

² The Board notes that, following the February 18 and 26, 2025 decisions, appellant submitted additional evidence to OWCP. 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.*

authorization for C5-6 anterior cervical discectomy and fusion surgery; (3) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,222.66 for the period September 11 through October 5, 2024, for which he was without fault, because he continued to receive wage-loss compensation for total disability following his return to full-time modified-duty work; and (4) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On March 20, 2023, appellant, then a 59-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that, on March 18, 2023, he sustained lower back, neck, left hip, and left shoulder injuries when he fell when attempting to transfer an emergency room patient to a stretcher, landing on his buttocks and striking his head/neck on the stretcher, while in the performance of duty. He stopped work on March 18, 2023. By decision dated April 6, 2023, OWCP accepted the claim for sprain of lumbosacral spine and radiculopathy, left lumbar region. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective May 3, 2023, and on the periodic rolls, effective August 13, 2023.

On November 10, 2023, appellant underwent an OWCP-approved left L4-5 and LS-S1 minimally-invasive laminectomy, medial facetectomy, and foraminotomy with associated discectomy, performed by Dr. Daniel Fahim, a Board-certified neurosurgeon.

In a January 23, 2024 report, Dr. Pierre Rojas, an osteopath Board-certified in physiatry, evaluated appellant and discussed a December 19, 2023 magnetic resonance imaging (MRI) scan of the cervical spine, which demonstrated progressive findings particularly at C5-6, noting that he primarily complained of radicular pain down the left side. He diagnosed lumbar radiculopathy, left greater than right; status post L4-5 and L5-S1 decompression; status post fall; and cervical radiculopathy, exacerbation. Dr. Rojas opined that the diagnosed conditions developed following appellant's fall at work on March 18, 2023.

In a February 20, 2024 report, Dr. Fahim reported that appellant also hurt his cervical spine during the March 2023 injury resulting in a C5-6 subluxation. He reported that a December 16, 2023 cervical spine MRI scan demonstrated subluxation at the C5-6 level with a disc herniation resulting in central canal and neuroforaminal stenosis. Dr. Fahim diagnosed cervical spondylolisthesis, cervical disc prolapse with radiculopathy (disorder), and other spondylosis with radiculopathy, lumbar region.

In a February 21, 2024 report, Dr. Fahim requested an anterior cervical discectomy and fusion surgery at C5-6.

On March 11, 2024, OWCP referred appellant, the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Robert Travis, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature of appellant's employment-related conditions, the extent of disability, and whether the proposed cervical surgery should be approved at the expense of OWCP.

In a March 19, 2024 report, Dr. Rojas noted that appellant was scheduled for an independent medical examination and would schedule cervical decompression with Dr. Fahim per his recommendation.

In a report dated April 24, 2024, Dr. Travis documented his findings from appellant's April 13, 2024 physical examination for the purpose of the second opinion evaluation. In his report, he discussed appellant's history of injury, and summarized his various diagnostic studies. Dr. Travis diagnosed cervical spondylosis with radiculopathy and lumbar spondylosis with radiculopathy. He opined that appellant likely had preexisting lumbar spondylosis and that the accepted March 18, 2023 employment injury also caused his lumbar radiculopathy. Dr. Travis reported that appellant's lumbar injuries resulting in the November 10, 2023 surgery had not yet resolved, noting that appellant demonstrated an objectively positive straight leg raise test with significant symptomology. He further opined that appellant's cervical radiculopathy was a preexisting condition as noted by appellant's history of neck pain. Dr. Travis opined that the March 18, 2023 employment injury caused a temporary exacerbation of this preexisting condition, which returned to baseline following six weeks to three months of rest, physical therapy, and medication management. He also opined that while the cervical fusion and discectomy surgery recommended by Dr. Fahim was medically necessary to treat appellant's underlying herniation and spondylolisthesis conditions, the requested surgery was not causally related to the accepted March 18, 2023 employment injury. Dr. Travis determined that appellant was unable to return to work and found him to be temporarily totally disabled due to his accepted lumbar spine conditions.

In a May 9, 2024 report, Dr. Fahim recommended a C5-6 anterior cervical discectomy and fusion to treat appellant's disc herniation and spondylolisthesis.

