

**United States Department of Labor
Employees' Compensation Appeals Board**

J.M., Appellant)
and) **Docket No. 25-0850**
U.S. POSTAL SERVICE, DES MOINES IOWA)
PROCESSING AND DISTRIBUTION CENTER,) **Issued: December 29, 2025**
Des Moines, IA, Employer)

)

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 4, 2025 appellant, through counsel, filed a timely appeal from an August 21, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the August 21, 2025 decision, OWCP received additional evidence. 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 determined that appellant received an overpayment of compensation in the amount of \$2,912.90 for the period June 18 through December 5, 2024, for which she was without fault, because she improperly received schedule award compensation at an augmented compensation rate; and (2) whether OWCP properly denied appellant's request for waiver of recovery of the overpayment.

FACTUAL HISTORY

On May 11, 2017 appellant, then a 48-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she developed osteoarthritis of the cervical spine, lumbar spine, knees, and right ankle due to factors of her employment including lifting, carrying, squatting, and pushing. She stopped work on December 9, 2017 for surgery. OWCP accepted her claim for aggravation of primary osteoarthritis in the cervical spine and lumbar spines knees, and right ankle.⁴ It paid wage-loss compensation on the supplemental rolls commencing December 9, 2017. Appellant began receiving disability retirement from the Office of Personnel Management on April 25, 2024.

Appellant filed a claim for a schedule award (Form CA-7) on January 9, 2024. She listed her spouse as a dependent on this claim form.

By decision dated June 3, 2024, OWCP granted appellant schedule award compensation for 4 percent permanent impairment of the right upper extremity, 3 percent permanent impairment of the left upper extremity, 29 percent permanent impairment of the right lower extremity and 25 percent permanent impairment of the left lower extremity. The award covered a period of 177.36 weeks from May 19, 2024 to October 12, 2027. This decision noted that the schedule award would be paid at the $\frac{3}{4}$ augmented compensation rate (75 percent) for employees with an eligible dependent.

On May 19, 2024 OWCP paid appellant schedule award compensation on the periodic rolls for the period May 19 through June 15, 2024. Appellant's weekly pay rate of \$1,226.42 was multiplied by a compensation rate of 75 percent for employees with an eligible dependent, yielding a net payment of \$4,518.00. OWCP made similar payments for the period June 16 through July 13, 2024.

On June 4, 2024 appellant requested payment of her schedule award in a lump sum.

⁴ OWCP assigned the present claim OWCP File No. xxxxxx543. On December 26, 2008 appellant filed a Form CA-2 alleging work-related carpal tunnel syndrome in OWCP File No. xxxxxx671. OWCP accepted this claim for left carpal tunnel syndrome and right shoulder impingement syndrome. On April 2, 2019 it granted her a schedule award for six percent permanent impairment of the left upper extremity. On June 16, 2011 appellant filed a Form CA-2 alleging that she developed right carpal tunnel syndrome in OWCP File No. xxxxxx740. OWCP accepted this claim for right carpal tunnel syndrome, sprain of the shoulder and upper arm, and superior glenoid labrum lesion on the right. It expanded acceptance of this claim to include right cubital tunnel syndrome. By decision dated April 23, 2025, OWCP granted appellant a schedule award for 40 percent permanent impairment of the right upper extremity. It administratively combined OWCP File Nos. xxxxxx543, xxxxxx740, and xxxxxx671, with the latter serving as the master file.

In a letter dated July 11, 2024, OWCP informed appellant that the liability of the United States for Compensation may be discharged by a payment equal to the present value of all future payments of compensation computed at four percent true discount rate compounded annually or \$180,041.67 as of July 14, 2024. It asserted that any lump-sum payment will represent full and final compensation payment for the period of the award even if she suffered a recurrence of total disability.

In a lump-sum schedule award calculation form dated July 11, 2024, OWCP utilized the four-week compensation schedule award amount appellant was receiving at the 75 percent augmented rate, to compute the remaining schedule award due appellant.

On July 14, 2024 appellant signed the agreement to accept a lump-sum settlement of schedule award. She agreed to accept the sum of \$180,041.67, in payment of compensation for the commuted value of further installments of compensation for the remainder of the schedule award payable from July 14, 2024 through October 12, 2027. OWCP issued the lump-sum award on July 19, 2024.

In an April 21, 2025 memorandum of telephone call (Form CA-110) appellant related that her spouse passed away on June 17, 2024 and that she remarried on December 6, 2024. On April 21, 2025 appellant submitted a marriage certificate indicating that on December 6, 2024 she and her current spouse were married.

