

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

C.Z., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
FEDERAL AVIATION MARSHAL SERVICE,
Brooklyn Heights, OH, Employer**

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**Docket No. 25-0798
Issued: November 26, 2025**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 22, 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. 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.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$23,057.58 for the period July 22 through November 30, 2024, for which he was without fault for the period July 22 through September 7, 2024, and at fault for the period September 8 through November 30, 2024, because he continued to receive wage-loss compensation for total disability following his return to full-time work in the private sector; (2) whether OWCP properly denied waiver of recovery of the portion of the overpayment that occurred from July 22 through September 7, 2024; and (3) whether OWCP properly found appellant at fault in the creation of the portion of the overpayment that occurred from September 8 through November 30, 2024, thereby precluding waiver of recovery of the overpayment.

FACTUAL HISTORY

On June 12, 2014 appellant, then a 40-year-old air marshal, filed a traumatic injury claim (Form CA-1) alleging that on June 11, 2014 he injured his right shoulder and wrist when he participated in organized physical training while in the performance of duty. He stopped work on the date of injury. OWCP accepted the claim for a right rotator cuff sprain and later expanded its acceptance of the claim to include cervical radiculopathy, temporary aggravation of cervical disc disorder, and adhesive capsulitis of the right shoulder. It paid appellant wage-loss compensation on the supplemental rolls effective September 16, 2014, and on the periodic rolls effective April 5, 2015.

In an August 5, 2024 report, a vocational rehabilitation counselor noted that appellant had returned to full-time work in the private sector, effective July 22, 2024.

On a completed election of benefits form dated October 30, 2024, appellant elected to receive retirement benefits from the Office of Personnel Management in lieu of workers' compensation under FECA. The effective date of the election was January 15, 2025.

In a fiscal memorandum dated December 3, 2024, OWCP noted that appellant had returned to work on July 22, 2024, but continued to receive wage-loss compensation during the period July 22 through November 30, 2024 in the net amount of \$30,917.98. In a letter of even date, it notified him that it had identified an overpayment of \$30,917.98 for the period July 22 through November 30, 2024, and that he could request a formal calculation of his loss of wage-earning capacity (LWEC) for this period by submitting copies of his pay stubs or a record of his gross earnings.

In a December 3, 2024 letter, the employing establishment indicated that appellant's date-of-injury pay rate for pay band I had a base salary of \$62,883.00 with locality pay of \$11,747.00.⁴ It noted that one year prior to the date of injury, he earned night differential of \$234.20, Sunday premium of \$788.73, and holiday compensation of \$654.90, that his salary ranged from \$59,080.00 (minimum) to \$91,624.00 (maximum) with an 18.68 percent locality pay. The employing

⁴ The employing establishment also indicated that the pay rate for pay band I was the same on the date disability began, June 27, 2024, as it was on the date of injury.

establishment also advised that the current pay band as of July 22, 2024 had a salary range of \$88,250.00 to \$115,079.00 with 22.01 percent locality pay.

On January 16, 2025 OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$30,917.98 for the period July 22 through November 30, 2024, because he returned to full-time employment on July 22, 2024, but received wage-loss compensation for total disability through November 30, 2025. It further notified him of its preliminary findings that he was without fault in the creation of the portion of the overpayment that occurred from July 22 through September 7, 2024, totaling \$11,242.90, but that he was at fault in the creation of the portion of the overpayment that occurred from September 8 through November 30, 2024, totaling \$19,675.08 because he accepted a payment that he knew, or reasonably should have known, was incorrect. Additionally, OWCP provided an overpayment action request form and informed appellant that, within 30 days, he could request a final decision based on the written evidence, or a prerecoupment hearing. It 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 January 29, 2025 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. He challenged OWCP's finding that an overpayment had occurred and requested waiver of recovery. A hearing was held on April 8, 2025.

On May 15, 2025 OWCP received appellant's payroll records from his private sector employer covering the period July 21, 2024 through March 15, 2025.

Appellant also submitted a completed Form OWCP-20 dated May 17, 2025, which reported total monthly income of \$8,750.00, total monthly expenses of \$16,274.32, and assets totaling \$5,005.00. He did not submit supporting financial documentation.

On June 9, 2025 the employing establishment confirmed the pay rate information as set forth in its December 3, 2024 correspondence.

In a June 16, 2025 worksheet for determining LWEC under performance based alternative pay systems, or pay banding, OWCP noted maximum and minimum salaries for the date of injury, determined the percentage of the salary range, and then added the base pay rate to the night differential, Sunday premium pay, and holiday pay. In a June 24, 2025 fiscal memorandum, OWCP applied the formula set forth in *Albert C. Shadrick*,⁵ and found that appellant's pay rate as of June 11, 2014, the date of injury, was \$1,826.26 and the current weekly pay rate as of July 22, 2024 for his date-of-injury job was \$2,735.00. It also noted that his actual weekly earnings from July 22 through November 30, 2024 were \$1,916.00.