In a May 28, 2024 report, Dr. Fahim requested authorization for C5-6 anterior cervical discectomy and fusion. He opined that the proposed surgery was medically necessary and causally related to appellant's accepted March 18, 2023 employment injury. He opined that the accepted March 18, 2023 employment injury not only exacerbated, but worsened his cervical spine condition resulting in the medical need for surgery.

On June 6, 2024, OWCP determined that a conflict of medical opinion evidence existed between Dr. Travis, the second opinion physician, and Dr. Fahim, appellant's treating physician, regarding whether the acceptance of the claim should be expanded to include a cervical condition as causally related to the accepted employment injury and, if so, whether the proposed C5-6 anterior cervical discectomy and fusion surgery was medically necessary and causally related to the March 18, 2023 employment injury.

On July 9, 2024, OWCP referred appellant, along with the case record, a SOAF, and a series of questions, to Dr. Paul Drouillard, an osteopath Board-certified in orthopedic surgery, for an impartial medical examination, to resolve the conflict of medical opinion.

In an August 16, 2024 report, Dr. Drouillard, serving as the impartial medical examiner (IME), reviewed appellant's history of injury, medical treatment, and the SOAF. He examined appellant and provided physical examination findings. Dr. Drouillard diagnosed multilevel degenerative disc disease and disc herniation at C5-6 dating back to 2018. He opined that the proposed C5-6 anterior cervical discectomy and fusion surgery was not medically necessary to

treat appellant's work-related condition for cervical sprain. Dr. Drouillard compared the April 12, 2018 and March 28, 2023 cervical spine MRI scans, explaining that the imaging studies were essentially the same other than the progression of arthritic changes at C5-6, which one would expect over a five-year period of time. As the chronic abnormality existed prior to the employment injury and was in development for years as evidenced by the April 12, 2018 cervical spine MRI scan following a 2017 motor vehicle accident, he found no evidence of an acute traumatic injury to the cervical spine causally related to the accepted March 18, 2023 employment injury. Dr. Drouillard explained that there was no evidence that the underlying cervical pathology was altered in any medically distinguishable way by the employment injury and opined that the surgery recommended by Dr. Fahim was needed to treat his chronic degenerative changes, not an acute traumatic injury. He opined that appellant did not require any further treatment for the accepted March 18, 2023 employment injury, explaining that he may have had a minor muscular strain resulting in temporary exacerbation. Dr. Drouillard reported that appellant could return to work in a sedentary capacity and required restrictions as a result of his work-related lumbar condition. He concluded that appellant's findings on physical examination and MRI scan studies were consistent with age-related degenerative changes and there was no evidence of an acute traumatic injury. In a work capacity evaluation (Form OWCP-5c) dated August 16, 2024, Dr. Drouillard determined that appellant was capable of returning to sedentary work for eight hours per day with restrictions.

In a September 10, 2024 disability certificate, Dr. Rojas noted that appellant was totally disabled from work from September 10 through November 26, 2024 due to his accepted March 18, 2023 employment injury and resulting lumbar and cervical radiculopathy.

In a September 10, 2024 Form OWCP-5c, Dr. Rojas restricted appellant from returning to work, noting that his lumbar spine remained unstable due to the accepted March 18, 2023 employment injury and may require additional surgery. He further disagreed with the opinion of the IME and opined that appellant's need for surgery was a direct result of the accepted March 18, 2023 employment injury regardless of any preexisting degenerative changes as he remained in constant pain and weakness.

Appellant returned to full-time modified-duty work on September 11, 2024.

In a September 10, 2024 report received by OWCP on September 26, 2024, Dr. Rojas held appellant off work from September 10 through November 26, 2024.

By decision dated October 3, 2024, OWCP expanded the acceptance of appellant's claim to include the additional condition of cervical strain, resolved. It noted that both the second opinion physician, Dr. Travis, and the IME, Dr. Drouillard, found that the accepted cervical strain was temporary and had resolved after six weeks of rest and physical therapy.

By separate decision also dated October 3, 2024, OWCP denied authorization for C5-6 anterior cervical discectomy and fusion surgery, finding that the evidence of record, as represented by the IME, Dr. Drouillard, did not support that the proposed surgery was medically necessary to address the effects of his work-related conditions under FECA.

