No. 22-1059 (issued April 28, 2023); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²³ *Id.* at § 10.438(b); *P.M.*, *id.*

²⁴ 20 C.F.R. § 10.436.

necessary for it to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.²⁵

Consequently, as appellant did not submit sufficient information required under 20 C.F.R. § 10.438 of OWCP's regulations, which was necessary to determine her eligibility of waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.²⁶

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits for failure to submit a Form EN-1032. The Board further finds that appellant received an overpayment of compensation in the amount of \$4,434.08, for the period June 5 through July 15, 2023, for which she was without fault, because she continued to receive wage-loss compensation for total disability from work after she returned to full-time work. The Board also finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the July 18 and September 20, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 12, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁵ See *T.H.*, Docket No. 23-0194 (issued July 17, 2023); *P.G.*, Docket No. 22-1073 (issued December 28, 2022); see also *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

²⁶ *T.H.*, *id.*; *A.S.*, Docket No. 22-0281 (issued September 26, 2022); see also *J.A.*, Docket No. 19-1946 (issued July 13, 2020).