In a May 27, 2025 preliminary overpayment determination, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$2,912.90 for the period June 18 through December 5, 2024. It stated that she received compensation at the augmented rate when she should have been paid at the basic rate of 66 2/3 percent (or 2/3) as she no longer had an eligible dependent. OWCP explained that, during the relevant period, appellant was not entitled to receive wage-loss compensation at the augmented rate as her spouse passed away on June 17, 2024. Appellant then remarried on December 6, 2024. OWCP provided its calculations, noting that for the period June 18, 2024 through July 13, 2024 she was paid \$4,195.29 in wage-loss compensation at the augmented 3/4 rate when she was only entitled to \$3,729.14 in wage-loss compensation at the basic 2/3 rate, resulting in an overpayment of compensation of \$466.15. For the remaining period of the lump-sum schedule award, appellant was paid at the augmented daily rate of \$151.87 for the 145-day period July 14 through December 5, 2024, or \$22,020.75, while she was entitled to receive a daily rate of \$134.99 for the 145-day period July 14 through December 5, 2024, or \$19,574.00, resulting in an overpayment of \$2,446.75. Combining the overpayment amounts for the total period from June 18 through December 5, 2024 resulted in a total overpayment of \$2,912.90. OWCP further found that she was without fault in the creation of the overpayment. Additionally, it provided an overpayment action request form and informed appellant that, within 30 days, she could request a final decision based on the written evidence, or a prerecoupment hearing. OWCP requested that she 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 May 28, 2025 appellant completed an overpayment action request form in which she challenged the fact and amount of the overpayment and requested waiver of recovery.

In a letter dated May 29, 2025, appellant, through counsel, disagreed with the fact and amount of the overpayment. She contended that the amount of the overpayment was incorrectly calculated as it failed to consider the reduced amount of benefits paid from July 14 to December 5, 2024 because of the four percent schedule award lump-sum reduction.

By decision dated August 21, 2025, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$2,912.90 for the period June 18, 2024 through December 5, 2024 because she had improperly received augmented compensation without having eligible dependents. It found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as appellant had not submitted any financial documentation in support of waiver. OWCP required recovery of the overpayment by payment in the full amount of the overpayment, \$2,912.90, within 30 days.

LEGAL PRECEDENT -- ISSUE 1

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from a personal injury sustained while in the performance of duty. If the disability is total, the United States shall pay the employee during the period of total disability the basic compensation rate of 2/3 or 66 2/3 percent of his monthly pay. A disabled employee is entitled to an augmented compensation rate of ¾ or 75 percent if he or she has one or more dependents.⁵ A husband is considered an employee's dependent if he is a member of the same household, is receiving regular contributions from the employee for his support, or if the employee has been ordered by a court to contribute to his support.⁶ In determining dependency under FECA, the decisive test is whether the person for whom benefits are claimed as a dependent of the employee, in fact, looked to and relied, in whole or in part, upon the contributions given by the employee as a means of maintaining or helping to maintain a customary standard of living.⁷

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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly found that an overpayment of compensation in the amount of \$2,912.90 was created for the period June 18 through December 5, 2024, because

⁵ *S.A.*, Docket No. 20-0279 (issued June 8, 2021); *R.G.*, Docket No. 18-1251 (issued November 26, 2019); *O.R.*, 59 ECAB 432, 436 (2008); *id.* at §§ 8105(a) and 8110(b).

⁶ 5 U.S.C. § 8110(a)(2).

⁷ See *N.J.*, Docket No. 18-0556 (issued December 6, 2018); *Nancy J. Masterson*, 52 ECAB 507 (2001); *Helyn E. Girmann*, 11 ECAB 557 (1960).

⁸ *R.G.*, *supra* note 5; *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

appellant received schedule award compensation at the augmented rate to which she was not entitled.

The evidence of record reflects that appellant's spouse passed away on June 17, 2024, she then remarried on December 6, 2024. As such, the record establishes that OWCP erroneously paid her compensation based on the augmented rate of 75 percent for the period June 18 through December 5, 2024. OWCP paid appellant \$26,216.04 in FECA compensation for that period at the augmented rate of 75 percent, when she was only entitled to \$23,303.14 at the 66 2/3 percent basic rate. It properly determined that the difference yielded an overpayment of compensation in the amount of \$2,912.90. The Board, having duly reviewed the detailed calculations of OWCP, thus finds that appellant received an overpayment in the amount of \$2,912.90 for the period June 18 through December 5, 2024. because she improperly received schedule award compensation at the augmented rate.⁹

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.¹⁰

Recovery of an overpayment will defeat the purpose of FECA when 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 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

Section 10.438 of OWCP's regulations provides 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.

⁹ See C.J., Docket No. 22-1107 (issued September 11, 2025); A.A., Docket No. 22-0751 (issued December 12, 2022).

¹⁰ 5 U.S.C. § 8129.

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).

¹² *Id.* at § 10.437(a)(b).

Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹³

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 this 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.¹⁴ Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.¹⁵

In its preliminary overpayment determination dated May 27, 2025, OWCP explained the importance of providing the completed overpayment recovery questionnaire and supporting financial documentation. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant, however, did not submit financial documentation necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience. She did not complete a Form OWCP-20 outlining her income, assets, and expenses. The evidence of record is therefore insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁶

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁷

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$2,912.90 for the period June 18 through December 5, 2024, for which she was without fault, because she improperly received schedule award compensation at an augmented compensation rate. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

¹³ *Id.* at § 10.438.

¹⁴ *Id.* at § 10.436.

¹⁵ *Id.* at § 10.438; *see also* N.J., Docket No. 19-1170 (issued January 10, 2020); S.M., Docket No. 17-1802 (issued August 20, 2018).

¹⁶ *Id.* at § 10.438.

¹⁷ *See* E.T., Docket No. 22-0234 (issued August 17, 2022); T.E., Docket No. 19-0348 (issued December 11, 2019).

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 29, 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