

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

G.E., Appellant

and

U.S. POSTAL SERVICE, BANNING POST
OFFICE, Banning, CA, Employer

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**Docket No. 23-0995
Issued: January 5, 2024**

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 July 20, 2023 appellant filed a timely appeal from an April 26, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the issuance of the April 26, 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.*

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$2,663.82 for the period July 18, 2016 through May 14, 2020, for which she was without fault, because she improperly received wage-loss compensation at an augmented rate; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 15, 2013 appellant, then a 48-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained right carpal tunnel syndrome due to factors of her federal employment including performing repetitive casing and motion.⁵ She noted that she first became aware of her condition on February 1, 2011, and realized the relationship to her federal employment on March 1, 2011. OWCP accepted appellant's claim for right complete rotator cuff rupture and right carpal tunnel syndrome. It thereafter paid her wage-loss compensation on the supplemental and periodic rolls for intermittent periods of disability from work commencing July 12, 2014.

OWCP, by decision dated September 15, 2020, found that appellant was not entitled to augmented compensation during the period of her disability from work because her nephew could not be considered a "child" under section 5 U.S.C. § 8101(9) and, thus, he was not an eligible dependent as defined under 5 U.S.C. § 8110.

On February 17, 2021 appellant appealed to the Board. By decision dated August 24, 2021, the Board affirmed the September 15, 2020 decision, finding that she had not met her burden of proof to establish that her wage-loss compensation should have been paid at an augmented rate. The Board explained that, although appellant was the legal guardian of her nephew, he was not considered a "child" as defined under 5 U.S.C. § 8101(9) and, thus, he was not an eligible dependent as defined under 5 U.S.C. § 8110.

On September 30, 2021 appellant requested reconsideration before OWCP. By decision dated November 23, 2021, OWCP denied modification of its September 15, 2020 decision.

On February 2, 2023 OWCP advised appellant that it had made a preliminary overpayment determination that she received an overpayment of compensation in the amount of \$2,663.82 for the period July 18, 2016 through May 14, 2020. It related that she received

⁴ Docket No. 21-0515 (issued August 24, 2021).

⁵ OWCP assigned the present claim OWCP File No. xxxxxx042. Appellant has prior claims. In OWCP File No. xxxxxx124, OWCP accepted her September 16, 2016 traumatic injury for strain of unspecified muscle, fascia and tendon at shoulder and upper arm level, right and left arm; and strain of unspecified muscle, fascia and tendon at neck level. In OWCP File No. xxxxxx070, it accepted appellant's July 21, 2021 occupational disease for trigger finger, right middle finger; and sprain of right middle finger. OWCP administratively combined these claims with the current claim serving as the master file.

compensation at the augmented 3/4 rate (75 percent) but did not have an eligible dependent. OWCP further related that appellant should have been paid at the basic 2/3 rate (66 2/3 percent). It determined that she was entitled to \$21,431.59 at the basic 2/3 rate for the stated period. OWCP noted the intermittent periods July 18, 2016 through May 14, 2020 that appellant received compensation paid at the 3/4 augmented rate. It then calculated the overpayment by subtracting \$21,431.59, the amount she should have been paid at the 2/3 rate, from \$24,095.41, the amount that she was paid, finding that she received an overpayment of compensation in the amount of \$2,663.82 during the period July 18, 2016 through May 14, 2020. OWCP also advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. It provided an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) for her completion and advised that, for OWCP to consider the question of waiver or to determine a reasonable method for collection, she must provide a completed Form OWCP-20 and attach supporting financial documentation. OWCP requested that appellant complete the enclosed Form OWCP-20 and submit supporting financial documentation including copies of income tax returns, bank account statements, bills, and canceled checks, pay slips, and any other records supporting his reported income and expenses. Additionally, it notified her that, within 30 days of the date of the letter, she could request a final decision based on the written evidence, or a prereducement hearing. No response was received.

OWCP provided compensation payment records and overpayment worksheets for the period July 18, 2016 through May 14, 2020 further explaining the \$2,663.82 overpayment.

By decision dated April 26, 2023, OWCP finalized the preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$2,663.82 had been created because appellant received compensation at the augmented rate during the period July 18, 2016 through May 14, 2020 when she did not have an eligible dependent. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, noting that she had not responded to the February 2, 2023 preliminary overpayment determination. OWCP requested that appellant forward the entire payment of \$2,663.82.

