United States Department of Labor
Employees' Compensation Appeals Board

L.W., Appellant	)	
and	)	**Docket No. 16-1179**
	)	**Issued: December 20, 2016**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Decatur, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 11, 2016 appellant filed a timely appeal from an April 15, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 appellant has established more than two percent permanent impairment of the left upper extremity and two percent permanent impairment of the right upper extremity, for which she received schedule awards; (2) whether OWCP properly found an

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted additional evidence accompanying her request for appeal. The Board may not consider new evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c)(1).

overpayment of compensation in the amount of $12,425.80, for which she was not at fault; and (3) whether OWCP abused its discretion in denying waiver of recovery of the overpayment.

FACTUAL HISTORY

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

OWCP accepted that on or before March 3, 2005 appellant, then a 50-year-old patient guide, sustained bilateral carpal tunnel syndrome in the performance of duty. She underwent right carpal tunnel release on April 3, 2008 and left carpal tunnel and trigger thumb release on July 3, 2008, authorized by OWCP. Following a period of work absence, appellant retired from the employing establishment effective October 14, 2008.

On April 23, 2009 appellant claimed a schedule award (Form CA-7).

A July 7, 2009 functional capacity evaluation (FCE) demonstrated that appellant had a sedentary work capacity. However, "[appellant] exhibited submaximal effort during testing, with 54 percent irregular test results," suggesting symptom magnification syndrome.

In an August 18, 2009 report, Dr. Jay Bender, an attending Board-certified physiatrist, diagnosed bilateral carpal tunnel syndrome based on electromyography (EMG) study findings, with swelling, paresthesias, and pain in both hands and wrists. Appellant had decreased sensation in the left radial nerve distribution. Dr. Bender noted both that she had normal sensation in all digits of the right hand, but had diminished sensation in the right median nerve distribution. He opined that according to Table 15-23 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[4] appellant had eight percent permanent impairment of each upper extremity.

An OWCP medical adviser reviewed Dr. Bender's report on August 28, 2009 and opined that his findings were unreliable. He noted that, while Dr. Bender diagnosed bilateral carpal tunnel syndrome, he found decreased sensation in the left radial nerve distribution, not the median nerve. Also, the medical adviser noted that sensation in all digits of the right hand was intact and that there was decreased sensation in the median nerve distribution. He opined that appellant's physical findings, clinical studies, and history warranted a grade modifier of 1 according to Table 15-23, resulting in three percent permanent impairment of the right upper extremity and two percent impairment of the left upper extremity.

In an October 27, 2009 decision, OWCP granted appellant a schedule award for three percent permanent impairment of the right arm and two percent impairment of the left arm.

[3] Docket No. 14-2055 (issued March 17, 2015).

[4] Table 15-23, page 449 of the sixth edition of the A.M.A., *Guides* is entitled "Entrapment/Compression Neuropathy Impairment."

An April 28, 2010 FCE demonstrated that appellant could perform sedentary work. There was evidence of symptom magnification as her pain behaviors were inconsistent with observed deviations in sitting tolerance, standing tolerance, and walking.

In a September 30, 2010 report, Dr. Randall D. Alexander, an attending Board-certified orthopedic surgeon, diagnosed bilateral carpal tunnel syndrome, which improved after bilateral carpal tunnel releases performed in 2008. He opined that because of the objective improvement in both wrists demonstrated by electrodiagnostic studies, and evidence of symptom magnification during the April 28, 2010 FCE, appellant was a poor candidate for additional surgery.

Based on Dr. Alexander's opinion and electrodiagnostic studies, OWCP issued an increased schedule award on January 19, 2011 for an increase of two percent permanent impairment of the right arm and three percent impairment of the left arm, for a total five percent permanent impairment of each upper extremity.

EMG and nerve conduction velocity (NCV) studies dated October 12, 2011 showed severe bilateral carpal tunnel syndrome.

On February 6, 2012 appellant claimed an increased schedule award (Form CA-7).

