

² 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 \$19,066.43 for the period July 16, 2023 through January 27, 2024, as she continued to receive wage-loss compensation while a third-party surplus was outstanding; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On April 1, 2022 appellant, then a 51-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on March 28, 2022 she sustained facial fractures, avulsed teeth, left hip, and right wrist injuries when a truck struck her stopped delivery vehicle head-on while in the performance of duty. She stopped work on March 28, 2022. OWCP accepted the claim for axial fracture, closed head injury, and right shoulder sprain. It subsequently expanded its acceptance of appellant's claim to include maxillary fracture, left side. OWCP paid her wage-loss compensation on the supplemental rolls, effective May 13, 2022, and on the periodic rolls, effective June 19, 2022. Appellant remained off work.

The record reflects that, on May 20, 2022, appellant's then-counsel, in the civil lawsuit against the truck driver, requested a list of conditional payments made as well as the amount of recovery sought by the Department of Labor/OWCP in subrogation.

In a June 14, 2022 letter, OWCP advised appellant's then-counsel of her obligations with regard to any potential third-party liability.

On January 23, 2023 OWCP received a Long Form Statement of Recovery (Form EN-1108) from appellant's then-counsel. The form noted a gross recovery of \$97,500.00, with the Federal Government's statutory right to a refund in the amount of \$18,156.96 and a surplus credit against future FECA benefits in the amount of \$24,768.52.

OWCP, however, continued to pay appellant wage-loss compensation on the periodic rolls through January 27, 2024.

A February 6, 2024 compensation payment record indicates that OWCP suspended appellant's compensation effective January 28, 2024 as there was an outstanding third-party surplus.

In a letter dated February 6, 2024, OWCP advised appellant that her wage-loss compensation and medical benefits had been suspended pending exhaustion of the third-party surplus.

In a May 2, 2024 third-party surplus tracking memorandum, OWCP noted that \$19,066.43 of the total \$24,768.52 surplus was scheduled to have been absorbed during the period July 16, 2023 through January 27, 2024.

On May 9, 2024 OWCP terminated appellant's entitlement to wage-loss compensation on the periodic rolls, effective April 21, 2024, as she began receiving disability retirement benefits through the Office of Personnel Management (OPM) effective April 15, 2024.

On August 13, 2024 OWCP issued a preliminary overpayment determination that an overpayment of compensation in the amount of \$19,066.43 had been created for the period July 16, 2023 through January 27, 2024 because appellant received wage-loss compensation during a period of a third-party surplus. It found that she was without fault in the creation of the overpayment. Copies of its worksheets pertaining to the calculation of the overpayment were included. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records to support her reported income and expenses. Additionally, it provided her with 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 September 9, 2024 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review regarding possible waiver of recovery of the overpayment.

On September 16, 2024 appellant submitted a completed Form OWCP-20, wherein she reported total monthly income of \$4,664.71 and total monthly expenses of \$4,380.61. She also reported that she had no assets. Appellant submitted supporting financial documentation for the amounts provided.

A prerecoupment hearing was held on December 16, 2024.

By decision dated March 5, 2025, OWCP's hearing representative finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$19,066.43 for the period July 16, 2023 through January 27, 2024 because she received wage-loss compensation when a third-party surplus was outstanding. The hearing representative found appellant without fault in the creation of the overpayment, but denied waiver of recovery. The hearing representative determined that the overpayment be recovered *via* payments of \$165.00, every four weeks.³

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of

³ With respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *See A.B.*, Docket No. 18-0915 (issued October 24, 2018); *Miguel A. Muniz*, 54 ECAB 217 (2002). As appellant was not in receipt of continuing compensation at the time of OWCP's overpayment determination, the Board does not have jurisdiction over the method of recovery of the overpayment in this case. *See Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

duty.⁴ Section 8132 of FECA outlines that where an injury or death for which compensation is payable is caused under circumstances creating a legal liability in a person other than the United States to pay damages and a beneficiary entitled to compensation from the United States for that injury or death receives money or other property in satisfaction of that liability as a result of suit or settlement by him or her in his or her behalf, the beneficiary, after deducting there from the costs of suit and a reasonable attorney's fee, shall refund to the United States the amount of compensation paid by the United States and credit any surplus on future payments of compensation to him or her for the same injury.⁵ The applicable regulations reiterate that, after the refund owed to the United States is calculated, FECA beneficiary retains any surplus remaining and this amount is credited, dollar for dollar, against future compensation for the same injury.⁶ OWCP will resume the payment of compensation only after FECA beneficiary has been awarded compensation, which exceeds the amount of the surplus.⁷ Where a beneficiary who has received a third-party recovery has made the required refund, but subsequent events result in payment of compensation benefits, including medical benefits, this may result in an overpayment of compensation.⁸ Such an overpayment of compensation should be adjudicated and processed by OWCP according to the usual overpayment procedures.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount \$19,066.43 during the period July 16, 2023 through January 27, 2024, for which she was without fault, as she continued to receive wage-loss compensation while a third-party surplus was outstanding.

