

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

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<b>E.L., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 25-0833</b>
	)	<b>Issued: January 9, 2026</b>
<b>DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Atlanta, GA, Employer</b>	)	
	)	
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*Appearances:*  
*Appellant, pro se*  
*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 28, 2025 appellant filed a timely appeal from a June 18, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> On appeal, appellant also referenced OWCP's final overpayment decision dated December 3, 2024. The Board's jurisdiction encompasses any final adverse decision issued by OWCP within 180 days of the date appellant filed the appeal. 20 C.F.R. § 501.3(e). The Board has no jurisdiction over the December 3, 2024 final OWCP adverse decision as it was not issued within 180 days from the date of docketing of the current appeal. *Id.* at § 501.3.

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

<sup>3</sup> The Board notes that following the June 18, 2025 decision appellant submitted additional evidence to OWCP and with her appeal to the Board. 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 \$2,432.84 for the period December 2, 2024 through January 25, 2025, 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 2, 2024 through January 25, 2025, thereby precluding waiver of recovery of the overpayment.

## **FACTUAL HISTORY**

On February 13, 2023 appellant, then a 69-year-old internal revenue officer, filed a traumatic injury claim (Form CA-1) alleging that on January 6, 2023 she fell when a wooden stair to a taxpayer's home collapsed as she was ascending the stairs while in the performance of duty. OWCP accepted the claim for contusion of lower back and pelvis; radiculopathy, lumbar region; spinal stenosis, lumbosacral region; and spondylolisthesis, lumbar region. On October 12, 2023 appellant underwent an OWCP-approved lumbar fusion and decompression at L4-5. OWCP paid her wage-loss compensation on the supplemental rolls, effective October 12, 2023, and on the periodic rolls, effective December 3, 2023. Appellant returned to work on December 2, 2024. However, OWCP continued to pay her wage-loss compensation for total disability on the periodic rolls through January 25, 2025.<sup>4</sup>

In a preliminary overpayment determination dated March 26, 2025, OWCP notified appellant that she had received an overpayment of compensation in the amount \$2,432.84 for the period December 2, 2024 through January 25, 2025 because she returned to work on December 2, 2024, but continued to receive wage-loss compensation for total disability through January 25, 2025. OWCP explained that she was entitled to \$7,170.27 in gross compensation during the 55-day calendar period December 2, 2024 through January 25, 2025, and, after subtracting \$592.39 in health benefits and \$4,145.04 in other appropriate offsets, a net overpayment of \$2,432.84 was created. It found appellant at fault in the creation of the overpayment. OWCP requested that she complete an 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 prerecoupment hearing. No response was received.

By decision dated June 18, 2025, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$2,432.84 for the period December 2, 2024 through January 25, 2025 because she continued to receive wage-loss compensation for total disability following her return to work. It determined that she was at fault in the creation of the overpayment as she accepted compensation payments

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<sup>4</sup> On December 28, 2024 a payment of \$1,425.83 was issued *via* electronic funds transfer (EFT) for the period December 1 through 28, 2024, and on January 25, 2025 a payment of \$1,057.93 was issued *via* EFT for the period December 29, 2024 through January 25, 2025.

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>

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 \$2,432.84 for the period December 2, 2024 through January 25, 2025, because she continued to receive wage-loss compensation for total disability following her return to work.

Appellant resumed work on December 2, 2024. OWCP, however, continued to pay her wage-loss compensation for total disability through January 25, 2025. As noted above, a claimant is not entitled to receive wage-loss compensation for total disability during a period in which she had actual earnings.<sup>10</sup> Therefore, an overpayment of compensation for the period December 2, 2024 through January 25, 2025 was created.

With regard to the amount of the overpayment, OWCP calculated appellant's net compensation paid for the period December 2, 2024 through January 25, 2025 as \$2,432.84. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant

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<sup>5</sup> *Supra* note 2 at § 8102(a).

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

<sup>7</sup> *Id.* at § 8129(a).

<sup>8</sup> See C.S., Docket No. 25-0562 (issued July 29, 2025); 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> C.S., *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 7; S.R., Docket No. 24-0338 (issued May 10, 2024).

received an overpayment of compensation in the amount of \$2,432.84 during the period December 2, 2024 through January 25, 2025.

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

Section 8129(b) of FECA provides as follows 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 this subchapter or would be against equity and good conscience.<sup>11</sup> No waiver of recovery of an overpayment is possible if the claimant is at fault in the creation of the overpayment.<sup>12</sup>

On the issue of fault 20 C.F.R. § 10.433(a) provides that an individual is at fault in the creation of an overpayment who: (1) made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; (2) failed to furnish information which the individual knew or should have known to be material; or (3) with respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know 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.<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 determined that appellant was at fault in the creation of the overpayment for the period December 2, 2024 through January 25, 2025.

OWCP paid appellant wage-loss compensation on the periodic rolls, effective December 3, 2023. OWCP issued its first payment following her return to work on December 28, 2024, covering the period December 2 through 28, 2024; and the second payment following her return to work on January 25, 2025, covering the period December 29, 2024 through January 25, 2025. Both payments were made *via* EFT.

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<sup>11</sup> 5 U.S.C. § 8129(b).

<sup>12</sup> *T.L.*, *supra* note 8; *S.S.*, *supra* note 8; *B.W.*, Docket No. 19-0239 (issued September 18, 2020); *R.G.*, Docket No. 18-1251 (issued November 26, 2019); *C.L.*, Docket No. 19-0242 (issued August 5, 2019).

<sup>13</sup> 20 C.F.R. § 10.433(a).

<sup>14</sup> *C.S.*, Docket No. 25-0562 (issued July 29, 2025); *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).

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 that the payment was incorrect.<sup>16</sup> Given the short period of time following appellant's return to work, the evidence fails to demonstrate that she had knowledge at the time her bank received direct deposits from OWCP on December 28, 2024 and January 25, 2025 that the payments were incorrect.<sup>17</sup> The Board thus finds that appellant was without fault in the creation of the overpayment for the period December 2, 2024 through January 25, 2025.<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 2, 2024 through January 25, 2025, 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, it shall issue a *de novo* decision regarding waiver.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for the period December 2, 2024 through January 25, 2025, because she continued to receive wage-loss compensation for total disability following her return to work. The Board further finds that OWCP improperly determined that appellant was at fault in the creation of the overpayment for the period December 2, 2024 through January 25, 2025.

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

<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> *C.B.*, Docket No. 23-0769 (issued May 28, 2024); *D.R.*, Docket No. 21-0234 (issued November 17, 2022); *C.C.*, Docket No. 19-1268 (issued April 2, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 18, 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: January 9, 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