

compensation for total disability after returning to work in the private sector; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On July 12, 2021, appellant, then a 36-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on July 2, 2021 she injured her left knee as she stepped out of her vehicle while in the performance of duty. She stopped work on July 2, 2021. On August 24, 2021 OWCP accepted the claim for sprain of the left knee, unilateral post-traumatic osteoarthritis of the left knee and internal derangement of the left knee. It paid appellant wage-loss compensation on the supplemental rolls, effective August 20, 2021.

In an undated report of work status (Form CA-3), received on December 20, 2021, the employing establishment reported that appellant had returned to work full-time modified duty on December 18, 2021.

Appellant subsequently stopped work. OWCP paid her wage-loss compensation benefits on the periodic rolls, effective September 10, 2023.

In a letter dated October 23, 2023, OWCP outlined appellant's entitlement to wage-loss compensation benefits and attached EN-1049 forms advising that, if she returned to work, she should notify OWCP at once. It informed her that wage-loss compensation for total disability was available only if she was unable to perform the duties of her regular position and that she should notify OWCP if she returned to work or obtained new employment. OWCP explained that, if appellant worked during a period in which she received compensation, she must notify OWCP. An attached EN-1049 instructed that, if appellant worked during any portion of the covered period, and compensation payments were received by paper check or electronic funds transfer (EFT), she was to return the payment to OWCP even if she had already advised OWCP that she was working.

In a letter received by OWCP on November 29, 2023, appellant noted that she had not worked from June 22 through September 30, 2022. She reported that on October 2, 2023 she started an "Earn While You Learn" contingency program through a local university. Appellant indicated that she worked full-time Monday through Friday. She described her work as going to school to learn and prepare to become a certified medical assistant and learn clinical work in an office setting. Appellant was paid \$17.00 an hour and provided her employer information.

On November 30, 2023, appellant reported that she began a school program on October 2, 2023, where she was paid \$17.00 an hour, 40 hours a week. However, she also indicated that she continued to be employed by the employing establishment.

In a compensation termination worksheet, OWCP determined that appellant had received compensation in the amount of \$5,872.77 for the period October 2 through December 2, 2023.³

On December 14, 2023, OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$4,421.92 for the period October 2 through December 2, 2023, because she returned to work in the private sector on October 2, 2023, but continued to receive wage-loss compensation for total disability through December 2, 2023. It found that she had received net compensation payments of \$568.33 for the period October 2 through 7, 2023, \$2,652.22 for the period October 8 through November 4, 2023, and \$2,652.22 for the period November 5 through December 2, 2023, to find total compensation paid in the amount of \$5,872.77. OWCP then applied the *Shadrick* formula⁴ and determined that appellant was entitled to only \$1,450.85 in net wage-loss compensation for that same period, resulting in an overpayment of \$4,421.92. It further notified her of its preliminary finding that she was without fault in the creation of the overpayment. OWCP 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 precoupment hearing. It 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. No response was received.

By decision dated January 29, 2024, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$4,421.92 for the period October 2 through December 2, 2023. It found her without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as she had not responded to the preliminary overpayment notice. OWCP required recovery of the overpayment by payment in full.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA 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.⁵ 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.⁶

³ On October 7, 2023, OWCP paid appellant *via* EFT a net wage-loss compensation payment in the amount of \$568.33 for the period October 2 through 7, 2023. On November 4, 2023, it paid her *via* EFT a net wage-loss compensation payment in the amount of \$2,652.22 for the period October 8 through November 4, 2023. On December 2, 2023, OWCP paid appellant *via* EFT a net wage-loss compensation payment in the amount of \$2,652.22 for the period November 5 through December 2, 2023.

⁴ *Albert C. Shadrick*, 5 ECAB 376 (1953); codified by regulation at 20 C.F.R. § 10.403(c)-(e).

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8129(a).

Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.⁷ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$4,421.92 for the period October 2 through December 2, 2023, because she continued to receive wage-loss compensation for total disability after returning to work in the private sector.

Appellant commenced work in the private sector on October 2, 2023. OWCP, however, continued to pay her wage-loss compensation for total disability through December 2, 2023, resulting in an overpayment of compensation. Appellant was not entitled to receive total disability benefits and actual earnings for the same period.⁹ Fact of overpayment is therefore established.

In determining the amount of the overpayment, OWCP found that appellant was paid a total of \$5,872.77 in net wage-loss compensation for the period October 2 through December 2, 2023. It then applied the *Shadrick* formula¹⁰ and determined that appellant was entitled to only \$1,450.85 in net wage-loss compensation for that same period, resulting in an overpayment of \$4,421.92. The Board has reviewed OWCP's calculations and finds that she received an overpayment of compensation in the amount of \$4,421.92 during the period October 2 through December 2, 2023.

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.¹¹ Thus, a finding that appellant was without fault does not automatically result in waiver of the

⁷ *Id.* at § 8116(a).

⁸ *G.H.*, Docket No. 22-0890 (issued January 9, 2023); *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *K.P.*, Docket No. 19-1151 (issued March 18, 2020); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.300.4g (September 2020).

⁹ *D.P.*, Docket No. 23-0590 (issued September 13, 2023); *G.H., id.; J.R.*, Docket No. 20-0025 (issued December 13, 2021); *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *S.N.*, Docket No. 19-1018 (issued November 12, 2019).

¹⁰ *Supra* note 5.

¹¹ 5 U.S.C. § 8129(a)-(b).

overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹²

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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.¹³ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁴ Also, 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.¹⁵ An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.¹⁶ Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.¹⁷

Section 10.437 of OWCP's implementing regulations provides that 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; 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.¹⁸ Its procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.¹⁹

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 overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to

¹² *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019); *L.S.*, 59 ECAB 350 (2008).

¹³ 20 C.F.R. § 10.436(a)(b).

¹⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

¹⁵ *Id.* at Chapter 6.400.4a(2) (September 2020).

¹⁶ *Id.* at Chapter 6.400.4b(3).

¹⁷ *Id.* at Chapter 6.400.4b(3)(a), (b).

¹⁸ 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁹ *Supra* note 14 at Chapter 6.400.4c(3) (September 2020).

determine the repayment schedule, if necessary.²⁰ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.²¹

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 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.²²

In its preliminary determination dated December 14, 2023, OWCP requested that appellant provide a completed Form OWCP-20 and 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, however, did not submit a completed Form OWCP-20 or supporting financial documentation. As such, OWCP did not have the financial information necessary for it to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.²³

Consequently, as appellant did not submit sufficient 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.²⁴

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$4,421.92, for the period October 2 through December 2, 2023, for which she was without fault, because she continued to receive wage-loss compensation for total disability after returning to work in the private sector. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

²⁰ *Supra* note 13 at § 10.438(a); *P.M.*, Docket No. 22-1059 (issued April 28, 2023); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²¹ *Id.* at § 10.438(b); *P.M.*, *id.*

²² 20 C.F.R. § 10.436.

²³ *See T.H.*, Docket No. 23-0194 (issued July 17, 2023); *P.G.*, Docket No. 22-1073 (issued December 28, 2022); *see also S.M.*, Docket No. 17-1802 (issued August 20, 2018).

²⁴ *T.H.*, *id.*; *A.S.*, Docket No. 22-0281 (issued September 26, 2022); *see also J.A.*, Docket No. 19-1946 (issued July 13, 2020).

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 12, 2026
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