In reports from February through April 2012, Dr. Marc J. Kornfeld, an attending Board-certified physiatrist, noted that appellant's diabetes was out of control. Appellant had continued pain and swelling in both hands and stiffness of the fingers in the right hand. Dr. Kornfeld noted that NCV testing showed "severe to profound abnormalities in the median sensory nerve and severe abnormalities with the ulnar nerve," but without evidence of complex regional pain syndrome. He prescribed physical therapy.

In a June 19, 2013 report, Dr. Duncan Wells, an attending Board-certified orthopedic surgeon, diagnosed bilateral median nerve neuritis after bilateral failed carpal tunnel releases. He opined that appellant had "pronounced disability" due to severe pain and stiffness. Dr. Wells explained that she did not experience significant improvement "after therapy, bracing, or steroid injections that were given by a pain specialist." On July 30, 2013 he diagnosed severe bilateral median nerve neuritis and flexor tendon synovitis. Dr. Wells performed an impairment rating on August 1, 2013, opining that appellant had 30 percent permanent impairment of the left upper extremity and 20 percent permanent impairment of the right upper extremity due to decreased grip strength.[5]

On August 2, 2013 an OWCP medical adviser reviewed Dr. Wells' reports. He noted that electrodiagnostic studies consistently demonstrated conduction delay in the median nerve at the wrist, right greater than left. The medical adviser explained that grip strength was not a valid rating criterion. Therefore, Dr. Wells' August 1, 2013 impairment rating based on grip strength could not be considered. The medical adviser performed a diagnosis-based impairment rating using Table 15-23. For both upper extremities, he found a diagnosis-based impairment Class of Diagnosis (CDX) of 1, a grade modifier for Functional History (GMFH) of 2, a grade modifier

[5] Dr. Wells acknowledged on September 24, 2013 that OWCP did not "consider grip strength for impairment."

for Physical Examination (GMPE) of 2, and a grade modifier for Clinical Studies (GMCS) of 1 due to conduction delay. Applying the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (2-1) + (2-1) + (1-1), the medical adviser calculated a grade modifier of two thirds, rounded up to one. This moved the default grade of five percent one space to the right, equaling six percent. The medical adviser therefore found six percent permanent impairment of each upper extremity.

By decision dated August 22, 2013, OWCP issued a schedule award for an additional one percent permanent impairment of each arm, for a total six percent permanent impairment of each arm.

Appellant claimed an increased additional schedule award (Form CA-7) on October 9, 2013. On January 5, 2014 OWCP obtained a second opinion from Dr. Alexander Doman, a Board-certified orthopedic surgeon. Dr. Doman reviewed the medical record and statement of accepted facts (SOAF). He performed EMG/NCV testing which showed bilateral median and right ulnar conduction delays. On examination, Dr. Doman noted no evidence of swelling. He diagnosed mild bilateral carpal tunnel syndrome, which had reached maximum medical improvement as of July 3, 2010. Referring to Table 15-23 of the sixth edition of the A.M.A., *Guides*, Dr. Doman assessed a grade modifier for GMCS of 1 based on NCV studies. Appellant had a grade modifier for GMFH of 2 due to significant intermittent symptoms, and a grade modifier for GMPE of 1, "which are normal." Dr. Doman explained that his objective findings were equivalent to a mild functional impairment. He advised: "Therefore, the upper extremity impairment rating is two percent based upon grade modifiers that average 1.33 with mild functional history of impairment. A two percent impairment rating applies to the left upper extremity as well as two percent to the right upper extremity, totaling four percent." An OWCP medical adviser reviewed Dr. Doman's report on January 27, 2014 and agreed with his assessment and methodology.

By decision dated January 31, 2014, OWCP denied appellant's claim for an increased schedule award, based on Dr. Doman's report as the weight of the medical evidence. It found that Dr. Doman's evaluation established only two percent permanent impairment of each upper extremity, which was less than the six percent previously awarded.

