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M.G., Appellant)	
)	
and)	Docket No. 24-0154
)	Issued: March 27, 2024
U.S. POSTAL SERVICE, MIDDLETOWN POST)	
OFFICE, Middletown, NJ, Employer)	
)	

Case Submitted on the Record

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

³ The Board notes that, following the June 13, 2023 decision, appellant submitted additional evidence to OWCP. 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 OWCP properly found that appellant received an overpayment of compensation in the amount of \$188,113.56 for the period September 17, 2016 through November 8, 2021 as she forfeited her entitlement to compensation; and (2) whether OWCP properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

FACTUAL HISTORY

On June 1, 2016 appellant, then 33-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on that date she sprained her right knee when she stumbled on grass while in the performance of duty. OWCP accepted the claim for right knee sprain. It subsequently expanded its acceptance of the claim to include a sprain of the posterior and anterior cruciate ligament of the right knee, cystic meniscus of the right knee, a disc bulge at L5-S1, and a herniated disc at L3-4 and L4-5. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective September 17, 2016, and on the periodic rolls, effective May 28, 2017.

On November 6, 2017, October 25 and December 17, 2018, and October 31, 2020 appellant signed financial disclosure statements (Form EN-1032) which contained language advising her what type of employment activities, earnings, and volunteer activities that she was required to report for each 15-month period prior to the time she signed each form. She also signed a Form EN-1032 that was undated but received by OWCP on November 4, 2019. The forms instructed appellant to report all employment for which she received a salary, wages, income, sales commissions, piecework, or payment of any kind. She was directed to report all self-employment or involvement in business enterprises, including (but not limited to) farming, sales work, operating a business, and providing services in exchange for money, goods, or other services. The forms contained a strongly-worded certification clause informing appellant of the consequences of not accurately reporting her employment activities, such as being subjected to criminal penalties and losing the right to receive workers' compensation. On the EN-1032 forms she indicated that, during the previous 15-month periods covered by the forms, she had not worked for any employer, been self-employed, or involved in any business enterprise. In an EN-1032 form dated November 8, 2021, appellant advised that she assisted her mother in posting on social media and in taking telephone orders. She specified that her mother received all earnings.

On June 30, 2021 a special agent with the employing establishment's Office of the Inspector General filed a criminal complaint with the U.S. District Court for the District of New Jersey alleging that appellant had violated 18 U.S.C. §1920 and falsely obtained benefits from FECA. He advised that during the period covered by EN-1032 forms, she had received "substantial income" from operating a food truck business that she had not reported.

On March 28, 2022 the U.S. District Court for the District of New Jersey charged appellant with one count of making a false statement or fraud to obtain FECA benefits from around June 2016 through June 2021 in violation of 18 U.S.C. § 1920. On that same date, a judge accepted appellant's plea of guilty.

By decision dated April 8, 2022, OWCP terminated appellant's entitlement to compensation, effective March 28, 2022, the date she pled guilty to defrauding the FECA program. It determined that, as a result of her conviction, and in accordance with 5 U.S.C. § 8148(a) and 20 C.F.R. § 10.17, she was not entitled to receive further benefits under FECA. OWCP further advised that any authorized medical treatment received prior to the date of this decision would be paid, but no further medical treatment would be paid beyond the date of the termination decision.

A Judgment in a Criminal Case, signed by a U.S. Magistrate Judge on October 21, 2022, noted that on March 28, 2022 appellant had pled guilty to one count of a false statement or fraud to obtain FECA benefits from June 2016 through July 2021 in violation of 18 U.S.C. § 1920. The judge sentenced appellant to two years of probation and ordered her to pay \$1,000.00 in restitution to OWCP.

By decision dated May 11, 2023, OWCP found that appellant had forfeited her entitlement to compensation from September 17, 2016 through November 8, 2021 as she knowingly failed to report self-employment on EN-1032 forms covering the period.⁴

On May 11, 2023 OWCP advised appellant of its preliminary overpayment determination that she had received an \$188,113.56 overpayment of compensation from September 17, 2016 through November 8, 2021 as she had received compensation for disability while self-employed. It further informed her of its preliminary determination that she was with 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. Additionally, it provided an overpayment action request form and 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 prerecoupment hearing.

By decision dated June 13, 2023, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of \$188,113.56 for the period September 17, 2016 through November 8, 2021. It noted that she had knowingly failed to report employment activities on EN-1032 forms and had pled guilty to fraud against FECA. OWCP further finalized its preliminary finding that appellant was at fault in the creation of the overpayment and thus not eligible for waiver of recovery of the overpayment. It advised her to forward the full amount of the overpayment as recovery.

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 his or her duty.⁵ Section 8129(a) of FECA provides, in pertinent part, "When an overpayment has been made to an individual under this subchapter because of an error of fact or

⁴ OWCP determined in a decision dated April 10, 2023 that appellant had forfeited her entitlement to compensation for the period June 13, 2017 through March 27, 2022. It also issued a preliminary overpayment determination based on its forfeiture finding. However, on May 11, 2023, OWCP vacated the April 10, 2023 decision.

⁵ 5 U.S.C. § 8102(b).

law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.”⁶

Section 8148(a) states:

“Any individual convicted of a violation of section 1920 of title 18, or any other Federal or State criminal statute relating to fraud in the application for a receipt of any benefit under this subchapter or subchapter III of the this chapter, shall forfeit (as of the date of such conviction) any entitlement to any benefit such individual would otherwise be entitled to under this subchapter of subchapter III for any injury occurring on or before the date of such conviction. Such forfeiture shall be in addition to any action the Secretary may take under section 8106 or 8129.”⁷

Section 10.529 (b) of OWCP’s implementing regulations provides as follows:

“(b) Where the right to compensation is forfeited, OWCP shall recover any compensation already paid for the period of forfeiture pursuant to 5 U.S.C. § 8129 and other relevant statutes.”⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$188,113.56 for the period September 17, 2016 through November 8, 2021 as she forfeited her entitlement to compensation.

