

FACTUAL HISTORY

On March 20, 2023 appellant, then a 51-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that on March 15, 2023 he sustained head injuries when the sliding trunk door of his employing establishment vehicle struck his head while in the performance of duty. He stopped work on March 16, 2023.

In a development letter dated April 10, 2023, OWCP informed appellant that it had converted his claim to a traumatic injury claim as the accepted injury occurred on March 15, 2023. It accepted the claim for concussion without loss of consciousness; post-concussion syndrome; neck tendon, muscle, and fascia strain; unspecified right wrist sprain; convergence insufficiency; saccadic eye movements; and unspecified ear disorder of vestibular function. OWCP subsequently expanded acceptance of the claim to include temporary cervical disc aggravation and aggravation of osseous, temporary subluxation stenosis of cervical region intervertebral foramina, and sleep disorder.

On July 28, 2023 appellant filed a claim for wage-loss compensation (Form CA-7) for disability from work during the period March 17 through October 27, 2023. OWCP paid him wage-loss compensation on the supplemental rolls commencing March 24, 2023, and on the periodic rolls commencing December 3, 2023.

In a December 12, 2023 letter to the employing establishment, OWCP advised that appellant mistakenly filed an occupational disease claim when he should have filed a traumatic injury claim. It informed the employing establishment that he was entitled to continuation of pay (COP) not to exceed 45 days following the date of his injury.

In a letter dated October 10, 2024, OWCP advised the employing establishment that it had received correspondence indicating that a debt regarding appellant had been created in the amount of \$25,896.54. It again advised that it had converted his occupational disease claim to a traumatic injury claim, and therefore he was entitled to COP for the period March 16 through April 29, 2023. OWCP attached a letter dated July 31, 2024 from the employing establishment to appellant which indicated the employing establishment's intent to collect the sum of \$25,896.54. The letter indicated that the debt was created due to conversion of 130 days of administrative leave to leave without pay (LWOP).

In response to appellant's inquiry, OWCP explained that the employing establishment had advised appellant of a debt balance in the amount of \$25,896.54 as it had paid him for administrative leave, when he should have been in LWOP status so that FECA wage-loss benefits could be paid. It further explained that on October 10, 2024 it had sent a notice to the employing establishment relating that appellant was entitled to COP for the period March 16 through April 29, 2023, and that it had requested that the employing establishment update him on the status of his debt following any retroactive pay adjustments to account for the COP period.

On December 2, 2024 appellant filed a Form CA-7 claiming compensation for LWOP for the period March 24 through November 18, 2023. The employing establishment noted he was in LWOP status from March 24 through November 18, 2023.

In a December 23, 2024 letter, OWCP noted that it had issued payments of compensation for the period March 24, 2023 through November 30, 2024. It noted that unfortunately the first payment was issued during the COP period that should have been covered by the employing establishment. Therefore, this period would be reviewed for potential overpayment.

On January 8, 2025 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$4,565.59 had been created for the period March 24 through April 29, 2023, because this period was covered under the COP provision and appellant was paid for total disability at the same time. It determined that appellant was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20), along with supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support his reported income, assets, and expenses. OWCP provided an appeal request form, and further notified appellant that, within 30 days of the date of the letter, he could contest the overpayment and request a final decision based on the written evidence, or a prerecoument hearing.

On January 15, 2025 appellant disagreed that an overpayment occurred and requested a decision on the written evidence.

On January 16, 2025 OWCP received a copy of a grievance settlement agreement signed by appellant and the employing establishment on September 27, 2025, noting that sick leave would be used for March 16 through 18, 2023, and that appellant would receive COP for the period March 20 through May 4, 2023.

On January 22, 2025 appellant requested that OWCP make a decision on the written evidence. He reiterated his disagreement that an overpayment had occurred. Appellant provided a completed Form OWCP-20 listing his monthly income, expenses and assets. He indicated that he had three minor children as dependents. Appellant submitted one page of a bank statement which indicated a checking balance of \$24,428.44. He contended that he was not at fault in the creation of the overpayment and there was no overpayment as the amount he received from the employing establishment was payment for his grievance which gave him credit for annual and sick leave, holidays, and other benefits taken from him.