In a February 12, 2014 manual adjustment worksheet, OWCP calculated that appellant was paid $18,384.00 in schedule award compensation for six percent permanent impairment of each arm, whereas she was only entitled to $5,958.20 for two percent permanent impairment of each arm, resulting in an overpayment of compensation in the amount of $12,425.80.

By notice dated February 12, 2014, OWCP advised appellant of its preliminary determination that a $12,425.80 overpayment of compensation was created as she was compensated for six percent impairment of each arm whereas she was entitled to compensation for only two percent impairment of each arm. It found that she was not at fault in creating the overpayment. OWCP advised appellant of her right to request a prerecoupment hearing within 30 days and the requirement to submit financial information for reconsideration of waiver.

In response to the preliminary notice of overpayment, appellant submitted a partially completed overpayment recovery questionnaire (Form OWCP-20), signed on March 11, 2014.

No supporting documentation of her income, assets, or expenses was received. OWCP received the form into the case record on March 20, 2014. Appellant asserted that there was no overpayment as her physicians opined that she had more than six percent permanent impairment of each arm. The top right corner of the first page of the questionnaire is marked "Hearing Req."

By decision dated March 17, 2014, OWCP finalized the preliminary finding of a $12,425.80 overpayment of compensation. It found that, although appellant was without fault, it could not consider waiver as she failed to submit financial information.

In a March 21, 2014 memorandum, OWCP noted that appellant's "representative requested a prerecoupment hearing. Therefore, the case will be suspended until a decision is reached." In April 15 and 22, 2014 letters, appellant's representative requested a telephonic hearing regarding the March 17, 2014 final overpayment determination.

By decision dated March 24, 2014, OWCP vacated its March 17, 2014 decision, finding that the case was not in posture for a decision as appellant had timely requested a prerecoupment hearing.

By decision dated September 4, 2014, an OWCP hearing representative denied appellant's request for a prerecoupment hearing as it was untimely filed. She found that appellant's request for a hearing was postmarked on April 15, 2014, more than 30 days after the issuance of the February 12, 2014 preliminary notice of overpayment. The hearing representative returned the case to OWCP so that the preliminary overpayment finding could be finalized.[6] Appellant then appealed to the Board.

During the pendency of the prior appeal, appellant submitted additional medical evidence. Dr. C. Lyn Crooms, an attending Board-certified orthopedic surgeon, opined on November 4, 2013, that according to unspecified portions of the sixth edition of the A.M.A., *Guides*, appellant had eight percent permanent impairment of each arm due to bilateral carpal tunnel syndrome.

Dr. Wells, an attending Board-certified orthopedic surgeon, provided periodic reports from March 25, 2014 to February 16, 2015.[7] He recommended bilateral microscopic neurolysis of the median nerve with flexor tendon tenolysis, to address "recalcitrant bilateral median nerve neuritis with adhesive tendinitis of the flexor tendons after previous carpal tunnel release." Findings included bilaterally positive Tinel's sign, and very limited motion of all right hand fingers.

Dr. Kevin Sheahan, an attending Board-certified anesthesiologist, provided a February 24, 2015 report relating appellant's complaints of pain and paresthesias in both hands and wrists. He diagnosed reflex sympathetic dystrophy and bilateral carpal tunnel syndrome.

[6] OWCP finalized the overpayment by decision dated November 10, 2014.

[7] A May 14, 2014, magnetic resonance imaging scan of the left wrist demonstrated "cystic lesions in the triquetrum and hamate."

Dr. Sheahan disagreed that appellant had "only a two percent impairment rating." He performed a right stellate ganglion block on March 4, 2015 authorized by OWCP.[8]

By decision and order dated March 17, 2015,[9] the Board set aside OWCP's September 4, 2014 decision, finding that appellant's March 11, 2014 overpayment recovery questionnaire constituted a timely request for a prerecoupment hearing. The Board remanded the case to OWCP to conduct a prerecoupment hearing and issue an appropriate decision.