LEGAL PRECEDENT -- ISSUE 1

FECA provides that the United States shall pay compensation for the disability of an employee resulting from injury sustained while in the performance of duty.⁶ If the disability is total, the United States shall pay the employee during the period of total disability the basic compensation rate of 66 2/3 percent of his or her monthly pay. A disabled employee is entitled to an augmented compensation rate of 75 percent if he or she has one or more dependents.⁷

If a claimant received compensation at the augmented rate during a period when he or she did not have an eligible dependent, the difference between the compensation that was disbursed

⁶ 5 U.S.C. § 8102(a).

⁷ *T.G.*, Docket No. 23-0332 (issued August 2, 2023); *A.A.*, Docket No. 22-0751 (issued December 12, 2022); *E.B.*, Docket No. 19-1571 (issued December 31, 2020); *R.G.*, Docket No. 18-1251 (issued November 26, 2019); *O.R.*, 59 ECAB 432, 436 (2008); *id.* at §§ 8105(a) and 8110(b).

at the 75 percent augmented rate and the compensation that should have been disbursed at the 66 2/3 percent basic rate constitutes an overpayment of compensation.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$2,663.82 for the period July 18, 2016 through May 14, 2020, for which she was without fault, because she improperly received wage-loss compensation at an augmented rate.

The Board preliminarily notes that it found in its August 24, 2021 decision that appellant failed to establish that her wage-loss compensation should have been paid at an augmented rate because although she was the legal guardian of her nephew, he was not considered a “child” as defined under section 8101(9) of FECA and, thus, he was not an eligible dependent as defined under section 8110 of FECA. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.⁹ Therefore, the Board’s prior finding regarding the dependent status of appellant’s nephew is not subject to further consideration.

OWCP paid appellant compensation at the augmented rate for the period July 18, 2016 through May 14, 2020 despite the fact that she did not have a qualifying dependent under FECA. It calculated the resulting overpayment as \$2,663.82. The record contains compensation payment records, as well as overpayment worksheets explaining the overpayment calculation and how the overpayment occurred. The Board has reviewed these calculations and finds that OWCP properly determined that an overpayment of \$2,663.82 was created.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment of compensation shall be recovered by OWCP 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.”¹⁰

Section 10.438 of OWCP’s regulations provides 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 or not recovery on 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 and no further request for waiver shall be considered until the requested information is furnished.¹¹

⁸ *T.G., id.; A.A., id.; S.D.*, Docket No. 17-0309 (issued August 7, 2018); *Ralph P. Beachum, Sr.*, 55 ECAB 442, 445 (2004).

⁹ *R.K.*, Docket No. 21-0873 (issued May 8, 2023); *T.S.*, Docket No. 22-1354 (issued May 1, 2023); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

¹⁰ 5 U.S.C. § 8129.

¹¹ 20 C.F.R. § 10.436.

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.¹² Appellant, however, had the responsibility to timely provide financial information to OWCP, but did not do so.¹³

In its February 2, 2023 preliminary overpayment determination, OWCP explained the importance of providing the completed Form OWCP-20 and supporting financial information. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant did not respond to the preliminary overpayment determination before OWCP issued its final overpayment determination on April 26, 2023. As a result, OWCP did not have the necessary financial information to determine whether recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.¹⁴

As appellant did not submit the information required under 20 C.F.R. § 10.438, which was necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁵

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$2,663.82 for the period July 18, 2016 through May 14, 2020, for which she was without fault, because she improperly received wage-loss compensation at an augmented rate. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.¹⁶

¹² *Id.*; see also *B.G.*, Docket No. 20-0541 (issued April 28, 2021); *R.H.*, Docket No. 15-0392 (issued February 3, 2016).

¹³ *Id.* at § 10.438; see *N.J.*, Docket No. 19-1170 (issued January 10, 2020).

¹⁴ *T.G.*, Docket No. 23-0332 (issued August 2, 2023); *B.A.*, Docket No. 20-0947 (issued July 15, 2021); *B.G.*, *supra* note 12; *G.G.*, Docket No. 19-0684 (issued December 23, 2019).

¹⁵ *T.G.*, *id.*; *W.H.*, Docket No. 21-0490 (issued July 12, 2022); *B.A.*, *id.*; *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

¹⁶ 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 April 26, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 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