Initially, the Board finds that OWCP properly determined that appellant forfeited compensation from September 17, 2016 through November 8, 2021. On March 28, 2022 appellant pled guilty to making a false statement or fraud to obtain FECA benefits from June 2016 through June 2021 in violation of 18 U.S.C. § 1920. On October 21, 2022 a U.S. Magistrate Judge sentenced appellant to two years of probation and ordered her to pay \$1,000.00 to OWCP in restitution. The plea of guilty is sufficient to establish that appellant knowingly omitted work activities from EN-1032 forms for the period covered by the plea agreement, June 2016 through June 2021.⁹ Appellant provided EN-1032 forms on November 6, 2017, October 25, 2018, December 17, 2018, November 4, 2019, October 31, 2020, and November 8, 2021 that failed to disclose her employment and earnings. When a Form EN-1032 is improperly completed resulting in a finding of forfeiture, the period of the forfeiture is the entire 15-month period covered by the

⁶ *Id.* at § 8129(a).

⁷ 5 U.S.C. § 8148(a).

⁸ 20 C.F.R. § 10.529.

⁹ *M.C.*, Docket No. 10-0881 (issued February 7, 2011).

form in question.¹⁰ The Board thus affirms the forfeiture of compensation for the period September 17, 2016 through November 8, 2021.

OWCP's regulations provide that OWCP must declare an overpayment of compensation for any compensation already paid for the period of a given forfeiture of compensation.¹¹ As found above, appellant forfeited her entitlement to compensation for the period September 17, 2016 through November 8, 2021, pursuant 5 U.S.C. § 8106(b)(2) of FECA. Therefore, fact of overpayment has been established.

OWCP determined that, for the period September 17, 2016 through November 8, 2021, it had paid appellant wage-loss compensation in the amount of \$188,113.56. The record contains documentation of OWCP's calculations. Thus, the Board finds that appellant received an overpayment of compensation of \$118,113.56.¹² It is also noted that the judgment in the criminal case did order restitution to the Department of Labor. OWCP procedures indicate that, if the court order does not represent a global settlement, OWCP should pursue collection of the full amount of the debt, taking credit for any restitution amounts received.¹³ On return of the case record, OWCP should ensure that appellant received credit for any restitution paid.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in 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."¹⁴ No waive of recovery of an overpayment is possible if the claimant is at fault in the creation of the overpayment.¹⁵

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.¹⁶

¹⁰ See *S.H.*, Docket No. 21-1349 (issued February 17, 2023); *J.C.*, Docket No. 16-1058 (issued July 10, 2017); *R.B.*, Docket No. 15-1946 (issued September 2, 2016); *Martin James Sullivan*, 50 ECAB 158 (1998).

¹¹ *Supra* note 7; see also *J.D.*, Docket No. 13-0086 (issued June 3, 2013).

¹² *J.D.*, *id.*

¹³ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.19b (September 2018); see also *J.D.*, *id.*; *Martin James Sullivan*, *supra* note 10.

¹⁴ 5 U.S.C. § 8129; see *Linda E. Padilla*, 45 ECAB 768 (1994).

¹⁵ See *L.C.*, Docket No. 19-1094 (issued February 25, 2020); *M.O.*, Docket No. 18-0686 (issued January 25, 2019).

¹⁶ 20 C.F.R. § 10.433(a).

With respect to whether an individual is without fault, section 10.433(b) of OWCP regulations provides that whether OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the 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.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

As discussed above, the record supports that appellant pleaded guilty to making a false statement or fraud to obtain FECA benefits from June 2016 through June 2021. She signed EN-1032 forms covering this period claiming that she had no earnings and participated in no employment, self-employment activities, or volunteer work. In a November 8, 2021 EN-1032 form, appellant indicated that she helped her mother learn social media and took telephone orders but that her mother received all earnings.

Given appellant's plea of guilty to knowingly using a false statement or fraud to obtain benefits from OWCP, the Board finds that she was at fault in the creation of the overpayment.¹⁸ Her fault in creating this overpayment precludes any consideration by OWCP of waiver.

The Board notes that there is no language in the judge's order providing that the \$1,000.00 payment was to be in full satisfaction of the debt due the United States. For this reason, OWCP is not precluded from pursuing recovery of the overpayment as the court-ordered restitution in this case was not intended to constitute a global settlement.¹⁹ 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 in receipt of wage-loss compensation benefits, the Board lacks jurisdiction over OWCP's recovery of the overpayment.²⁰

CONCLUSION

The Board finds that appellant received an overpayment of compensation for the period September 17, 2016 through November 8, 2021 as appellant forfeited her entitlement to compensation. The amount of the overpayment was \$188,113.56 minus any restitution paid pursuant to the court judgment. The Board also finds that OWCP properly denied waiver of recovery of the overpayment.

¹⁷ *Id.* at § 10.433(b).

¹⁸ *L.B.*, Docket No. 13-1096 (issued September 23, 2013).

¹⁹ *See P.A.*, Docket No. 17-0687 (issued December 21, 2017); *Ronald E. Ogden*, 56 ECAB 278 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.19 (September 2018).

²⁰ *See L.C.*, *supra* note 15; *see also D.R.*, 59 ECAB 148 (2007) (with respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits under FECA).

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: March 27, 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