By decision dated April 17, 2015, OWCP vacated its November 10, 2014 decision and directed that its Branch of Hearings and Review address appellant's timely request for a prerecoupment hearing.[10]

In an April 20, 2015 report, Dr. Sheahan opined that, as March 12, 2015 electrodiagnostic studies showed severe bilateral median neuropathy at the wrists and hands, appellant had more than two percent permanent impairment of each arm.[11]

Dr. John G. Seiler, III, an attending Board-certified orthopedic surgeon, submitted a May 5, 2015 report diagnosing persistent bilateral median nerve conduction delay despite multiple median nerve releases and corticosteroid injections.[12] May 8, 2015 EMG and NCV studies showed bilateral carpal tunnel syndrome.

On January 28, 2015 OWCP sent appellant a new Form OWCP-20 for completion.

OWCP conducted a prerecoupment hearing on February 2, 2016. At the hearing, appellant asserted that she continued to have severe pain, paresthesias, and swelling in both hands. She alleged that Dr. Doman did not perform electrodiagnostic testing and that he threatened her during the examination. Appellant noted that she had undergone surgery on both shoulders and a breast procedure. She stated that her physicians had not performed an impairment rating after Dr. Doman's report. The hearing representative explained the type of financial information necessary to consider waiver and afforded appellant 30 days to submit it. She emphasized that appellant needed to submit financial information regarding her husband's income and assets, as well as supporting documentation of household expenses.

[8] Dr. Sheahan performed additional stellate ganglion blocks on March 18 and April 2, 2015, authorized by OWCP.

[9] *Supra* note 3.

[10] OWCP scheduled a prerecoupment hearing on December 8, 2015, rescheduled for a different time on that date at appellant's request. Appellant did not attend the hearing or contact OWCP within 10 days to explain her failure to appear. Therefore, OWCP deemed appellant's hearing request abandoned, and performed a review of the written record on December 21, 2015. In a December 21, 2015 decision, an OWCP hearing representative affirmed the preliminary finding of a $12,425.80 overpayment. Additional development indicated that appellant was hospitalized for a respiratory condition on December 8, 2015 and was unable to contact OWCP. Therefore, OWCP rescheduled the prerecoupment hearing for February 2, 2016.

[11] Dr. Sheahan reiterated this opinion in periodic reports through January 8, 2016.

[12] Dr. Seiler provided periodic reports through January 19, 2016 finding appellant's condition unchanged.

After the hearing, appellant submitted her February 22, 2016 statement, asserting that she was unable to repay the overpayment due to severe financial hardship. She emphasized that she remained disabled due to work-related carpal tunnel syndrome. Appellant listed the following monthly expenses: $861.23 mortgage payment; $970.00 for two car payments; $367.38 for three life insurance policy premiums; $160.02 car insurance; $25.00 credit card payment; $50.00 home warranty; $200.00 cable television; $300.00 utilities; $250.00 food; $300.00 gasoline; and $59.00 dental insurance. She did not submit supporting documentation.

By decision dated April 15, 2016, an OWCP hearing representative affirmed the preliminary determination of a $12,425.80 overpayment, as Dr. Doman's opinion established that appellant had only two percent permanent impairment of each arm, less than the six percent awarded. The hearing representative further found that although she was without fault in creating the overpayment, she was not eligible for waiver as she did not provide sufficient financial information. The hearing representative explained that, although appellant partially completed a Form OWCP-20 questionnaire, she did not disclose her husband's income or assets, or provide documentation verifying her expenses. Without such information it could not be established that recovery of the overpayment would defeat the purpose of FECA or cause severe financial hardship. As appellant did not assert or establish that she changed her position for the worse due to the overpaid compensation, it was not established that recovery of the overpayment would be against equity and good conscience. Additionally, as she did not provide the financial information requested, OWCP could not formulate a repayment schedule. Therefore, the hearing representative directed that the overpayment was "considered due and payable in full."

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA[13] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[14] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.[15]

The sixth edition of the A.M.A., *Guides* provides a diagnosis based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[16] Under the sixth edition, the evaluator identifies the impairment CDX, which

[13] 5 U.S.C. § 8107.

