

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

creation of the overpayment, thereby precluding waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$624.50 from appellant's continuing compensation payments, every 28 days.

### **FACTUAL HISTORY**

On June 4, 2003 appellant, then a 42-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she pulled a muscle in her right shoulder blade when closing the rear door of her long-life vehicle while in the performance of duty. OWCP accepted the claim for cervical strain. It paid appellant wage-loss compensation on the supplemental rolls from July 26, 2003 through March 19, 2004 and on the periodic rolls commencing March 21, 2004 at the augmented rate of 75 percent of her monthly pay.

By decision dated November 12, 2008, OWCP reduced appellant's wage-loss compensation, effective November 23, 2008, based on its finding that she had the capacity to earn wages in the constructed position of a telephone solicitor. Appellant's new compensation rate was still paid at the augmented rate of 75 percent of her monthly pay.

In a letter dated November 12, 2015, OWCP informed appellant that federal regulations required her to report any improvement in her medical condition, any employment, any change in the status of claimed dependents, any third-party settlement, and any income or change in income from federally-assisted disability or benefit programs. It notified her that she was required to completely answer all questions on the enclosed financial reporting form (Form EN-1032) and return it within 30 days or her benefits would be suspended.

Appellant submitted a completed Form EN-1032 dated November 17, 2015, in which she listed her son C.T., born October 23, 1995, as a dependent. She indicated that he was a full-time student.

OWCP, by letter dated November 30, 2015, advised appellant that compensation was payable for an unmarried child who had reached the age of 18 or older who was either a full-time student or incapable of self-support. It noted that additional information was needed to determine whether her son had continuing eligibility to compensation beyond his eighteenth birthday. OWCP explained that compensation was payable for an unmarried child who had reached age 18 and was a student who had not yet completed four years of education beyond high school. It continued that a student was defined in section 8101(17) of FECA (5 U.S.C. § 8101(17)) as one who was currently pursuing a full-time course of study at an accredited school, college, or university, or at a technical, trade, vocational, business, or professional school. OWCP explained that compensation was not payable beyond the end of the semester or enrollment period in which the child either completed the fourth year of education beyond high school or reached the age of 23 years. It advised appellant that it requested verification of student status at least once each year. To claim compensation for her son as a student, it indicated that appellant must provide a statement and certification of school enrollment using the accompanying forms. OWCP also informed appellant that the law prohibited the acceptance of compensation when a dependent was no longer entitled to it. It explained that, if the dependent was no longer a full-time, unmarried student under the age of 23 who had not completed four years of education beyond high school, then appellant must notify OWCP immediately. Additionally, OWCP informed her that any compensation payment she received after such a change in status of the dependent must be returned to OWCP for cancellation. It indicated that it would be replaced with a payment in the correct amount.

In response, appellant submitted Part B of a student dependency form completed by an associate director of financial aid on December 10, 2015. The associate director reported that appellant's son, C.T., was currently enrolled as a full-time student at Duquesne University, an accredited or licensed institution, and that the present school year ran from August 24, 2015 through May 3, 2016. He also noted that C.T. was expected to complete his present course of study on May 11, 2018.

Appellant subsequently submitted a completed Form EN-1032 dated December 2, 2016, and received on December 8, 2016 by OWCP, in which she again listed C.T. as a dependent as a full-time student. Additionally, she indicated that he was no longer her dependent as of January 1, 2016 because he had entered the military.

OWCP, by letter dated January 30, 2017, noted that on her Form EN-1032 received on December 8, 2016, appellant claimed C.T. as a dependent as a full-time student, but also indicated that he was no longer a dependent because he had entered the military effective January 1, 2016. OWCP advised appellant that it requested verification of student status at least once each year. To claim compensation for her son as a student, it indicated that appellant must provide a statement and certification of school enrollment using the accompanying forms. OWCP also informed appellant that the law prohibited the acceptance of compensation when a dependent was no longer entitled to it. It explained that, if the dependent was no longer a full-time, unmarried student under the age of 23 who had not completed four years of education beyond high school, then appellant must notify OWCP immediately. Additionally, OWCP informed her that any compensation payment she received after such a change in status of the dependent must be returned to OWCP for cancellation. It indicated that it would be replaced with a payment in the correct amount.

In response, appellant submitted Part B of a student dependency form completed by a registrar on February 23, 2017. The registrar reported that appellant's son, C.T., was currently enrolled as a full-time student at Duquesne University, an accredited or licensed institution, and that the present school year ran from January 12 through May 10, 2017. She also noted that C.T. was expected to complete his present course of study in May 2018.

Appellant completed additional EN-1032 forms on December 4, 2017 and November 11, 2018 and continued to claim C.T. as a dependent as a full-time student.

Appellant subsequently submitted Part B of a dependency form completed by a school official on March 18, 2019. The school official reported that C.T. was currently enrolled in Duquesne University as a full-time student. He also noted that the present school year was from August 27, 2018 through May 10, 2019 and that C.T. was expected to complete his course of study on May 10, 2019.

In EN-1032 forms dated November 22, 2019 and November 17, 2020, appellant reported that she no longer had a dependent child.

