

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

S.C., Appellant)	
)	
and)	Docket No. 22-0308
)	Issued: January 11, 2024
U.S. POSTAL SERVICE, SECURITY BRANCH)	
POST OFFICE, Colorado Springs, CO, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 27, 2021 appellant filed a timely appeal from a November 29, 2021 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.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$3,803.11 for the period February 28 through March 27, 2021, for which she was

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 29, 2021 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.*

without fault, because she received an improper schedule award payment; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On March 26, 2015 appellant, then a 58-year-old city carrier, filed an occupational disease claim (Form CA-2) that her left ankle osteoarthritic degeneration had been aggravated by her employment duties. She noted that she first became aware of her condition and realized its relation to her federal employment on March 29, 2013. Appellant did not stop work. By decision dated August 15, 2016, OWCP accepted the claim for permanent aggravation of left ankle osteoarthritis.

By decision dated July 8, 2020, OWCP granted appellant a schedule award for 31 percent permanent impairment of the left lower extremity. Appellant was to receive 63.55 weeks of compensation for the period December 23, 2019 through March 11, 2021.³

OWCP accordingly paid appellant schedule award compensation in the net amount of \$24,254.84 for the period December 23, 2019 through June 20, 2020. It thereafter paid her schedule award compensation in the net amount of \$3,752.13 every four weeks from June 21, 2020 through February 27, 2021.⁴ On March 26, 2021 OWCP paid appellant schedule award compensation in the net amount of \$1,610.30 for the period February 28 through March 11, 2021. Its records, however, indicate that on March 27, 2021 appellant received an extra schedule award payment for the period February 28 to March 27, 2021 in the amount of \$3,803.11.

In a preliminary overpayment determination dated April 16, 2021, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$3,803.11 for the period February 28 through March 27, 2021 because OWCP had issued an extra schedule award payment. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records that support income and expenses. Additionally, OWCP further provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a prerecoument hearing.

On May 17, 2021 OWCP received appellant's April 12, 2021 request for a prerecoument hearing and waiver of recovery of the overpayment. Appellant contended that she regularly received payments in the amount of \$3,752.13 every four weeks and did not know when her payments were to end. She explained that when she received the extra schedule award payment of \$3,803.11, she believed it was her final payment since it neither matched the prior payments

³ OWCP noted the period of the award as December 23, 2019 to June 20, 2020. However, this was a typographical error as 63.55 weeks covers the period December 23, 2019 to March 11, 2021.

⁴ In a financial disclosure statement (Form EN-1032) dated December 27, 2020, appellant indicated that she was married.

nor the amount listed on her award. Appellant provided a completed Form OWCP-20, noting total monthly income of \$4,746.27, total monthly expenses of \$4,967.32, and total assets of \$66,746.07. She also submitted supporting financial documentation.

An oral hearing was held on September 14, 2021.

By decision dated November 29, 2021, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$3,803.11 for the period February 28 through March 27, 2021 because she received an extra schedule award payment to which she was not entitled. The hearing representative found appellant without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. She instructed that the overpayment be recovered in full.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA⁵ and its implementing regulations⁶ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. Section 10.404 of the regulations provides that compensation is provided for specified periods of time for the permanent loss or loss of use of certain members.⁷ FECA provides for 288 weeks of compensation for 100 percent loss or loss of use of a lower extremity and the implementing regulations provides that compensation for proportionate periods of time is payable for partial loss.

OWCP's procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,803.11 for the period February 28 through March 27, 2021, for which she was without fault, because she received an improper schedule award payment.

OWCP granted appellant a schedule award for 31 percent permanent impairment of the left lower extremity. Appellant was to receive 63.55 weeks of compensation for the period December 23, 2019 through March 11, 2021. OWCP accordingly paid her \$24,254.84 for the period December 23, 2019 through June 20, 2020 and continuing payments every four weeks in the amount of \$3,752.13. Appellant was only entitled to receive compensation through March 11, 2021 and, on March 26, 2021, she received a final schedule award payment in the amount of \$1,745.06 covering the period February 28 through March 11, 2021. However, on March 27, 2021, OWCP improperly issued an extra payment in the amount of \$3,803.11 for the

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.*

⁸ 5 U.S.C. § 8107(c)(2).

period February 28 through March 27, 2021. As appellant received an extra schedule award payment in the amount of \$3,803.11 to which she was not entitled, the Board finds that this payment constituted an overpayment of schedule award compensation.⁹

The Board thus finds that OWCP properly determined the fact and amount of the overpayment.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA¹⁰ 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.¹¹

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.¹²

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.¹³ OWCP considered appellant's financial information, as reported, to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

⁹ *Id.*

¹⁰ *Supra* note 1.

¹¹ *A.R.*, Docket No. 21-1000 (issued March 25, 2022); *J.T.*, Docket No. 21-0010 (issued September 30, 2021); *G.L.*, Docket No. 19-0297 (issued October 23, 2019).

¹² 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) and (3) (September 2020).

¹³ *Id.* at § 10.436.

The Board finds that as appellant reported on her completed Form OWCP-20 assets totaling \$66,746.07, she has not met the standard for waiver of recovery of the overpayment because her assets exceed the allowable resource base of \$10,300.00 for an individual with a spouse, such as appellant. Because she has not met the second prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider the first prong of the test, *i.e.*, whether she needs substantially all of her current income to meet ordinary and necessary living expenses.¹⁴ The Board thus finds that appellant has not established that she was entitled to waiver on the basis of defeating the purpose of FECA.¹⁵

Additionally, the evidence does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant did not submit evidence to substantiate that she would experience severe financial hardship in attempting to repay the debt, or that in reliance on such payment she gave up a valuable right or changed her position for the worse. Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.¹⁶

As such, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁷

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$3,803.11, for which she was without fault, for the period February 28 through March 27, 2021 because she received an improper schedule award payment. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

¹⁴ *J.H.*, Docket No. 22-1375 (issued May 16, 2023); *S.W.*, Docket No. 20-0363 (issued November 23, 2020); *M.H.*, Docket No. 19-1497 (issued September 9, 2020).

¹⁵ *J.H.*, *id.*; *P.M.*, Docket No. 21-0915 (issued December 14, 2021); *R.D.*, Docket No. 19-1598 (issued April 17, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020).

¹⁶ *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *V.T.*, Docket No. 18-0628 (issued October 25, 2018).

¹⁷ 20 C.F.R. § 10.441(a); *A.F.*, Docket No. 19-0054 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2024
Washington, DC

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

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

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