[14] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[15] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); *see also id*. Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[16] A.M.A., *Guides* 3, (6th ed. 2009), section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

is then adjusted by grade modifiers based on GMFH, GMPE, and GMCS.[17] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome. Appellant underwent right carpal tunnel release on April 3, 2008 and left carpal tunnel release and trigger thumb release on July 3, 2008. She claimed a schedule award on April 23, 2009. On October 27, 2009 OWCP issued a schedule award for three percent permanent impairment of the right upper extremity and a two percent permanent impairment of the left upper extremity, based on an August 18, 2009 report from Dr. Bender, an attending Board-certified physiatrist, as reviewed by an OWCP medical adviser. On January 19, 2011 it issued an increased schedule award for an increase of two percent permanent impairment of the right upper extremity and an additional three percent permanent impairment of the left upper extremity, for a total of five percent permanent impairment for each upper extremity. By decision dated August 22, 2013, OWCP issued an increased schedule award for an increase of one percent permanent impairment of each arm, for a total six percent permanent impairment of each arm. This increase was based on an OWCP medical adviser's review of the reports of Dr. Wells, an attending Board-certified orthopedic surgeon.

On October 9, 2013 appellant again claimed an increased schedule award. On January 5, 2014 OWCP obtained a second opinion from Dr. Doman, a Board-certified orthopedic surgeon. Based on the medical record, SOAF, clinical examination, and new electrodiagnostic studies, Dr. Doman diagnosed mild bilateral carpal tunnel syndrome. He opined that according to Table 15-23 appellant had a GMCS of 1 based on NCV studies, GMFH of 2 due to significant intermittent symptoms, and a GMPE of 1. Applying the net adjustment formula, Dr. Doman found two percent permanent impairment of each arm, which is less than the six percent each previously awarded. OWCP issued its January 31, 2014 decision denying an additional schedule award, based on Dr. Doman's opinion as the weight of the medical evidence.

OWCP then found an overpayment of compensation in the amount of $12,425.80 as appellant received schedule awards for six percent permanent impairment of each arm, but was only entitled to schedule awards for two percent permanent impairment of each arm. Appellant submitted additional medical evidence to OWCP.

Dr. Wells diagnosed bilateral median nerve neuritis with adhesive tendinitis. Dr. Seiler, an attending Board-certified orthopedic surgeon, diagnosed persistent bilateral median nerve conduction delay. Neither physician addressed the appropriate percentage of permanent impairment.

Dr. Crooms, an attending Board-certified orthopedic surgeon, opined on November 4, 2013, that appellant had an eight percent permanent impairment of each arm due to carpal tunnel syndrome according to unspecified portions of the sixth edition of the A.M.A., *Guides*. Dr. Sheahan, an attending Board-certified anesthesiologist, opined in February 24 and April 20, 2015 reports that she had greater than two percent permanent impairment of each arm. However,

[17] A.M.A., *Guides*, 494-531 (6th ed. 2009).

neither physician provided an impairment rating. Their general assertions that appellant had more than two percent impairment of each upper extremity are insufficiently detailed to create a conflict with Dr. Doman's well-reasoned opinion.

The Board finds that Dr. Doman's impairment rating of appellant's upper extremities, as reviewed by the OWCP medical adviser, is entitled to the weight of the medical evidence. Dr. Doman properly applied the appropriate portions of the A.M.A., *Guides* to his detailed clinical findings. His opinion was based on a review of the medical record, updated electrodiagnostic testing, and a SOAF. Therefore, OWCP's April 15, 2016 decision finding that appellant had not established more than two percent permanent impairment of each arm was proper under the facts and circumstances of this case.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

LEGAL PRECEDENT -- ISSUE 2

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.[18] 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.[19]

ANALYSIS -- ISSUE 2

Appellant received schedule awards totaling six percent permanent impairment of each arm, in the amount of $18,384.00. However, the weight of the medical evidence established that she had two percent permanent impairment of each upper extremity, entitling her to $5,985.20. The difference between the two amounts, $12,425.80, therefore represents an overpayment of compensation. Therefore, OWCP's April 15, 2016 decision finding a $12,425.80 overpayment is proper under the law and facts of this case.