On October 7, 2024, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a November 19, 2024 disability certificate, Dr. Rojas reported that appellant was temporarily totally disabled from work during the period November 19, 2024 through January 21, 2025.

In a November 22, 2024 debt referral memorandum, OWCP noted that appellant received an overpayment of compensation from September 11 through October 5, 2024. It further noted that he had returned to full-time limited duty on September 11, 2024, but with a loss in differential pay due to his employment restrictions. Taking into consideration that appellant continued to experience a loss in differential pay after his return to work, OWCP calculated his wage-earning capacity (WEC) entitlement and credit for the entitlement from September 11 through October 5, 2024, which amounted to \$756.11. It explained that the \$4,978.77 initially computed overpayment for temporary total disability, less the \$756.11 entitled for loss of differential pay, amounted to the remaining \$4,222.66 overpayment for the period September 11 through October 5, 2024.

In a preliminary overpayment determination dated December 2, 2024, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$4,222.66 for the period September 11 through October 5, 2024, because he continued to receive wage-loss compensation for total disability following his return to full-time modified-duty work. It found that he was without fault in the creation of the overpayment. OWCP requested that appellant complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support his reported income and expenses. Additionally, it notified appellant that, within 30 days of the date of the letter, he could request a final decision based on the written evidence or a prerecoupment hearing.

OWCP subsequently received additional medical evidence. In a November 19, 2024 report received by OWCP on December 3, 2024, Dr. Rojas reported that appellant returned to work per Dr. Drouillard's restrictions of sedentary work.

On December 11, 2024, appellant requested waiver of recovery of the overpayment and requested that OWCP make a decision based on the written evidence. He asserted that he was without fault in the creation of the overpayment and repayment would cause hardship. Appellant provided a completed Form OWCP-20 and reported total monthly income of \$7,542.00, total monthly expenses of \$4,958.00, and total assets of \$11,500.00. He also submitted supporting financial documentation.³

A hearing was held on January 6, 2025 with regard to the denial of authorization for surgery.

³ Appellant retired from the employing establishment, effective December 28, 2024.

OWCP subsequently received additional medical evidence. In a January 14, 2025 report, Dr. Rojas reported that appellant had retired from employment and would follow up with Dr. Fahim for surgical revaluation of the neck and low back.

In a January 16, 2025 report, Dr. Fahim recommended an MRI scan of the lumbar and cervical areas of the spine due to appellant's complaints of continued pain for more than a year.

Appellant also submitted additional diagnostic study reports, including a January 28, 2025 MRI scan of the cervical and lumbar areas of the spine.

By decision dated February 18, 2025, OWCP's hearing representative affirmed the October 3, 2024 decision regarding denial of authorization for surgery.

By decision dated February 26, 2025, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$4,222.66 for the period September 11 through October 5, 2024 because he continued to receive wage-loss compensation for total disability following his return to full-time modified-duty work. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment.⁴

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying termination or modification of an employee's compensation benefits.⁵ It may not terminate compensation without establishing that the disability ceased, or that it was no longer related to the employment injury.⁶ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

⁴ Although the hearing representative ordered recovery of the overpayment by deducting from appellant's continuing compensation, the case record establishes that appellant was no longer receiving continuing compensation at the time of the February 26, 2025 final overpayment decision. 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. *A.B.*, Docket No. 18-0915 (issued October 24, 2018); *Miguel A. Muniz*, 54 ECAB 217 (2002). As appellant was not in receipt of continuing compensation at the time of OWCP's overpayment determination, the Board does not have jurisdiction over the method of recovery of the overpayment in this case. See *Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

⁵ *K.C.*, Docket No. 23-0526 (issued December 22, 2023); *A.M.*, Docket No. 18-1243 (issued October 7, 2019); *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001); *Alice J. Tysinger*, 51 ECAB 638, 645 (2000).

⁶ *K.C., id.*; *S.P.*, Docket No. 19-0196 (issued June 24, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁷ *K.C., id.*; *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁸ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant's employment-related cervical strain had resolved as of October 3, 2024.

OWCP determined that a conflict of medical opinion evidence existed between Dr. Travis, the second opinion physician, and Dr. Fahim, appellant's treating physician, regarding whether the acceptance of the claim should be expanded to include a cervical condition as causally related to the accepted March 18, 2023 employment injury. It properly referred him to Dr. Drouillard, pursuant to 5 U.S.C. § 8123(a), for an impartial medical examination.

