

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

A.A., Appellant)
and) Docket No. 25-0923
DEPARTMENT OF JUSTICE, BUREAU OF) Issued: January 15, 2026
ALCOHOL, TOBACCO, FIREARMS, AND)
EXPLOSIVES, Washington, DC, Employer)

)

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 September 30, 2025 appellant filed a timely appeal from an August 18, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$43,267.57 for the period September 7, 2023

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the August 18, 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.*

through March 4, 2024, because he forfeited his entitlement to compensation for that period; and (2) whether OWCP properly determined that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 18, 2023 appellant, then a 52-year-old lead personnel security specialist, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2023 he reinjured his right shoulder, right thumb, and lower back when he attempted to sit in his work chair while in the performance of duty. He stopped work on the date of injury and has not returned. OWCP accepted the claim for sprain of right shoulder, initial encounter.

On November 7, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work during the period September 7 through November 7, 2023. He checked a box marked "No" indicating that he had not performed work outside of his federal employment during the period claimed and signed the form. The employing establishment reported on the reverse side of the claim form that appellant was on leave without pay (LWOP) from October 30 through November 3, 2023.

By decision dated January 5, 2024, OWCP expanded the acceptance of appellant's claim to include sprain of ligaments of lumbar spine and intervertebral disc disorders with radiculopathy, lumbar region; sciatica left side; and other biomechanical lesions of lumbar and sacral regions.

On March 4, 2024 appellant signed an additional Form CA-7, requesting wage-loss compensation for total disability from work during the period November 13, 2023 through March 4, 2024. He again checked a box marked "No" indicating that he had not performed work outside of his federal employment during the claimed period. On the reverse side of the claim form, the employing establishment indicated that appellant was on sick leave from September 5 through 6, 2023; annual leave from August 28 through 31, 2023; and LWOP from August 31, 2023 through March 4, 2024.

OWCP paid appellant wage-loss compensation on the supplemental rolls for the periods August 31 through October 20, 2023 and October 30, 2023 through March 4, 2024.

On September 20, 2024 OWCP received a July 9, 2024 investigative report from the employing establishment's Internal Affairs Division. The evidence described in the report and accompanying documents revealed that appellant owned and operated a limited-liability company (LLC) called Wraps on Whips, during periods covered by his CA-7 forms.

³ Docket No. 25-0399 (issued May 20, 2025).

By decision dated October 22, 2024, OWCP found that appellant had forfeited his entitlement to compensation for the period August 31, 2023 through March 4, 2024 under 5 U.S.C. § 8106(b), because he knowingly failed to disclose his outside employment on his CA-7 forms dated November 7, 2023 and March 4, 2024. It explained that he had engaged in employment activities as the owner and operator of a vehicle wrapping business, Wraps on Whips, LLC, but failed to report his employment activities on his completed CA-7 forms.

In a preliminary overpayment determination also dated October 22, 2024, OWCP advised appellant that he had received an overpayment in the amount of \$45,495.17 because he forfeited his compensation for the period August 31, 2023 through March 4, 2024. An overpayment calculation worksheet reflected that the overpayment was calculated for the periods August 31 through October 20, 2023, and October 30, 2023 through March 4, 2024.

On October 31, 2024 appellant requested an oral hearing and a pre-recoupment hearing before a representative of OWCP's Branch of Hearings and Review regarding OWCP's October 22, 2024 forfeiture decision and preliminary overpayment determination, respectively.

By decision dated March 7, 2025, OWCP's hearing representative affirmed the October 22, 2024 forfeiture decision.

By decision dated March 10, 2025, OWCP's hearing representative finalized the October 22, 2024 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$45,495.17 for the period August 31, 2023 through March 4, 2024, as he had forfeited his entitlement to compensation for that period. She also found that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. The hearing representative required appellant to submit payments of \$525.00 per month as recovery of the overpayment.

On March 17, 2025 appellant appealed the March 7 and 10, 2025 decisions of the OWCP hearing representative to the Board. By decision dated May 20, 2025,⁴ the Board affirmed as modified, OWCP's March 7, 2025 forfeiture decision, finding that appellant forfeited his entitlement to compensation during the period September 7, 2023 through March 4, 2024, pursuant to 5 U.S.C. § 8106(b), because he knowingly failed to report his employment activities for this period. The Board found that while OWCP had determined the period of the forfeiture to be August 31, 2023 through March 4, 2024, appellant had only claimed disability during the period September 7, 2023 through March 4, 2024 in his CA-7 forms. Additionally, the Board affirmed as modified, OWCP's March 10, 2025 overpayment determination, in part, finding that appellant had received an overpayment of compensation for the period September 7, 2023 through March 4, 2024, and that he was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. However, the Board set aside OWCP's March 10, 2025 decision, in part, finding that the case was not in posture for decision with regard to the amount of the overpayment for the period September 7, 2023 through March 4, 2024. The Board remanded the case for OWCP to recalculate the amount of the overpayment, and issue a new preliminary overpayment determination, along with a new overpayment action request form,

⁴ *Id.*

a new overpayment recovery questionnaire (Form OWCP-20), and instructions to provide supporting financial documentation, followed by a *de novo* decision.