LEGAL PRECEDENT -- ISSUE 3

Section 8129(a) of FECA provides that when an overpayment of compensation occurs because of an error of fact of law, adjustment or recovery shall be made by decreasing later payment to which the individual is entitled.[20] The only exception to this requirement that an overpayment must be recovered is set forth in section 8129(b).

[18] 5 U.S.C. § 8102(a).

[19] *Id*. at § 8129(a).

[20] *Id*.

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.

Thus, a finding that appellant was without fault is not sufficient, in and of itself, for OWCP to waive the recovery of the overpayment. OWCP must exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience, pursuant to the guidelines provided in the implementing federal regulations.

Section 10.436 of the implementing regulations[21] provide that recovery of an overpayment will defeat the purpose of FECA if recovery would cause hardship to a currently or formerly entitled beneficiary such that: (a) 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 (b) the beneficiary's assets do not exceed the resource base of $4,800.00 for an individual.[22] 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. In other words, the amount of monthly funds available for debt repayment is the difference between current income and adjusted living expenses (*i.e.*, ordinary and necessary living expenses plus $50.00).[23]

Recovery of an overpayment is considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his position for the worse.[24] Conversion of the overpayment into a different form, such as food, consumer goods, real estate, *etc.*, from which the claimant derived some benefit, is not to be considered a loss.[25] 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. This information will also be used to determine the repayment schedule, if necessary.[26]

ANALYSIS -- ISSUE 3

OWCP found that appellant was not at fault in creating the overpayment of compensation and considered whether she was entitled to waiver of recovery. Waiver is only possible if

[21] 20 C.F.R. § 10.436.

[22] *Id.* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6.a(1)(b) (October 2004).

[23] *Id.*

[24] 20 C.F.R. § 10.437(b).

[25] *See supra* note 22 at Chapter 6.200.6.b(3) (October 2004). *C.P.*, Docket No. 14-975 (issued September 11, 2014).

[26] 20 C.F.R. § 10.438(a); *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

recovery would defeat the purpose of FECA or would be against equity and good conscience. In order to establish that, repayment of the overpayment would defeat the purpose of FECA, appellant must show that she requires substantially all of her income to meet current ordinary and necessary living expenses and that her assets do not exceed the established limit as determined by OWCP's procedures.[27]

OWCP advised appellant by February 14, 2014 and January 28, 2015 letters, as well as at the February 2, 2016 prerecoupment hearing, to submit financial information from her and her husband by completing a questionnaire and providing supporting documentation. However, appellant did not provide information about her husband's income and assets, or any documentation supporting the monthly expenses she listed in her February 22, 2016 letter. In the absence of the information requested, OWCP could not determine whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

Additionally, the evidence does not demonstrate that repayment of the overpayment would be against equity and good conscience. Appellant submitted no argument that she relied upon the incorrect payments to her detriment, or sufficient evidence that she would experience severe financial hardship attempting to repay the debt. Consequently, OWCP properly denied waiver of recovery of the overpayment.

On appeal, appellant requests waiver of recovery due to financial hardship caused by significant health issues affecting her husband and herself. She emphasized that she was not at fault. As set forth above, appellant did not submit the financial information needed to consider waiver of the overpayment. The fact that a claimant is without fault in creating an overpayment does not preclude OWCP from recovering all or part of the overpayment.[28]

CONCLUSION

The Board finds that appellant has not established more than two percent permanent impairment of her left upper extremity and two percent permanent impairment of her right upper extremity, for which she received schedule awards. The Board further finds that OWCP properly found an overpayment of compensation in the amount of $12,425.80, for which she was not at fault. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

[27] *Id*. at § 10.436.

[28] *See George A. Rodriguez*, 57 ECAB 224 (2005); *Joyce O. Diaz*, 51 ECAB 124 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 15, 2016 is affirmed.

Issued: December 20, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board