In his August 16, 2024 report, Dr. Drouillard, serving as the IME, diagnosed multilevel degenerative disc disease and disc herniation at C5-6 dating back to 2018 which he found was unrelated to appellant's work-related cervical sprain condition. He explained that there was no evidence of an acute traumatic injury to the cervical spine causally related to the accepted March 18, 2023 employment injury, noting that appellant's chronic abnormality existed prior to the employment injury and was in development for years as evidenced by the April 12, 2018 cervical spine MRI scan following a 2017 motor vehicle accident. Dr. Drouillard opined that the underlying cervical pathology was not altered in any medically distinguishable way by the employment injury and that appellant did not require any further treatment for the accepted March 18, 2023 employment injury, explaining that he may have had a minor muscular strain resulting in temporary exacerbation. He concluded that appellant could return to work in a sedentary capacity and required restrictions as a result of his work-related lumbar condition.

The Board finds that OWCP properly relied upon Dr. Drouillard's opinion that appellant's cervical strain had resolved.¹⁰ Dr. Drouillard's opinion was sufficiently rationalized and based on physical examination as well as review of the medical records.¹¹ In situations where the case is referred to an IME for the purpose of resolving a medical conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special

⁸ *P.G.*, Docket No. 24-0437 (issued June 26, 2024); *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁹ *P.G.*, *id.*; *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

¹⁰ *M.P.*, Docket No. 25-0253 (issued April 3, 2025).

¹¹ *See P.B.*, Docket No. 21-0894 (issued February 8, 2023); *D.W.*, Docket No. 20-0885 (issued June 11, 2021); *M.L.*, Docket No. 13-0442 (issued September 3, 2013).

weight.¹² Therefore, the Board finds that Dr. Drouillard's opinion is entitled to the special weight of the medical evidence.¹³

The reports of Dr. Fahim and Dr. Rojas are insufficient to overcome the special weight accorded to Dr. Drouillard because they failed to provide sufficient medical rationale explaining that appellant had continuing disability or residuals causally related to the accepted cervical strain.¹⁴ Accordingly, their reports are insufficient to overcome the weight of the medical evidence accorded to Dr. Drouillard, or to create a conflict in medical opinion as to whether appellant's work-related cervical strain had resolved as of October 3, 2024.¹⁵

The Board therefore finds that OWCP met its burden of proof to establish that appellant's employment-related cervical strain had resolved as of October 3, 2024.¹⁶

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA provides for the furnishing of services, appliances and supplies prescribed or recommended by a qualified physician who OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation.¹⁷ In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.¹⁸ It therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness.¹⁹

In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.²⁰ While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.²¹

¹² See *D.S.*, Docket No. 19-1698 (issued June 18, 2020).

¹³ *Id.*

¹⁴ *D.L.*, Docket No. 22-0161 (issued March 10, 2023).

¹⁵ *Id.*

¹⁶ *A.M.*, Docket No. 24-0219 (issued April 15, 2024).

¹⁷ 5 U.S.C. § 8103(a).

¹⁸ See *Dale E. Jones*, 48 ECAB 648, 649 (1997).

¹⁹ *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *Mira R. Adams*, 48 ECAB 504 (1997).

²⁰ *R.M.*, Docket No. 19-1319 (issued December 10, 2019); *J.T.*, Docket No. 18-0503 (issued October 16, 2018); *Debra S. King*, 44 ECAB 203 (1992).

²¹ *Kennett O. Collins, Jr.*, 55 ECAB 648, 654 (2004).

Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.²² In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.²³

Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken, which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.²⁴

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or IME) who shall make an examination.²⁵ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.²⁶ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently rationalized and based upon a proper factual background, must be given special weight.²⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied authorization for C5-6 anterior cervical discectomy and fusion surgery.

OWCP properly referred appellant, pursuant to 5 U.S.C. § 8123(a), to Dr. Drouillard for an impartial medical examination and opinion in order to resolve the conflict in the medical opinion evidence between appellant's treating physician Dr. Fahim, and OWCP's second opinion physician, Dr. Travis, regarding whether the proposed C5-6 anterior cervical discectomy and fusion surgery was medically necessary.

