

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

D.L., Appellant

and

**U.S. POSTAL SERVICE, NORTHEAST
BRANCH POST OFFICE, Columbia, SC,
Employer**

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**Docket No. 25-0496
Issued: July 27, 2026**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On April 23, 2025 appellant filed a timely appeal from a December 11, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.³

¹ The Board notes that, following the December 11, 2024 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.*

² 5 U.S.C. § 8101 *et seq.*

³ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, she asserted that the decision did not account for all the pertinent facts and findings. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. For these reasons, oral argument is denied, and this decision is based on the case record as submitted to the Board.

ISSUES

The issue are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$16,424.77 for the period September 5, 2022 through April 5, 2023 because she received a payment of wage-loss compensation to which she was not entitled; and (2) whether OWCP properly determined that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

FACTUAL HISTORY

On August 11, 2023 appellant, then a 31-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 5, 2022 she sustained a left shoulder superior labrum anterior to posterior (SLAP) tear as a result of lifting a heavy package while in the performance of duty. She did not stop work.

On February 12, 2024, OWCP accepted the claim for left shoulder superior glenoid labrum lesion of the left shoulder.

Appellant subsequently filed claims for compensation (Forms CA-7) for intermittent disability from work.

On March 22, 2024, OWCP paid appellant wage-loss compensation for intermittent disability during the period September 5, 2022 through April 5, 2023 in the net amount of \$16,486.06. This payment was made *via* electronic funds transfer (EFT).

In a May 1, 2024 preliminary overpayment determination, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$15,415.09, for the period September 5, 2022 through April 5, 2023, because she received a payment of wage-loss compensation to which she was not entitled. It further notified her of its preliminary finding that she was at fault in the creation of the overpayment as she had accepted payments that she knew or reasonably should have known to be incorrect. OWCP requested that appellant submit an overpayment questionnaire (Form OWCP-20) to determine a reasonable payment method and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records that support income and expenses. Additionally, OWCP 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.

On May 31, 2024 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She also requested waiver of recovery of the overpayment and submitted a completed Form OWCP-20. No supporting financial documentation was received.

Following a preliminary review, by decision dated July 22, 2024, OWCP's hearing representative set aside the May 1, 2024 preliminary overpayment determination and remanded the case for further development regarding the period and amount of the overpayment.

By decision dated October 1, 2024, OWCP denied appellant's claim for intermittent disability from work during the period September 5, 2022 through April 7, 2023, finding that the

medical evidence of record was insufficient to establish causal relationship between the claimed disability and the accepted September 21, 2022 employment injury.

In an October 2, 2024 preliminary overpayment determination, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$16,424.77, for the period September 5, 2022 through April 5, 2023, because she received a payment of wage-loss compensation to which she was not entitled. It explained that she had received a payment of \$16,486.77 in net compensation for the period September 5, 2022 through April 5, 2023, when she was only entitled to compensation for a four-hour period on September 21, 2022, which resulted in an overpayment of \$16,424.77. OWCP further notified appellant of its preliminary finding that she was at fault in the creation of the overpayment as she had accepted payments that she knew or reasonably should have known to be incorrect. It requested that she submit a Form OWCP-20 to determine a reasonable payment method and advised her that he could request waiver of recovery of the overpayment. OWCP further requested that appellant provide supporting financial documentation including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records that 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 December 11, 2024, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$16,424.77, for the period September 5, 2022 through April 5, 2024, because she received a payment of wage-loss compensation to which she was not entitled. It further finalized its preliminary determination that she was at fault in the creation of the overpayment, and required recovery of the overpayment by payment in full.

LEGAL PRECEDENT – ISSUE 1

Section 8102(a) of FECA⁴ 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

OWCP's procedures provide that an overpayment is created if the claimant is determined not to be entitled to compensation already paid.⁷

⁴ *Id.* at § 8102(a).

⁵ *Id.*

⁶ *Id.* at § 8129(a).

⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1 (September 2020).

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$16,424.77 for the period September 5, 2022 through April 5, 2023 because she received a payment of wage-loss compensation to which she was not entitled.

