

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

## **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,954.92 for the period December 26, 2023 through March 23, 2024, because she continued to receive wage-loss compensation for total disability following her return to work; and (2) whether OWCP properly found appellant at fault in the creation of the overpayment for the period December 26, 2023 through March 23, 2024, thereby precluding waiver of recovery of the overpayment.

## **FACTUAL HISTORY**

On May 24, 2022 appellant, then a 54-year-old manager, filed an occupational disease claim (Form CA-2) alleging that she had developed right shoulder conditions due to factors of her federal employment, including repetitive lifting and throwing mail sacks weighing 50 to 80 pounds daily. She noted that she first became aware of her conditions on March 8, 2022, and realized their relationship to her federal employment on May 9, 2022. OWCP accepted the claim for right shoulder bursitis; rotator cuff tear; impingement syndrome; and right lateral epicondylitis and carpal tunnel syndrome. Appellant stopped work on November 11, 2022. OWCP paid her wage-loss compensation on the supplemental rolls, effective November 11, 2022, and on the periodic rolls, effective January 1, 2023. Appellant returned to work on December 26, 2023. However, OWCP continued to pay her wage-loss compensation for total disability on the periodic rolls through March 23, 2024.<sup>3</sup>

In a preliminary overpayment determination dated June 11, 2024, OWCP notified appellant that she had received an overpayment of compensation in the amount \$11,954.92 for the period December 26, 2023 through March 23, 2024 because she returned to work on December 26, 2023, but continued to receive wage-loss compensation for total disability through March 23, 2024. It explained its calculation that she had received a total of \$15,029.47 in net compensation for the period December 3, 2023 through March 23, 2024 and that, while she was entitled to \$3,074.55 in net compensation for the period December 3 through 25, 2023, she was not entitled to receive the remainder of the net compensation paid for the period December 26, 2023 through March 23, 2024. OWCP found that this resulted in an overpayment of compensation in the amount of \$11,954.92 for the period December 26, 2023 through March 23, 2024. It found that appellant was at fault in the creation of the overpayment. OWCP requested that she complete an accompanying overpayment recovery questionnaire (Form OWCP-20) and provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and other records to support income and expenses. Additionally, it provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a precoupment hearing.

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<sup>3</sup> OWCP paid appellant net compensation *via* electronic funds transfer (EFT). On December 30, 2023 it paid her \$3,742.93 for the period December 3 through 30, 2023. On January 27, 2024 OWCP paid appellant \$3,756.29 for the period December 31, 2023 through January 27, 2024. On February 24, 2024 it paid her \$3,711.57 for the period January 28 through February 24, 2024. On March 23, 2024 OWCP paid appellant \$3,818.68 for the period February 25 through March 23, 2024.

On June 20, 2024 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on September 25, 2024.

By decision dated November 15, 2024, OWCP's hearing representative vacated the June 11, 2024 preliminary overpayment determination and remanded the case for OWCP to obtain confirmation from the employing establishment as to whether that December 26, 2023 was the date appellant returned to work. The hearing representative further instructed OWCP to then issue a *de novo* overpayment decision, finding that appellant was without fault in the creation of the overpayment for the period December 26 through 30, 2023 and at fault in the creation of the overpayment for the period December 31, 2023 through March 23, 2024.

In letters dated January 28 and February 20, 2025, OWCP requested that the employing establishment verify the date appellant had returned to duty and to specify the type of duty that she returned to. In a February 27, 2025 response, the employing establishment verified that appellant had returned to full-duty work on December 26, 2023.

In a preliminary overpayment determination dated March 4, 2025, OWCP notified appellant that she had received an overpayment of compensation in the amount \$11,954.92 for the period December 26, 2023 through March 23, 2024, because she returned to work on December 26, 2023, but continued to receive wage-loss compensation for total disability through March 23, 2024. It explained that she had received a total of \$15,029.47 in net compensation for the period December 3, 2023 through March 23, 2024 and that, while she was entitled to \$3,074.55 in net compensation for the period December 3 through 25, 2023, she was not entitled to receive the remainder of the net compensation paid for the period December 26, 2023 through March 23, 2024. OWCP found that this resulted in an overpayment of compensation in the amount of \$11,954.92 for the period December 26, 2023 through March 23, 2024. It found that appellant was without fault in the creation of the overpayment. OWCP requested that she submit a completed Form OWCP-20 to determine a reasonable recovery method and advised that she could request waiver of recovery of the overpayment. It 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, OWCP further provided an overpayment action request form and notified her that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a prerecoupment hearing.

On March 11, 2025 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She disagreed with the fact and amount of the overpayment and requested waiver of recovery of the overpayment.

