

² Counsel did not appeal OWCP's November 14, 2023 decision which denied, in part, appellant's claim for disability compensation for the period June 17 through September 8, 2023. Accordingly, the Board will not address this issue on appeal. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$18,748.26 for the periods November 18 through 30, 2022, December 17 through 26, 2022, and May 6 through 19, 2023, for which he was without fault, because he was issued duplicate compensation payments due to a computer error; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.⁵ 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 June 27, 2013 appellant, then a 45-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained injury to his left hip, back, and legs due to factors of his federal employment which required repetitive standing, lifting, bending, carrying, walking, driving, and standing with heavy loads. He noted that he first became aware of his conditions on September 29, 2012 and realized their relationship to his federal employment on April 10, 2013. OWCP initially accepted the claim for lumbar sprain. It subsequently expanded the acceptance of appellant's claim to include temporary aggravation of degenerative disc disease, lumbar region; temporary aggravation of unilateral primary osteoarthritis, left hip; temporary aggravation of avascular necrosis, left hip; thrombosis of left femoral vein; bilateral pulmonary embolism; and unilateral primary osteoarthritis, right hip. OWCP paid appellant wage-loss compensation on the supplemental rolls as of October 21, 2015, on the periodic rolls from July 19, 2020 through February 27, 2021, and again on the supplemental rolls, intermittently, from February 28, 2021.

On November 13, 2023 OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$18,748.26, for which he was without fault, because, he was paid duplicate compensation payments covering the periods November 18 through 30, 2022, December 17 through 26, 2022, and May 6 through 19, 2023, due to a computer error. It found that for the period November 18 through 30, 2022, appellant was entitled to one payment of \$1,028.07, but was erroneously issued six additional payments of \$1,028.07 which resulted in an overpayment of \$6,168.42 for that period. For the period December 17 through 26, 2022, appellant was entitled to one payment of \$845.61, but was

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that following the February 9, 2024 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.*

⁵ Docket No. 23-0526 (issued December 22, 2023).

erroneously issued six additional payments of \$845.61, which resulted in an overpayment of \$5,073.66 for that period. For the period May 6 through 19, 2023, appellant was entitled to one payment of \$1,251.03, but was erroneously issued 6 additional payments of \$1,251.03, which resulted in an overpayment of \$7,506.18. OWCP advised that due to the computer error, appellant was without fault in the creation of the overpayment and provided copies of appellant's payments. It also provided appellant with an overpayment action request form and informed him that within 30 days he could request a final decision based on the written evidence, or a prerecoupment hearing. OWCP requested that he complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses.

On December 12, 2023 appellant requested that OWCP make a determination based on the written evidence. He requested waiver because he was found without fault in the creation of the overpayment, and he thought he was being paid backpay from September 2012. In a separate December 12, 2023 response, appellant indicated that he thought he was being compensated for previous periods of nonpayment in 2015. In an attached December 12, 2023 Form OWCP-20, he advised that he had zero household monthly income, \$3,880.00 in monthly expenses and zero assets. No financial documentation was submitted.

By decision dated February 9, 2024, OWCP finalized the preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$18,748.26 for the periods November 18 through 30, 2022, December 17 through 26, 2022, and May 6 through 19, 2023, for which he was without fault, because he was issued duplicate compensation payments due to a computer error. It denied waiver of recovery of the overpayment and required repayment of the debt in full.

LEGAL PRECEDENT -- ISSUE 1

An injured employee may receive compensation for lost wages due to either total or partial disability.⁶ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under the regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁷ When a claimant receives a duplicate compensation payment for a period that he or she has already received compensation for wage loss, an overpayment is created.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$18,748.26 for the periods November 18 through 30, 2022, December 17 through 26, 2022, and

⁶ 20 C.F.R §§ 10.401, 10.403.

⁷ 5 U.S.C § 8129(a).

⁸ *C.L.*, Docket No. 09-1246 (issued December 16, 2009); see *Lawrence J. DuBuque*, 55 ECAB 667, 670-71 (2004).

May 6 through 19, 2023, for which he was without fault, because he was issued duplicate compensation payments due to a computer error.

The case record establishes that appellant received duplicate compensation payments covering the periods November 18 through 30, 2022, December 17 through 26, 2022, and May 6 through 19, 2023 due to a computer error. As explained above, when a claimant receives a duplicate compensation payment for a period that he or she has already received compensation for wage loss, an overpayment is created.⁹ The Board thus finds that fact of overpayment has been established.

The Board further finds that OWCP properly determined the amount of the overpayment. It found that for the period November 18 through 30, 2022, appellant was entitled to one payment of \$1,028.07, but was erroneously issued six additional payments of \$1,028.07 which resulted in an overpayment of \$6,168.42 for that period. For the period December 17 through 26, 2022, appellant was entitled to one payment of \$845.61, but was erroneously issued six additional payments of \$845.61, which resulted in an overpayment of \$5,073.66 for that period. For the period May 6 through 19, 2023, appellant was entitled to one payment of \$1,251.03, but was erroneously issued six additional payments of \$1,251.03, which resulted in an overpayment of \$7,506.18 for that period. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received an overpayment of compensation in the amount of \$18,748.26.

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. 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.¹⁰

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.¹¹ 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

⁹ *Id.*

¹⁰ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); see *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹¹ 20 C.F.R. § 10.436(a)-(b). 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a.(2) (September 2020).

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.¹²

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 or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.¹³ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹⁴

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.¹⁵

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. In its preliminary overpayment determination, OWCP explained the importance of providing the completed Form OWCP-20 overpayment questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income, expenses, and assets. Appellant, however, did not provide financial documentation to support his claimed income, assets and/or expenses. As he did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁶

CONCLUSION

The Board finds that appellant received an overpayment in the amount of \$18,748.26 for the periods November 18 through 30, 2022, December 17 through 26, 2022, and May 6 through 19, 2023, for which he was without fault, because he was issued duplicate compensation payments due to a computer error. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

¹² *Id.* at § 10.437(a)(b).

¹³ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁴ *Id.* at § 10.438(b).

¹⁵ *Id.* at § 10.436.

¹⁶ *D.C.*, Docket No. 19-0118 (issued January 15, 2020); *see S.B.*, Docket No. 16-1795 (issued March 2, 2017).

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 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