

FACTUAL HISTORY

On June 26, 2019 appellant, then a 54-year-old production management specialist, filed a traumatic injury claim (Form CA-1) alleging that on June 4, 2019 she sustained a strain/sprain of the right shoulder and knee and abrasion to the right forearm when she tripped over carpet that was not secured to the floor properly while in the performance of duty. OWCP accepted the claim for contusion of the right forearm, right knee sprain, and left shoulder joint sprain. It paid appellant wage-loss compensation on the supplemental rolls for the period September 16 through October 14, 2019.

On August 13, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated November 2, 2020, OWCP granted appellant a schedule award for 11 percent permanent impairment of the left arm. The initial payment for the award was \$12,371.88 for the period July 15 through October 10, 2020 and included a continuing payment each four weeks in the amount of \$3,936.51, running for a total period of 34.32 weeks from July 15, 2020 through March 12, 2021.

On November 6, 2020 OWCP paid appellant schedule award compensation in the net amount of \$12,371.88 for the period July 15 through October 10, 2020. It continued to pay her schedule award compensation in the net amount of \$3,936.51 every four weeks thereafter from October 11, 2020 through February 27, 2021. On March 26, 2021 OWCP paid appellant schedule award compensation in the net amount of \$1,745.06 for the period February 28 through March 12, 2021. On March 27, 2021 it paid her schedule award compensation in the net amount of \$3,990.02 for the period February 28 through March 27, 2021.

In a preliminary overpayment determination dated April 16, 2021, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$3,990.02 for the period February 28 through March 27, 2021 because “an extra schedule award payment” was issued. It explained that she received \$3,990.02 in error because she had been issued “an extra full schedule award payment” in addition to her final supplemental schedule award payment. OWCP advised that appellant was without fault in the creation of the overpayment because the payment was initiated by OWCP and she was not aware. It informed her of her review rights, *via* an overpayment action request form, and instructed her to complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting documentation including copies of tax returns, bank account statements, bills and cancelled checks, pay slips, and other records which supported the income and expenses listed. OWCP advised that, under 20 C.F.R. § 10.438, failure to submit the requested information within 30 days would result in a denial of waiver of recovery of the overpayment.

On April 26, 2021 appellant requested a decision based on the written evidence regarding possible waiver of recovery of the overpayment. She disagreed that the payment occurred, stating that she had not received a payment of \$3,936.51 for the period November 8 through December 5, 2020. Appellant submitted an incomplete Form OWCP-20. With her Form OWCP-20, she submitted bank statements covering the period November 1, 2020 through January 1, 2021.

By decision dated May 19, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant was overpaid in the amount of \$3,990.02 for the period February 28 through March 27, 2021 because she received an extra schedule award payment to which she was not entitled. It found that she was without fault in the creation of the overpayment because OWCP erred in issuing this payment. OWCP also found that the overpayment could not be waived because there was no evidence to substantiate that adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. It instructed that the overpayment be recovered in full.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA² and its implementing regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. Section 10.404 of the regulations provides that compensation is provided for specified periods of time for the permanent loss or loss of use of certain members.⁴ FECA provides for 288 weeks of compensation for 100 percent loss or loss of use of a lower extremity⁵ and the implementing regulations provides that compensation for proportionate periods of time is payable for partial loss.⁶

OWCP's procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,990.02 for the period February 28 through March 27, 2021.

OWCP granted appellant a schedule award for 11 percent permanent impairment of the left arm on November 2, 2020 for the period July 15 through March 12, 2021. The Board has reviewed the evidence of record and concludes that 11 percent of the 312 weeks of compensation allowable for total loss of use of an upper extremity equals 34.32 weeks of compensation entitlement. Appellant was therefore only entitled to receive compensation through March 12, 2021, and on March 26, 2021 she received a schedule award payment of \$1,745.06 covering the period February 28 through March 12, 2021. The record reflects that appellant received all schedule award payments due through March 12, 2021. However, on March 27, 2021, OWCP issued another payment for the period February 28 through March 27, 2021 in the amount of \$3,990.02.

² *Id.*

³ 20 C.F.R. § 10.404.

⁴ *Id.*

⁵ 5 U.S.C. § 8107(c)(2).

⁶ *Supra* note 3.

⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1f.(1)(i) (September 2018).

Consequently, the \$3,990.02 in compensation received for the period February 28 through March 27, 2021 constituted an overpayment of compensation. The Board thus finds that OWCP properly determined the fact and amount of the overpayment.

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.”⁸ Section 10.438 of OWCP’s regulations provides 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 or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.⁹

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.¹⁰ Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.¹¹

In its preliminary overpayment determination dated April 16, 2021, OWCP explained the importance of providing the completed overpayment recovery questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income and expenses. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant, however, did not submit sufficient financial documentation necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience. She did not complete the Form OWCP-20 outlining her income, assets, and expenses. The evidence of record is, therefore, insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹²

⁸ 5 U.S.C. § 8129.

⁹ 20 C.F.R. § 10.438.

¹⁰ *Id.* at § 10.436.

¹¹ *Supra* note 9.

¹² *Supra* note 10.

Consequently, as appellant did not submit the 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.¹³

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$3,990.02, for which she was without fault, for the period February 28 through March 27, 2021 due to receipt of duplicate schedule award compensation. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

¹³ See *T.E.*, Docket No. 19-0348 (issued December 11, 2019).