On June 24, 2025 OWCP issued a revised preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$23,057.58 for the period July 22 through November 30, 2024, because he returned to full-time employment on

⁵ 5 ECAB 376 (1953); codified by regulation at 20 C.F.R. § 10.403(c)-(e). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Wage-Earning Capacity Based on Actual Earnings*, Chapter 2.815.3b(1) and 4b (June 2013) (The method for computing the compensation payable where an injured employee has actual earnings is called the *Shadrick* formula).

July 22, 2024 but received wage-loss compensation for total disability through November 30, 2025. Using the *Shadrick*⁶ formula, it determined that for the period July 22 through November 30, 2024 his weekly compensation rate was \$410.91, and that his four-week compensation amount was \$1,643.64.⁷ OWCP noted that appellant received \$30,917.99 in net wage-loss compensation for the period July 22 through November 30, 2024 when he was only entitled to receive \$7,860.41 for that same period, in a total overpayment of compensation in the amount of \$23,057.58. It further notified him of its preliminary finding that he was without fault in the creation of the portion of the overpayment that occurred from July 22 through September 7, 2024, totaling \$8,384.58, but was at fault in the creation of the portion of the overpayment that occurred from September 8 through November 30, 2024, totaling \$14,673.00 because he accepted a payment that he knew or reasonably should have known, was incorrect. Additionally, OWCP provided an overpayment action request form and informed appellant that, within 30 days, he could request a final decision based on the written evidence, or a prerecoumpment hearing. It requested that he complete an enclosed 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. Appellant did not respond.

In an automated compensation payment system history dated August 14, 2025, OWCP reported that appellant received two compensation payments *via* direct deposit during the period July 22 through September 7, 2024 totaling a net amount of \$11,242.91 and three compensation payments *via* direct deposit during the period September 8 through totaling a net amount of \$19,675.08.⁸

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 \$23,057.58 for the period July 22 through November 30, 2024. It found him without fault in the creation of the portion of the overpayment that occurred from July 22 through September 7, 2024, totaling \$8,384.58.⁹ OWCP further found appellant at fault in the creation of the portion of the overpayment that occurred from September 8 through November 30, 2024, totaling \$14,673.00, because he accepted compensation payments that he knew, or reasonably should have known, were incorrect. It denied waiver of recovery of the overpayment and required that appellant forward the full amount of \$23,057.58 within 30 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) 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 his or her federal employment.¹⁰ Section 8129(a) provides, in pertinent part: “When an overpayment

⁶ *Id.*

⁷ OWCP also provided its calculations for increases in the weekly compensation rate based upon the consumer price index from March 1, 2016 through March 1, 2025.

⁸ On September 22, 2014 OWCP acknowledged receipt of appellant’s direct deposit sign up form of even date.

⁹ OWCP found that appellant lacked the requisite knowledge that he was not entitled to these payments, which he received in the form of direct deposits, at the time that they were received. *See R.S.*, Docket No. 20-0177 (issued September 3, 2021); *M.J.*, Docket No. 19-1665 (issued July 29, 2020); *Tammy Craven*, 57 ECAB 689 (2006).

¹⁰ 5 U.S.C. § 8102(a).

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.”¹¹ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation for total disability, he or she may not receive salary, pay, or remuneration of any type from the United States.¹²

Section 8115(a) of FECA and section 10.403 of OWCP’s regulations provides that, in determining compensation for partial disability, the wage-earning capacity of an employee is determined by the employee’s actual earnings if the actual earnings fairly and reasonably represent the employee’s wage-earning capacity.¹³ Generally, wages actually earned are the best measure of a wage-earning capacity, and in the absence of showing that they do not fairly and reasonably represent the injured employee’s wage-earning capacity, must be accepted as such a measure.¹⁴

When a claimant has actual earnings that span a lengthy period of time (*e.g.*, several months or more) the proper compensation should be determined by averaging the earnings for the entire period, determining the average pay rate, and applying the *Shadrick* formula (comparing the average pay rate for the entire period to the pay rate of the date-of-injury position in effect at the end of the period of actual earnings).¹⁵ The wage-earning capacity in terms of percentage is determined by dividing the employee’s earnings by the current pay rate of the job held at the time of injury. The computation in dollars is computed by multiplying the pay rate for compensation purposes by the percentage of wage-earning capacity and the resulting dollar amount is subtracted from the pay rate for compensation purposes to obtain the LWEC.¹⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$23,057.58 for the period July 22 through November 30, 2024, because he received wage-loss compensation for total disability following his return to full-time work.

The case record establishes that appellant returned to full-time work in the private sector on July 22, 2024, but continued to receive wage-loss compensation for total disability through November 30, 2024. As noted above, a claimant is not entitled to receive compensation for total

¹¹ *Id.* at § 8129(a).

¹² *Id.* at § 8116.

¹³ 5 U.S.C. § 8115(a); 20 C.F.R. § 10.403; *V.H.*, Docket No. 20-1012 (issued August 10, 2021); *Loni J. Cleveland*, 52 ECAB 171 (2000); *Z.D.*, Docket No. 19-0662 (issued December 5, 2019).