Following a preliminary review, by decision dated April 7, 2025, OWCP's hearing representative vacated the March 4, 2025 preliminary overpayment determination and remanded the case for OWCP to issue a *de novo* decision with proper findings regarding whether appellant was at fault in the creation of the overpayment as previously directed in the November 15, 2024 hearing representative's decision.

On April 10, 2025 OWCP issued a *de novo* preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$11,954.92 was created for the

period December 26, 2023 through March 23, 2024 because appellant returned to work on December 26, 2023 but continued to receive wage-loss compensation for total disability through March 23, 2024. It explained that she had received a total of \$15,029.47 in net compensation for the period December 3, 2023 through March 23, 2024 and that, while she was entitled to \$3,074.55 in net compensation for the period December 3 through 25, 2023, she was not entitled to receive the remainder of the net compensation paid for the period December 26, 2023 through March 23, 2024. OWCP therefore found that this resulted in an overpayment of \$11,954.92 for the period December 26, 2023 through March 23, 2024. It found that appellant was without fault in the creation of the overpayment for the period December 26<sup>4</sup> through 30, 2023 because she lacked the requisite knowledge to identify that she was overpaid during that period. OWCP further found, however, appellant was at fault in the creation of the overpayment for the period December 31, 2023 through March 23, 2024 because she received compensation payments that she knew or reasonably should have known were incorrect. It requested that she submit a completed Form OWCP-20 to determine a reasonable recovery method. 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 her reported income and expenses. Additionally, it further provided an overpayment action request form and notified her that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a prerecoupment hearing. No response was received.

By decision dated May 12, 2025, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$11,954.92 for the period December 26, 2023 through March 23, 2024 because she continued to receive wage-loss compensation for total disability after her return to work. It determined that she was at fault in the creation of the overpayment for the period December 26, 2023 through March 23, 2024 as she accepted compensation payments that she knew or reasonably should have known to be incorrect. OWCP required recovery of the overpayment by payment in full within 30 days.

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

Section 8102(a) of FECA<sup>5</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>6</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>7</sup>

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<sup>4</sup> OWCP's April 10, 2025 preliminary overpayment determination noted this date as December 23, 2023; however, this appears to be a typographical error as the case record indicates that the overpayment period did not begin until appellant's return to work on December 26, 2023.

<sup>5</sup> *Id.* at § 8102(a).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at § 8129(a).

A claimant is not entitled to receive total disability benefits and actual earnings for the same time period.<sup>8</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>9</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,954.92, for which she was partially at fault, because she continued to receive wage-loss compensation for total disability following her return to work.

The case record establishes that appellant returned to work on December 26, 2023. However, OWCP continued to pay her wage-loss compensation for total disability through March 23, 2024. As noted, a claimant is not entitled to receive wage-loss compensation for total disability and actual earnings for the same time period.<sup>10</sup> Accordingly, the Board finds that appellant has established fact of overpayment.<sup>11</sup>

With regard to the amount of the overpayment, OWCP explained that she had received a total of \$15,029.47 in net compensation for the period December 3, 2023 through March 23, 2024 and that, while she was entitled to \$3,074.55 in net compensation for the period December 3 through 25, 2023, she was not entitled to receive the remainder of the net compensation paid for the period December 26, 2023 through March 23, 2024. It therefore found that this resulted in an overpayment of \$11,954.92 for the period December 26, 2023 through March 23, 2024. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received an overpayment of compensation in the amount of \$11,954.92 for the period December 26, 2023 through March 23, 2024.

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

Section 8129 of FECA provides that adjustment or recovery by the United States may not be made when 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

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<sup>8</sup> See *M.B.*, Docket No. 24-0908 (issued February 3, 2025); *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>9</sup> *M.B.*, *id.*; *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).

<sup>10</sup> *Supra* note 6.

<sup>11</sup> See *M.B.*, *supra* note 8; *T.H.*, Docket No. 23-0194 (issued July 17, 2023); *A.C.*, Docket No. 22-0118 (issued December 15, 2022).

conscience. A claimant who is at fault in the creation of the overpayment is precluded from waiver of recovery of the overpayment.<sup>12</sup>

Section 10.433(a) of OWCP's regulations provides that an individual is found at fault in the creation of an overpayment if he or she has: (1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) failed to furnish information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have known was incorrect.<sup>13</sup>

Even if an overpayment resulted from negligence by OWCP, this does not excuse the employee from accepting payment, which the employee knew or should have been expected to know he or she was not entitled to.<sup>14</sup> The Board has held that an employee who receives payments from OWCP in the form of a direct deposit may not be at fault the first or second time that incorrect funds are deposited into his or her account, as he or she lacks the requisite knowledge in accepting payment.<sup>15</sup>

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

The Board finds that OWCP improperly found appellant at fault in the creation of the overpayment for the period December 26, 2023 through January 27, 2024.