The case record establishes that on January 23, 2023, OWCP received a Form EN-1108 from appellant's then-counsel. The form noted a gross recovery of \$97,500.00, with the Federal Government's statutory right to a refund in the amount of \$18,156.96 and a surplus credit against future FECA benefits in the amount of \$24,768.52. In a May 2, 2024 third-party surplus tracking memorandum, OWCP noted that \$19,066.43 of the total \$24,768.52 surplus was scheduled to have been absorbed during the period July 16, 2023 through January 27, 2024. However, appellant also received FECA wage-loss compensation payments covering that same period. As explained above, OWCP's regulations provide that when a third-party settlement is reached and the refund owed to the United States is calculated, further compensation payments are to be charged against

⁴ 5 U.S.C. § 8102.

⁵ *Id.* at § 8132. *L.G.*, Docket No. 21-0950 (issued June 6, 2022); *see R.M.*, Docket No. 20-0686 (issued May 20, 2020); *E.K.*, Docket No. 18-0599 (issued February 26, 2020); *see also T.D.*, Docket No. 16-0565 (issued May 5, 2016).

⁶ 20 C.F.R. § 10.712.

⁷ *Id.*

⁸ *Id.*; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Third-Party Subrogation Guidelines*, Chapter 2.1100.10 (March 2006).

⁹ *Id.*; *L.G.*, *supra* note 5; *see S.M.*, Docket No. 21-0449 (issued October 25, 2021).

a surplus until it has been exhausted.¹⁰ Where a beneficiary who has received a third-party recovery has made the required refund, but subsequent events result in payment of compensation benefits, including medical benefits, this may result in an overpayment of compensation.¹¹ Thus, the Board finds that fact of overpayment has been established.

With regard to the amount of the overpayment, the Board has reviewed OWCP's calculations and finds that it properly determined that appellant received an overpayment of compensation in the amount of \$19,066.43 for the period July 16, 2023 through January 27, 2024.

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.¹² 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.¹³

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.¹⁴ 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.¹⁵

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

¹⁰ *Supra* note 6.

¹¹ *Supra* note 8.

¹² 5 U.S.C. § 8129.

¹³ *C.B.*, Docket No. 25-0275 (issued March 24, 2025); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁴ 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).

¹⁵ *Id.* at § 10.437(a)(b).

the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for 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.¹⁷

On September 16, 2024 appellant submitted a completed Form OWCP-20, wherein she reported total monthly income of \$4,664.71 and total monthly expenses of \$4,380.61. She submitted supporting financial documentation for the amounts provided. As appellant's total monthly income exceeds her total monthly expenses by more than \$50.00, she has not shown that she needs substantially all of her current income to meet current ordinary and necessary living expenses.¹⁸ Because she has not met the first prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is unnecessary for OWCP to consider the second prong of the test, *i.e.*, whether her assets exceed the allowable resource base.

Appellant has not provided any evidence to support that she relied on payments or relinquished a valuable right or changed her position for the worse in reliance on payments received as part of the overpayment.

As appellant failed to establish that recovery of the overpayment of compensation would either defeat the purpose of FECA or be against equity and good conscience, the Board thus finds that OWCP properly denied waiver of recovery of the overpayment.¹⁹

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount \$19,066.43 during the period July 16, 2023 through January 27, 2024, for which she was without fault, as she continued to receive wage-loss compensation while a third-party surplus was outstanding. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

¹⁶ *Id.* at § 10.438(a); *J.P.*, Docket No. 24-0927 (issued December 5, 2024); *R.M.*, Docket No. 20-0696 (issued May 20, 2024); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁷ *Id.* at § 10.436.

¹⁸ *See supra* note 16.

¹⁹ *J.P.*, *supra* note 16; *see L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 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