¹⁴ *D.A.*, Docket No. 21-0267 (issued November 19, 2021); *K.B.*, Docket No. 20-0358 (issued December 10, 2020); *Lottie M. Williams*, 56 ECAB 302 (2005).

¹⁵ *Supra* note 5 at Chapter 2.815.3b(4) (June 2013); *C.G.*, Docket No. 18-1655 (issued June 14, 2019).

¹⁶ *Albert C. Shadrick*, *supra* note 5.

disability during a period in which he or she had actual earnings.¹⁷ Accordingly, the Board finds that fact of overpayment is established.¹⁸

Regarding the amount of the overpayment, OWCP found that appellant was overpaid \$23,057.58 for the period July 22 through November 30, 2024. It explained that he received a net compensation payment in the amount of \$30,917.99 for the period July 22 through November 30, 2024. OWCP applied the *Shadrick*¹⁹ formula and advised that appellant was entitled to only \$7,860.41 in net compensation for that same period⁴. The difference between the compensation paid and the compensation he was entitled to for the period July 22 through November 30, 2024 was \$23,057.58. The Board thus finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$23,057.58 during the above-noted period.

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.²⁰

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.²¹ An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.²²

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.²³

¹⁷ See *M.S.*, Docket No. 16-0289 (issued April 21, 2016); *D.B.*, Docket No. 15-0258 (issued February 1, 2016).

¹⁸ *B.N.*, Docket No. 22-1337 (issued November 7, 2023); *J.M.*, Docket No. 17-1574 (issued February 8, 2018).

¹⁹ *Supra* note 5.

²⁰ 5 U.S.C. § 8129(a)-(b).

²¹ 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).

²² *Id.* at Chapter 6.400.4.a(3); see also *B.M.*, Docket No. 23-0891 (issued January 30, 2024); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

²³ 20 C.F.R. § 10.437(a)-(b).

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. The information is also used to determine the repayment schedule, if necessary.²⁴ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.²⁵

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the portion of the overpayment of compensation that occurred from July 22 through September 7, 2024.

In its preliminary overpayment determination dated January 16, 2025 and in its revised preliminary overpayment determination dated June 24, 2025, OWCP explained the importance of providing the completed Form OWCP-20 and supporting financial documentation. Although appellant submitted a completed Form OWCP-20 dated May 17, 2025, he did not provide the requested supporting financial documentation. 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.²⁶

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 his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.²⁷

LEGAL PRECEDENT -- ISSUE 3

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 conscience. A claimant who is at fault in the creation of the overpayment is precluded from waiver of recovery of the overpayment.²⁸

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

²⁴ *Id.* at § 10.438(a); *B.M.*, *supra* note 22; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²⁵ *Id.* at § 10.438; *D.L.*, Docket No. 20-1522 (issued July 27, 2023).

²⁶ *Id.* at § 10.438.

²⁷ *See E.T.*, Docket No. 22-0234 (issued August 17, 2022); *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

²⁸ *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).

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.²⁹

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.³⁰ 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.³¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly found appellant at fault in the creation of portion of the overpayment that occurred during the period September 8 through November 30, 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.³² 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.³³ After his receipt of the first and second direct deposits following his return to work, appellant knew or reasonably should have known that OWCP had begun to make payments to her in error, and that he was no longer entitled to compensation payments.³⁴ By the time the third direct deposit payment was received following appellant's return to private sector work, he should have known that he was not entitled to the same amount of wage-loss compensation as the amount received prior to returning to work.³⁵ The Board therefore finds that OWCP properly found appellant at fault in the creation of the overpayment for the period September 8 through November 30, 2024, thereby precluding waiver of recovery of the overpayment for that period.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$23,057.58 for the period July 22 through November 30, 2024, for which he was without fault for the period for July 22 through September 7, 2024, and at fault for the period September 8 through November 30, 2024, because he continued to receive wage-loss compensation for total disability

²⁹ 20 C.F.R. § 10.433(a).

³⁰ *Diana L. Booth*, 52 ECAB 370 (2001).

³¹ 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).

³² *Id.*

³³ *Id.*

³⁴ See *C.S.*, Docket No. 25-0562 (issued July 29, 2025); *M.R.*, Docket No. 24-0200 (issued March 28, 2024); *J.B.*, Docket No. 22-1027 (issued November 16, 2023).

³⁵ See *S.R.* Docket No. 24-0338 (issued May 10, 2024).

following his return to full-time work in the private sector. The Board further finds that OWCP properly denied waiver of recovery of the overpayment for the period July 22 through September 7, 2024. The Board also finds that OWCP properly found appellant at fault in the portion of the overpayment that occurred from September 8 through November 30, 2024, thereby precluding waiver of recovery of the overpayment.³⁶

ORDER

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

Issued: November 26, 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

³⁶ With respect to recovery of the overpayment of compensation, the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA. As appellant is no longer receiving wage-loss compensation, the Board does not have jurisdiction with respect to the recovery of the overpayment under the Debt Collection Act. *See T.C.*, Docket No. 21-0612 (issued December 2, 2021); *R.W.*, Docket No. 18-1059 (issued February 6, 2019); *Cheryl Thomas*, 55 ECAB 610 (2004).