In a letter dated January 24, 2025, OWCP requested that the employing establishment confirm that it had paid appellant COP for the period March 20 to May 4, 2023.

On January 30, 2025 the employing establishment confirmed that appellant had been paid COP for the period March 20 through May 4, 2023.

In a corrected preliminary overpayment determination dated February 10, 2025, OWCP found that an overpayment in the amount of \$5,257.03 had been created for the period March 24 through May 4, 2023 because this period was covered under the COP provision and appellant was paid for total disability at the same time. It again determined that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20), along with supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other

records to support his reported income, assets, and expenses. OWCP provided an appeal request form, and further notified appellant that, within 30 days of the date of the letter, he could contest the overpayment and request a final decision based on the written evidence, or a precoupment hearing.

On February 25, 2025 appellant requested that OWCP make a decision based on the written evidence. He disagreed with the amount of the overpayment and requested waiver. Appellant provided a completed Form OWCP-20 wherein he indicated that he had three minor children as dependents. He listed no monthly income and monthly expenses totaling \$5,360.00. Appellant indicated that he had a checking account balance of \$20,000, cash on hand of \$200.00, and a savings account balance of \$500.00, for a total of \$20,700.00. He again asserted that the money paid by the employing establishment was compensation for harm caused by a management mistake and that he had received a bill indicating that he had to repay the employing establishment \$32,000.00 in 30 days.

In a letter dated March 31, 2025, OWCP informed appellant that no supporting documentation had been submitted with his Form OWCP-20. It advised him that if he wanted waiver or a repayment plan to be considered he was required to submit documentation supporting monthly income, monthly expenses and assets.

Appellant subsequently submitted numerous financial documents including bank and credit card statements, pay stubs for his spouse, property tax, condominium account history report, utility bills, an HVAC & Plumbing bill, a hospital bill and car insurance bills. Financial documentation confirmed that appellant's monthly household income, which consisted of appellant's OWCP compensation and his wife's income, totaled \$5,810.87. In an accompanying letter, appellant alleged that the employing establishment was still attempting to collect \$32,000.00, but after he filed a grievance for \$6,000.00, the employing establishment was supposed to lower the amount owed but had not done so. He also submitted an employing establishment statement dated February 20, 2025 which indicated that appellant owed a total of \$32,388.04.

By decision dated May 9, 2025, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation amount of \$5,257.03 for the period March 24 through May 4, 2023. It noted that his daily gross compensation rate was \$173.76, that he had received \$4,565.59 in net compensation from March 24 to April 29, 2023, and \$691.44 for the period April 30 to May 5, 2023. OWCP reviewed appellant's documented income and expenses, as well as assets. It denied waiver of recovery of the overpayment because the evidence of record was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP noted that the evidence of record established that appellant had assets in excess of the resource base. It required recovery of the overpayment by deducting \$145.00 from his continuing compensation payments, every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 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 duty.² 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 law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.³

Section 8118(c) provides that compensation for disability does not begin until termination of COP or the use of annual or sick leave ends.⁴

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,257.03 during the period March 24 through May 4, 2023, for which he was without fault, as he received compensation to which he was not entitled.

The record reflects that on January 30, 2025 the employing establishment confirmed that COP was paid to appellant for the period March 20 through May 4, 2023. The record confirms that from March 24 through May 4, 2023, appellant received compensation payments for temporary total disability from OWCP, but also received COP from the employing establishment. Because appellant received COP from the employing establishment during the period March 24 through May 4, 2023, he was not entitled to wage-loss compensation from OWCP for the same period. The Board finds that his receipt of wage-loss compensation benefits from OWCP during the COP period created an overpayment of compensation.⁵

OWCP determined overpayment existed in the amount of \$5,257.03. The Board has reviewed OWCP's calculations and finds that it properly determined that an overpayment in the amount of \$5,257.03 was created during the period March 24 through May 4, 2023.