The case record establishes that OWCP paid appellant wage-loss compensation for total disability on the periodic rolls effective January 1, 2023. Appellant returned to work on December 26, 2023, but continued to receive compensation payments *via* EFT every 28 days through March 23, 2024. The first compensation payment following her return to work was made by OWCP on December 30, 2023, covering the period December 3 through 30, 2023; and the second compensation payment following her return to work was made by OWCP on January 27, 2024, covering the period December 31, 2023 through January 27, 2024.

As noted above, the Board has held that an employee who receives payments from OWCP in the form of a direct deposit may not be at fault for the first or second incorrect deposit since at the time of receipt of the direct deposit, the employee lacks the requisite knowledge.<sup>16</sup> Given the short period of time following appellant's return to work, there is no documentation to demonstrate that she had knowledge at the time her bank received direct deposits from OWCP on December 30,

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<sup>12</sup> *J.S.*, Docket No. 19-1363 (issued April 10, 2020); *B.R.*, Docket No. 18-0339 (issued January 24, 2019); *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *Gregg B. Manston*, 45 ECAB 344, 354 (1994); *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

<sup>13</sup> 20 C.F.R. § 10.433(a).

<sup>14</sup> *Diana L. Booth*, 52 ECAB 370 (2001).

<sup>15</sup> See *C.B.*, Docket No. 23-0769 (issued May 28, 2024); *R.S.*, Docket No. 20-0177 (issued September 3, 2021); *L.G.*, Docket No. 20-1342 (issued September 3, 2021); *M.J.*, Docket No. 19-1665 (issued July 29, 2020); *Tammy Craven*, 57 ECAB 689 (2006).

<sup>16</sup> *Id.*

2023 and January 27, 2024 that the payments were incorrect.<sup>17</sup> The Board thus finds that appellant was without fault in the creation of the overpayment with regard to accepting the two direct deposits covering the period of the overpayment from December 26, 2023 through January 27, 2024.<sup>18</sup>

As the case is not in posture for decision regarding the issue of waiver of recovery of the overpayment for the period December 26, 2023 through January 27, 2024, the case must be remanded for OWCP to determine whether appellant is entitled to waiver of recovery of the overpayment covering that period.<sup>19</sup> Following any further development deemed necessary, OWCP shall issue a *de novo* decision regarding waiver.

The Board further finds, however, that OWCP properly found appellant at fault in the creation of the overpayment for the period January 28, 2024 through March 23, 2024.

As explained above, section 10.433(a) of OWCP's regulations provides that an individual is found at fault in the creation of an overpayment if he or she has accepted a payment which he or she knew or should have known was incorrect.<sup>20</sup> Even if an overpayment resulted from negligence by OWCP, this does not excuse the employee from accepting payment, which the employee knew or should have been expected to know he or she was not entitled.<sup>21</sup> By the time of the third direct deposit payment following appellant's return to work, she should have known that she was not entitled to the same amount of wage-loss compensation as the amount received prior to returning to work.<sup>22</sup> After her receipt of the first and second direct deposits following her return to work, she knew or reasonably should have known that OWCP had begun to make payments to her in error, and that she was no longer entitled to compensation payments.<sup>23</sup> The Board therefore finds that OWCP properly found appellant at fault in the creation of the overpayment for the period January 28 through March 23, 2024, thereby precluding waiver of recovery of the overpayment for that period.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,954.92 because she continued to receive wage-loss compensation for total disability following her return to work. The Board further finds that OWCP

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<sup>17</sup> *Id.* See also *M.T.*, Docket No. 20-1353 (issued May 9, 2022); *B.W.*, Docket No. 19-0239 (issued September 18, 2020); *K.E.*, Docket No. 19-0978 (issued October 25, 2018).

<sup>18</sup> *Id.*

<sup>19</sup> See *C.B.*, *supra* note 17; *D.R.*, Docket No. 21-0234 (issued November 17, 2022); *C.C.*, Docket No. 19-1268 (issued April 2, 2021).

<sup>20</sup> *Supra* note 15.

<sup>21</sup> *Supra* note 16.

<sup>22</sup> See *S.R.* Docket No. 24-0338 (issued May 10, 2024).

<sup>23</sup> See *M.R.*, Docket No. 24-0200 (issued March 28, 2024); *J.B.*, Docket No. 22-1027 (issued November 16, 2023).

improperly found appellant at fault in the creation of the overpayment for the period December 26, 2023 through January 27, 2024. The Board also finds that OWCP properly found appellant at fault in the creation of the overpayment for the period January 28 through March 23, 2024, thereby precluding waiver of recovery of the overpayment for that period.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 12, 2025 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 29, 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