By letter dated July 12, 2021, the employing establishment informed OWCP that appellant's November 22, 2019 Form EN-1032 indicated that she had no dependents. It further noted, however, that she was paid compensation at the augmented rate through March 2, 2019, when she was no longer eligible to receive compensation at that rate.

In a preliminary overpayment determination dated July 27, 2021, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$3,893.30 for the period

May 11, 2018 through March 2, 2019 because she received wage-loss compensation at the augmented rate instead of the basic rate when she had no eligible dependent. It explained that on May 11, 2018, her son, C.T., graduated from Duquesne University. OWCP's worksheets revealed that it continued to pay appellant compensation at the augmented rate from May 11, 2018 through March 2, 2019, which amounted to a total of \$34,383.29. Appellant, however, was only entitled to receive \$30,489.99 in compensation at the basic two-thirds rate, resulting in a \$3,893.30 overpayment. OWCP further advised appellant of its preliminary determination that she was at fault in creation of the overpayment because she neglected to provide notification of the dependency change within 90 days, and she knowingly continued to receive compensation at the augmented rate. It requested that she complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit documentation including tax returns, bank account statements, bills and cancelled checks, pay slips, and other records which supported income and expenses listed. Additionally, OWCP advised 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.

In an overpayment action request form dated August 13, 2021, appellant requested a decision based on the written evidence. She also requested waiver of recovery, contending that she was without fault in the creation of the overpayment. Appellant contended that in response to OWCP's request, she submitted a student dependency form completed by Duquesne University acknowledging her son's graduation on May 11, 2018.

By decision dated March 28, 2022, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$3,893.30 for the period May 11, 2018 through March 2, 2019 because she received wage-loss compensation at the augmented rate for a child who was no longer an eligible dependent. It further found that she was at fault in creation of the overpayment, thereby precluding waiver of recovery of the overpayment. OWCP required recovery of the overpayment by deducting \$624.50 every 28 days from appellant's continuing compensation payments.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102 of FECA<sup>3</sup> provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>4</sup> 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.<sup>5</sup> Under FECA a dependent includes an unmarried child, while living with the employee or receiving regular contributions from the employee toward their support, who is under 18 years of age.<sup>6</sup> FECA further provides that compensation payable for a child that would otherwise end at the time he or she reaches 18 years of age shall continue if he or she is a student

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<sup>3</sup> *Id.*

<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *See id.* at § 8110(b).

<sup>6</sup> *Id.* at § 8110(a)(3).

as defined therein.<sup>7</sup> A student is defined as “an individual under 23 years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full-time course of study.”<sup>8</sup>

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 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.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP failed to meet its burden of proof to establish that appellant received an overpayment of compensation in the amount of \$3,893.30 for the period May 11, 2018 through March 2, 2019.

The evidence of record supports that appellant’s son, C.T., was born on October 23, 1995, and that he graduated from college in May 2018. FECA provides that a disabled employee is entitled to an augmented compensation rate of 75 percent if he or she has one or more dependents.<sup>10</sup> Under FECA, a dependent includes an unmarried child, while living with the employee or receiving regular contributions from the employee toward their support, who is under 18 years of age.<sup>11</sup> FECA further provides that compensation payable for a child that would otherwise end at the time he or she reaches 18 years of age shall continue if he or she is a student as defined therein.<sup>12</sup> It defines the term “student” as an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution. FECA further provides, however, that:

“Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 4 months and if he [or she] shows to the satisfaction of the Secretary that he has a *bona fide* intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.”

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<sup>7</sup> *Id.* at § 8101.

<sup>8</sup> *Id.* at § 8101(17). The section notes that if the student’s 23rd birthday occurs during a semester or other enrollment period, he or she is deemed a student until the semester or enrollment period ends.

<sup>9</sup> See *Ralph P. Beachum, Sr.*, 55 ECAB 442, 445 (2004); see also *K.S.*, Docket No. 15-0940 (issued September 9, 2015).

<sup>10</sup> See 5 U.S.C. § 8110(b).

<sup>11</sup> *Id.* at § 8110(a)(3).

<sup>12</sup> *Id.* at § 8101.

The case record establishes that, following his May 2018 college graduation, C.T. continued to be enrolled as a full-time student into 2019 pursuing a graduate degree, with an expected graduation date of May 2019. While C.T. turned 23 years old on October 23, 2018, he should have been deemed a student through the end of the “semester or other enrollment period.” OWCP should have further developed the claim to determine when C.T.’s semester or other enrollment period had ended, prior to declaring an overpayment of compensation. As it remains unclear when C.T.’s post-graduate semester or other enrollment period following his October 23, 2018 birthday had ended, the Board finds that OWCP failed to meet its burden of proof.<sup>13</sup>

### **CONCLUSION**

The Board finds that OWCP failed to meet its burden of proof to establish that appellant received an overpayment of compensation in the amount of \$3,893.30 for the period May 11, 2018 through March 2, 2019.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 28, 2022 decision of the Office of Workers’ Compensation Programs is reversed.

Issued: April 11, 2025  
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

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<sup>13</sup> In light of the Board’s disposition of Issue 1, Issues 2 and 3 are rendered moot.