LEGAL PRECEDENT -- ISSUE 2

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.⁶ The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.⁷

² *Id.* at 8102(a).

³ *Id.* at § 8129(a).

⁴ *Id.* at § 8118(c).

⁵ *D.G.*, Docket No. 16-0281 (issued April 21, 2016); *Y.L.*, Docket No. 10-364 (issued October 18, 2010).

⁶ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see M.C.*, Docket No. 19-0699 (issued February 12, 2020).

⁷ *C.B.*, Docket No. 25-0456 (issued May 13, 2025); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

Recovery of an overpayment will defeat the purpose of FECA, if such recovery would cause hardship to a currently or formerly entitled beneficiary 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.⁸ Additionally, 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 in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.⁹

OWCP's regulations provide 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 recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁰

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 recovery is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹¹ In order to establish that recovery of the overpayment would defeat the purpose of FECA, appellant must show that he requires substantially all of his income to meet current ordinary and necessary living expenses, and that his assets do not exceed the established limit as determined by OWCP procedures.¹²

The record contains documentation indicating that appellant's monthly household income totaled \$5,810.87, and that his monthly household expenses totaled \$5,360.00. As appellant's total monthly income exceeds his total monthly expenses by more than \$50.00, he has not shown that he needs substantially all of his current income to meet current ordinary and necessary living expenses.¹³ Because he has not met the first prong of the two-prong test of whether recovery of

⁸ 20 C.F.R. § 10.436(a)-(b). 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. *Id.* at Chapter 6.400.4a(2).

⁹ *Id.* at § 10.437(a)(b).

¹⁰ *Id.* at § 10.438.

¹¹ *Id.* at § 10.434; *C.B.*, *supra* note 7.

¹² *Id.* at § 10.436.

¹³ *Id.*

the overpayment would defeat the purpose of FECA, it is unnecessary for OWCP to consider the second prong of the test, *i.e.*, whether his assets exceed the allowable resource base.

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. Appellant has not shown that he would experience severe financial hardship in attempting to repay the debt, or that he has relinquished a valuable right, or changed his position for the worse in reliance on the payments which created the overpayment.¹⁴

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.

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.¹⁵

Section 10.441 of OWCP's regulations¹⁶ provides that, when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as the error is discovered or his or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.¹⁷

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$145.00 from appellant's continuing compensation payments, every 28 days.

In requiring recovery, OWCP explained how it considered the factors set forth at 20 C.F.R. § 10.441(a) in setting the amount of repayment from continuing compensation benefits to minimize hardship, while liquidating the debt, as appellant had financial resources sufficient for more than ordinary needs.¹⁸ Thus, it did not abuse its discretion in setting the rate of recovery.¹⁹

¹⁴ *Id.* at § 10.437

¹⁵ *Id.* at § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

¹⁶ *Id.* at § 10.441(a).

¹⁷ *Id.*; *see L.G.*, Docket No. 19-1274 (issued July 10, 2020).

¹⁸ *See A.N.*, Docket No. 23-0983 (issued January 10, 2024); *P.S.*, Docket No. 21-0859 (issued May 12, 2023); *D.S.*, Docket No. 18-1447 (issued July 22, 2019).

¹⁹ *See A.N.*, *id.*; *P.S.*, *id.*; *T.G.*, Docket No. 17-1989 (issued June 5, 2018); *M.D.*, Docket No. 11-1751 (issued May 7, 2012).

The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$145.00, every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,257.03 during the period March 24 through May 4, 2023, for which he was without fault, as he received compensation to which he was not entitled. The Board further finds that OWCP properly denied waiver of recovery of the overpayment of compensation and required recovery of the overpayment by deducting \$145.00 from appellant's continuing compensation payments, every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2025 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: August 6, 2025
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