In an August 16, 2024 report, Dr. Drouillard, the IME, discussed appellant's history of injury, reviewed the SOAF, and medical evidence, and conducted a physical examination. He opined that the proposed C5-6 anterior cervical discectomy and fusion surgery was not medically

²² *M.B.*, 58 ECAB 588 (2007).

²³ *J.L.*, Docket No. 18-0990 (issued March 5, 2019); *R.C.*, 58 ECAB 238 (2006).

²⁴ *E.L.*, Docket No. 17-1445 (issued December 18, 2018); *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007).

²⁵ *Supra* note 1 at § 8123(a); *M.W.*, Docket No. 19-1347 (issued December 5, 2019); *C.T.*, Docket No. 19-0508 (issued September 5, 2019); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

²⁶ 20 C.F.R. § 10.321; *S.W.*, Docket No. 23-0513 (issued September 28, 2023).

²⁷ *K.C.*, Docket No. 19-0137 (issued May 29, 2020); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

necessary to treat appellant's accepted work-related condition for cervical sprain. Dr. Drouillard diagnosed the claimant with multilevel degenerative disc disease and disc herniation at C5-6 dating back to 2018. He compared the April 12, 2018 and March 28, 2023 MRI scans, which were essentially the same other than the progression of arthritic changes at C5-6, which would be expected over a five-year period of time. Dr. Drouillard opined that the surgery recommended by Dr. Fahim was needed to treat his chronic degenerative changes, not an acute traumatic injury. He further opined that appellant did not require any further treatment for the accepted March 18, 2023 employment injury, explaining that he may have had a minor muscular strain, which had been a temporary exacerbation. Dr. Drouillard reported that appellant could return to work in a sedentary capacity. He concluded that appellant's findings on physical examination and MRI scan findings were consistent with degenerative changes consistent with his age, and there was no evidence of an acute traumatic injury.

In situations where the case is referred to an IME for the purpose of resolving a medical conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.²⁸ As Dr. Drouillard's opinion was well rationalized and based on an accurate history, the SOAF, and his examination findings, the Board finds that it is entitled to the special weight of the medical evidence.²⁹

The reports of Dr. Fahim and Dr. Rojas are insufficient to overcome the special weight accorded to Dr. Drouillard or to create a new medical conflict, because they failed to provide medical rationale explaining why the proposed cervical surgery was medically necessary to treat appellant's accepted cervical strain, resolved. The Board has held that a medical opinion is of limited probative value if it does not contain sufficient medical rationale in support of the physician's opinion.³⁰

The diagnostic test results submitted by appellant including the January 28, 2025 reports, also fail to establish his claim. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment factors caused any of the diagnosed conditions.³¹

The only limitation on OWCP's authority in approving or denying service under FECA is one of reasonableness.³² In the instant case, OWCP obtained a well-rationalized report from Dr. Drouillard in which he opined that the requested surgery was not warranted for appellant's accepted employment injury. The Board thus finds that OWCP had sufficient evidence to deny surgery, and did not abuse its discretion.

²⁸ See *C.L.*, Docket No. 24-0249 (issued April 15, 2024); *C.W.*, Docket No. 17-0918 (issued January 5, 2018); *Patricia J. Glenn*, 53 ECAB 159 (2001); *James P. Roberts*, *id.*

²⁹ See *C.L.*, *id.*; *P.F.*, Docket No. 16-0693 (issued October 24, 2016).

³⁰ *R.C.*, Docket No. 21-1018 (issued September 1, 2023); *O.M.*, Docket No. 20-0640 (issued April 19, 2021).

³¹ *F.D.*, Docket No. 19-0932 (issued October 3, 2019).

³² See *T.A.*, Docket No 19-1030 (issued November 22, 2019).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 3

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.³³

Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.³⁴ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.³⁵

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,222.66, for the period September 11 through October 5, 2024, for which he was without fault, because he received wage-loss compensation for total disability following his return to full-time modified-duty work.

The case record establishes that appellant returned to full-time modified-duty work on September 11, 2024, but continued to receive wage-loss compensation for total disability through October 5, 2024. As noted above, a claimant is not entitled to receive compensation for total disability during a period in which he or she had actual earnings.³⁶ Accordingly, the Board finds that fact of overpayment is established.³⁷

With regard to the amount of the overpayment, OWCP found that appellant was overpaid \$4,222.66 for the period September 11 through October 5, 2024. It explained that appellant received a net compensation payment in the amount of \$5,576.22 for the period September 8 through October 5, 2024. However, he was only entitled to three days of compensation for that period. He was, therefore, overpaid for 25 days of non entitlement from September 11 through October 5, 2024, which resulted in an overpayment of compensation in the amount of \$4,978.77.

