

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

2023, for which he was without fault, because he continued to receive wage-loss compensation for total disability following his return to full-time work; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On September 5, 2022 appellant, then a 53-year-old registered nurse, filed a traumatic injury claim (Form CA-1) alleging that on September 4, 2022 he sustained severe right ankle pain, swelling and sprain, facial bruising, swelling and abrasions, cervical pain, right shoulder pain, severe emotional trauma, and post-traumatic stress disorder (PTSD) when a patient from the psychiatric ward pulled the door open and attacked him while he was in the performance of duty. He stopped work on the date of injury. OWCP accepted the claim for cervical sprain and high right ankle sprain, with tears to the anterior talofibular and tibiofibular ligaments. It subsequently expanded the acceptance of the claim to include PTSD, acute stress disorder, cervical spine strain, and right ankle sprain. OWCP paid appellant wage-loss compensation on the supplemental rolls beginning October 23, 2022, and on the periodic rolls beginning April 23, 2023.

In a letter dated May 8, 2023, OWCP advised that appellant would receive a net compensation payment of \$8,594.30 for the period March 26 through April 22, 2023, and \$8,594.30 for every 28-day period from April 23 through May 20, 2023 and continuing. It further instructed that, if he worked during any portion of the covered period and compensation payments were received by paper check or electronic funds transfer (EFT), he was to return the payment to OWCP even if he had already advised OWCP that he was working. OWCP noted that appellant was expected to monitor his EFT deposits carefully, at least every two weeks.

On May 9, 2023, Dr. James A. Kim, a Board-certified anesthesiologist, released appellant to full-duty work with no restrictions on a trial basis.

Appellant returned to full-time modified duty on June 8, 2023. On June 6, 2017, OWCP paid him wage-loss compensation in the net amount of \$8,594.40 for the period May 21 through June 17, 2023.

In a preliminary overpayment determination dated July 10, 2023, OWCP notified appellant that he had received an overpayment of compensation in the amount \$3,069.39 for the period June 8 through 17, 2023 because he returned to work full time on June 8, 2023 but continued to receive wage-loss compensation for disability through June 17, 2023. It explained that he received \$8,594.30 in net compensation for the period May 21 through June 17, 2023, but was only entitled to compensation for the period May 21 through June 7, 2023. OWCP found that appellant was without fault in the creation of the overpayment. It requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable recovery method and advised him that he could request waiver of recovery of the overpayment. OWCP further requested that appellant provide 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 further provided an overpayment action request form and notified him 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. No response to the preliminary overpayment determination was received.

By decision dated July 30, 2024, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$3,069.39 for the period June 8 through 17, 2023 because he continued to receive wage-loss compensation following his return to full-time work. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP required recovery of the overpayment by payment in full within 30 days.

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

Section 8102(a) of FECA<sup>3</sup> 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.<sup>4</sup> Section 8129(a) of FECA provides, in pertinent part, that 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.<sup>5</sup>

A claimant is not entitled to receive temporary total disability benefits and actual earnings for the same time period.<sup>6</sup> OWCP's regulations provide that compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.<sup>7</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount \$3,069.39, for which he without fault, because he continued to receive wage-loss compensation for total disability following his return to full-time work.

The case record establishes that appellant returned to full-time work on June 8, 2023. However, OWCP continued to pay him wage-loss compensation through June 17, 2023. As noted, a claimant is not entitled to receive wage-loss compensation benefits and actual earnings

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<sup>3</sup> *Id.* at § 8102(a).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at § 8129(a).

<sup>6</sup> *See K.A.*, Docket No. 25-0127 (issued December 11, 2024); *T.L.*, Docket No. 23-0424 (issued December 28, 2023); *S.S.*, Docket No. 20-0776 (issued March 15, 2021); *C.H.*, Docket No. 19-1470 (issued January 24, 2020); *L.S.*, 59 ECAB 350 (2008).

<sup>7</sup> *K.A.*, *id.*; *T.L.*, *id.*; *S.S.*, *id.*; *C.H.*, *id.*; Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1a (September 2020).

for the same time period.<sup>8</sup> Accordingly, the Board finds that appellant has established fact of overpayment.<sup>9</sup>

With regard to the amount of the overpayment, OWCP explained that appellant received \$8,594.30 in net compensation for the period May 21 through June 17, 2023, when he was only entitled to compensation for the period May 21 through June 7, 2023, which resulted in an overpayment of \$3,069.39. The Board has reviewed OWCP's calculations and finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,069.39, for the period June 8 through 17, 2023.<sup>10</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an overpayment must be recovered 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."<sup>11</sup>

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his income (including compensation benefits) to meet current ordinary and necessary living expenses, and also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.<sup>12</sup>

Section 10.437 provides that recovery of an overpayment is 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.<sup>13</sup>

Section 10.438 of 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

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<sup>8</sup> *Supra* note 6.

<sup>9</sup> *See T.H.*, Docket No. 23-0194 (issued July 17, 2023); *A.C.*, Docket No. 22-0118 (issued December 15, 2022).

<sup>10</sup> Appellant asserts that he sustained a recurrence of disability during the period of the overpayment and, thus, the amount of the overpayment should be reduced accordingly. However, the recurrence issue is not presently before the Board. *See* 20 C.F.R. § 501.2(c).

<sup>11</sup> 5 U.S.C. § 8129(a)-(b); *see D.D.*, Docket No. 20-1522 (issued July 27, 2023); *R.Q.*, Docket No. 18-0964 (issued October 8, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

<sup>12</sup> 20 C.F.R. § 10.436. 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. Its procedures further provide that 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. *Supra* note 7 at Chapter 6.400.4a(2) and (3) (September 2020).

<sup>13</sup> *Id.* at § 10.437.

overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found him without fault in the creation of the \$3,069.39 overpayment for the period June 8 through 17, 2023, 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.<sup>15</sup>

In its preliminary overpayment determination dated July 10, 2023, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial information. It advised him that waiver of recovery would be denied if he failed to furnish the requested financial information within 30 days. Appellant did not submit a completed Form OWCP-20, or otherwise submit the financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

Appellant had the responsibility to provide financial information to OWCP but failed to do so.<sup>16</sup> As he did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.<sup>17</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount \$3,069.39, for which he was without fault, because he continued to receive wage-loss compensation for total disability following his return to full-time work. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

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<sup>14</sup> *Id.* at § 10.438.

<sup>15</sup> *Id.* at § 10.436.

<sup>16</sup> *Id.* at § 10.438; *C.B.*, Docket No. 24-0285 (issued April 24, 2024); *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

<sup>17</sup> *See A.P.*, Docket No. 24-0943 (issued December 10, 2024); *E.A.*, Docket No. 24-0810 (issued September 26, 2024).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 30, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 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