On June 13, 2025 OWCP notified appellant of its preliminary overpayment determination that he had received an overpayment of compensation in the amount of \$43,267.57 for the period September 7, 2023 through March 4, 2024 because he forfeited his entitlement to compensation for that period. The determination included an overpayment calculation worksheet explaining that appellant received an overpayment of compensation in the amount of \$43,267.57 for the period September 7, 2023 through March 4, 2024. During the period September 7 through October 20, 2023, appellant received net compensation of \$11,257.89; from October 30 through November 7, 2023, appellant received net compensation of \$2,464.32; from November 8, 2023 through March 4, 2024, appellant received net compensation of \$29,545.36, for total net compensation during this period of \$43,267.57. OWCP also made a preliminary determination that appellant was at fault in the creation of the overpayment because he failed to report information that he knew or should have known was material. It provided a Form OWCP-20 for his completion and requested that he provide supporting financial documentation. OWCP also provided an overpayment action request form and further notified appellant that, within 30 days of the date of the letter, he could request a final decision based on the written evidence or a prerecoupment hearing. No response was received.

By decision dated August 18, 2025, OWCP finalized the June 13, 2025 preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$43,267.57 for the period September 7, 2023 through March 4, 2024 as he had forfeited his entitlement to compensation for that period. It further found that he was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. OWCP required recovery of the overpayment by payment in full, within 30 days.

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 his or her duty.⁵ Section 8129(a) of FECA provides, in pertinent part, “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

Section 10.529(b) of OWCP’s implementing regulations provides as follows: “(b) Where the right to compensation is forfeited, OWCP shall recover any compensation already paid for the period of forfeiture pursuant to 5 U.S.C. § 8129 and other relevant statutes.”⁷

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8129(a).

⁷ 20 C.F.R. § 10.529.

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$43,267.57 for the period September 7, 2023 through March 4, 2024, because he forfeited his entitlement to compensation for that period.

The Board preliminarily notes that it previously found, in its May 20, 2025 decision, that appellant had forfeited his entitlement to wage-loss compensation for the period September 7, 2023 through March 4, 2024. The Board therefore found that appellant had received an overpayment of compensation during the period September 7, 2023 through March 4, 2024. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.⁸ Therefore, the Board's prior finding regarding the fact and period of the overpayment is not subject to further consideration.

On remand from the Board's prior decision, OWCP recalculated the amount of the overpayment and provided a detailed explanation of its calculations. During the period September 7 through October 20, 2023, appellant received net compensation of \$11,257.89; from October 30 through November 7, 2023, appellant received net compensation of \$2,464.32; from November 8, 2023 through March 4, 2024, appellant received net compensation of \$29,545.36, for total net compensation during this period of \$43,267.57. The Board has reviewed OWCP's calculations and finds that OWCP properly determined that appellant received an overpayment of compensation for the period September 7, 2023 through March 4, 2024 in the amount of \$43,267.57.⁹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless "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."¹⁰

Section 10.433(a) of OWCP's regulations provides that OWCP:

"[M]ay consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives from OWCP are proper. The recipient must show good faith and exercise a high degree of care in reporting events which may

⁸ *K.B.*, Docket No. 22-1330 (issued June 14, 2023); *M.G.*, Docket No. 22-1079 (issued November 25, 2024); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998). *See also* 20 C.F.R. § 501.6(d).

⁹ *K.B.*, *id.*; *M.G.*, *id.*

¹⁰ 5 U.S.C. § 8129; *see A.S.*, Docket No. 17-0606 (issued December 21, 2017); *Linda E. Padilla*, 45 ECAB 768 (1994).

affect entitlement to or the number of benefits. A recipient who has done any of the following will be found to be at fault in creating an overpayment:

- (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or
- (2) Failed to provide 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 to be incorrect. (This provision applies only to the overpaid individual). ”¹¹

To determine if an individual was at fault with respect to the creation of an overpayment, OWCP examines the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual’s capacity to realize that he or she is being overpaid.¹²

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery.

As noted above, the Board found, in its May 20, 2025 decision, that appellant forfeited his entitlement to wage-loss compensation for the period September 7, 2023 through March 4, 2024. As such, he was at fault in the creation of the overpayment because he failed to provide information that he knew or should have known to be material. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.¹³ Since appellant was at fault in the creation of the overpayment, he is not eligible for a waiver of recovery of the overpayment.¹⁴

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$43,267.57 for the period September 7, 2023 through March 4, 2024, because he forfeited his entitlement to compensation for that period. The Board further

¹¹ 20 C.F.R. § 10.433(a); *see K.F.*, Docket No. 19-1016 (issued February 14, 2020); *Sinclair L. Taylor*, 52 ECAB 227 (2001).

¹² *Id.* at § 10.433(b); *J.C.*, Docket No. 19-0911 (issued March 25, 2021); *Duane C. Rawlings*, 55 ECAB 366 (2004).

¹³ *Supra* note 8.

¹⁴ *D.O.*, Docket No. 25-0221 (issued February 20, 2025).

finds that OWCP properly determined that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery.¹⁵

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 15, 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

¹⁵ 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.