³³ 5 U.S.C. § 8102(a).

³⁴ *Id.* at § 8116.

³⁵ See *L.H.*, Docket No. 20-0115 (issued September 4, 2020); *E.R.*, Docket No. 19-1365 (issued December 23, 2019); *J.L.*, Docket No. 18-1266 (issued February 15, 2019); *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *B.H.*, Docket No. 09-0292 (issued September 1, 2009); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying Calculating an Overpayment*, Chapter 6.200.1a (September 2020).

³⁶ See *M.S.*, Docket No. 16-0289 (issued April 21, 2016); *D.B.*, Docket No. 15-0258 (issued February 1, 2016).

³⁷ *B.N.*, Docket No. 22-1337 (issued November 7, 2023); *J.M.*, Docket No. 17-1574 (issued February 8, 2018).

OWCP then applied the *Shadrick*³⁸ formula and advised that he was entitled to \$211.71 in weekly compensation of \$756.11 for the period September 11 through October 5, 2024. The difference between the compensation paid in the amount of \$4,978.77 and the compensation appellant was entitled to for the period September 11 through October 5, 2024 was \$4,222.66. The Board thus finds that OWCP properly determined that he received an overpayment of compensation in the amount of \$4,222.66 during the above-noted period.

LEGAL PRECEDENT -- ISSUE 4

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.³⁹ 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.⁴⁰

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.⁴¹ 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 \$50.00.⁴² 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.⁴³ 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.⁴⁴ Non liquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, 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.⁴⁵

³⁸ *Albert C. Shadrick*, 5 ECAB 376 (1953), codified at 20 C.F.R. § 10.403 (c)-(e).

³⁹ 5 U.S.C. § 8129(a)-(b).

⁴⁰ *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).

⁴¹ 20 C.F.R. § 10.436(a)(b).

⁴² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

⁴³ *Id.* at Chapter 6.400.4a(2).

⁴⁴ *Id.* at Chapter 6.400.4b(3).

⁴⁵ *Id.* at Chapter 6.400.4b(3)(a), (b).

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 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.⁴⁶ 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.⁴⁷

ANALYSIS -- ISSUE 4

The Board finds that OWCP properly denied waiver of recovery of the overpayment for the period September 11 through October 5, 2024.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered. As noted above, even if a claimant is found without fault in the creation of the overpayment, recovery of the overpayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.⁴⁸

On the Form OWCP-20, appellant reported total assets of \$11,500.00. As noted above, in determining whether recovery of the overpayment would defeat the purpose of FECA, OWCP considers whether assets exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent.⁴⁹ Accordingly, the Board finds that appellant has not met the standard for waiver of recovery of the overpayment, because his assets exceed the allowable resource base.⁵⁰ Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider whether he needs substantially all of his current income to meet ordinary and necessary living expenses.⁵¹

The Board also finds that appellant has not established that he was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience.

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

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

⁴⁷ *Supra* note 42 at Chapter 6.400.4c(3).

⁴⁸ *Id.*

⁴⁹ *Supra* note 43.

⁵⁰ *S.W.*, Docket No. 20-0363 (issued November 23, 2020); *H.F.*, Docket No. 17-0101 (issued September 5, 2017).

⁵¹ *S.R.*, Docket No. 20-1416 (issued September 8, 2022); *M.H.*, Docket No. 19-1497 (issued September 9, 2020).

CONCLUSION

The Board finds that OWCP properly determined that appellant's cervical strain had resolved as of October 3, 2024. The Board further finds that OWCP properly denied authorization for C5-6 anterior cervical discectomy and fusion surgery. The Board also finds that appellant received an overpayment of compensation in the amount of \$4,222.66 for the period September 11 through October 5, 2024, for which he was without fault, because he continued to receive wage-loss compensation for total disability following his return to full-time modified-duty work. Additionally, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the October 3, 2024, and February 18 and 26, 2025 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 25, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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