Following the September 5, 2022 employment injury, appellant did not stop work. OWCP accepted the claim for left shoulder superior glenoid labrum lesion of the left shoulder. Appellant subsequently filed Forms CA-7 for intermittent disability from work. On March 22, 2024, OWCP paid her wage-loss compensation for the period September 5, 2022 through April 5, 2023. However, by subsequent decision dated October 1, 2024, OWCP denied entitlement to wage-loss compensation for intermittent disability from work during the period September 5, 2022 through April 7, 2023, finding that the medical evidence of record was insufficient to establish causal relationship between the claimed disability and the accepted September 21, 2022 employment injury. As explained above, OWCP's procedures provide that an overpayment is created if the claimant is determined not to be entitled to compensation already paid.⁸ Accordingly, the Board finds that appellant received an overpayment of compensation.⁹

With regard to the amount of the overpayment, OWCP explained that appellant received \$16,486.77 in net compensation for the period September 5, 2022 through April 5, 2023, when she was only entitled to compensation for a four-hour period on September 21, 2022, which resulted in an overpayment of \$16,424.77. The Board has reviewed OWCP's calculations and finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$16,424.77, for the period September 5, 2022 through April 5, 2023.

LEGAL PRECEDENT -- ISSUE 2

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.¹⁰ A claimant who is at fault in the creation of the overpayment is not entitled to waiver.¹¹

On the issue of fault, 20 C.F.R. § 10.433(a) provides that an individual will be found at fault if he or she has done any of the following: (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 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 was incorrect.¹²

⁸ *Id.*

⁹ See *K.J.*, Docket No. 26-0324 (issued June 15, 2026).

¹⁰ 5 U.S.C. § 8129(b).

¹¹ See *J.F.*, Docket No. 23-0800 (issued April 10, 2025); *C.C.*, Docket No. 19-1268 (issued April 2, 2021); *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).

¹² 20 C.F.R. § 10.433(a).

With respect to whether an individual is without fault, section 10.433(b) of OWCP's regulations provide that whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on 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.¹³

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 time incorrect funds are deposited into his or her account, as the acceptance of the resulting overpayment lacks the requisite knowledge.¹⁴ The Board has also held in cases involving a series of incorrect payments, where the requisite knowledge is established by a letter or telephone call from OWCP, or simply with the passage of time and a greater opportunity for discovery, the claimant will be at fault for accepting the payments subsequently deposited.¹⁵ Previous cases have held that receiving one erroneous direct deposit payment does not necessarily create the requisite knowledge to find that a claimant was at fault in the creation of the overpayment.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly determined that appellant was at fault in the creation of the overpayment.

On March 22, 2024, OWCP paid appellant wage-loss compensation for intermittent disability during the period September 5, 2022 through April 5, 2023 in the net amount of \$16,486.06. This payment was made *via* EFT. However, it was not until October 1, 2024 that OWCP denied appellant's entitlement to wage-loss compensation for that claimed period. Therefore, appellant did not know, nor did she have reason to know, at the time that her bank received the March 22, 2024 EFT that the payment was incorrect.¹⁷ The Board thus finds that appellant was without fault in the creation of the overpayment.

Consequently, the case must be remanded for OWCP to determine whether appellant is entitled to waiver of recovery of the overpayment. On remand, OWCP shall request updated financial information from appellant to evaluate her current financial situation. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision regarding waiver of recovery of the overpayment.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$16,424.77 for the period September 5, 2022 through April 5, 2023 because she received a payment of wage-loss compensation to which she was not entitled. The Board further finds that OWCP improperly determined that appellant was at fault in the creation of the overpayment.

¹³ *Id.* at § 10.433(b); *see also C.C.*, *supra* note 11; *M.P.*, Docket No. 20-1035 (issued December 1, 2020).

¹⁴ *See C.C.*, *id.*; *A.B.*, Docket No. 18-0922 (issued January 3, 2019); *see also Tammy Craven*, 57 ECAB 689 (2006).

¹⁵ *See Tammy Craven*, *id.*; *see also S.D.*, Docket No. 17-0309 (issued August 7, 2018).

¹⁶ *See C.C.*, *supra* note 11; *C.H.*, Docket No. 19-1470 (issued January 24, 2020).

¹⁷ *See M.P.*, *supra* note 13; *K.K.*, Docket No. 19-0978 (issued October 21, 2019).

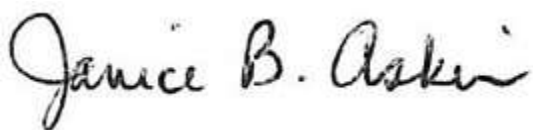
ORDER

IT IS HEREBY ORDERED THAT the December 11, 2024 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: July 27, 2026
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

A handwritten signature in black ink that reads "Janice B. Askin". The signature is written in a cursive, flowing style.

Janice B. Askin, Judge
Employees' Compensation Appeals Board