

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

G.S., Appellant)	
)	
and)	Docket No. 20-1580
)	Issued: March 19, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Monroe, CT, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 21, 2020 appellant filed a timely appeal from a May 28, 2020 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 over the merits of this case.

ISSUES

The issues are: (1) whether appellant received an overpayment of schedule award compensation in the amount of \$5,366.89 for the period February 13 through March 28, 2020, for

¹ The Board notes that following the May 28, 2020 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.*

which he was without fault; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On March 1, 2017 appellant, then a 52-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on February 24, 2017 he injured his shoulder, neck, and back in a motor vehicle accident while in the performance of duty. OWCP accepted the claim for cervical radiculopathy at C7. It subsequently expanded acceptance of the claim to include an acute musculoligamentous strain of the lumbosacral spine and a left rotator cuff tear.

By decision dated June 13, 2019, OWCP granted appellant a schedule award for 12 percent permanent impairment of the left upper extremity. The period of the award ran for 37.44 weeks, or 262 days, from May 26, 2019 to February 12, 2020.³

By decision dated November 1, 2019, OWCP terminated appellant's entitlement to wage-loss compensation benefits effective that date, in accordance with 20 C.F.R. § 10.500(a), as he had failed to accept a temporary modified assignment with the employing establishment deemed appropriate by OWCP. It noted that he was currently receiving schedule award compensation.

On December 10, 2019 the Office of Personnel Management (OPM) advised that appellant had elected to receive retirement benefits effective May 26, 2019 in lieu of compensation benefits from OWCP.

OWCP continued to pay appellant schedule award compensation from February 13 through March 28, 2020.

In a memorandum of telephone call (Form CA-110) dated April 1, 2020, appellant informed OWCP that he had received compensation for the period March 1 to 28, 2020 even though his schedule award had ended.

On April 7, 2020 OWCP determined that it had not properly terminated appellant's schedule award. It calculated that it had paid him net compensation of \$1,997.65 for the period February 13 to 29, 2020 and \$3,369.24 for the period March 1 to 28, 2020, for a total overpayment amount of \$5,366.89.

In a preliminary determination dated April 16, 2020, OWCP notified appellant that he had received a \$5,366.89 overpayment of compensation for the period February 13 through March 28, 2020 because he continued to receive schedule award compensation after his schedule award had expired on February 12, 2020. It explained that it had inadvertently paid him beyond the expiration date of the award due to a technical error. OWCP further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment. It requested that he complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents. Additionally, OWCP notified appellant that, within

³ OWCP indicated that the number of weeks of compensation was 262.08 weeks instead of days; however, this is a typographical error.

30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a prerecoument hearing.

On May 13, 2020 appellant requested a decision based on the written evidence. In a completed Form OWCP-20, appellant listed no monthly income and monthly expenses of \$1,390.00 for housing, \$400.00 for food, \$300.00 for utilities, \$60.00 to \$100.00 for medical treatment, \$390.00 for auto insurance, and \$235.00 for an automobile loan. He provided assets of \$50.00 to \$100.00.

By decision dated May 28, 2020, OWCP finalized the preliminary overpayment determination that appellant had received an overpayment of schedule award compensation in the amount of \$5,366.89 for the period February 13 through March 28, 2020 because he received schedule award payments after the expiration of the award. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, noting that he had not filled out income information on the Form OWCP-20 or submitted supporting financial documentation. OWCP determined that appellant should submit \$5,366.89 to repay the overpayment.

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.⁴ 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.”⁵

Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.⁶

The schedule award provisions of FECA⁷ and its implementing regulations⁸ 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 20 C.F.R. § 10.404

⁴ *Supra* note 2 at § 8102(a).

⁵ *Id.* at § 8129(a).

⁶ *Id.* at § 8116(a).

⁷ *Supra* note 2.

⁸ 20 C.F.R. § 10.404.

provides that compensation is awarded for specified periods of time for the permanent loss or loss of use of certain members.⁹ FECA provides for 312 weeks of compensation for 100 percent loss or loss of use of an upper extremity¹⁰ and the implementing regulations provides that compensation for proportionate periods of time is payable for partial loss.¹¹

OWCP's procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of schedule award compensation in the amount of \$5,366.89 for the period February 13 through March 28, 2020, for which he was without fault.

OWCP granted appellant a schedule award for 12 percent permanent impairment of the left upper extremity. The period of the award ran for 37.44 weeks, or 262 days, from May 26, 2019 to February 12, 2020. The Board has notes that 12 percent of the 312 weeks of compensation allowable for total loss of use of an upper extremity equals 37.44 weeks of compensation. OWCP, however, continued to issue schedule award compensation until March 28, 2020. It paid appellant \$1,997.65 from February 13 to 29, 2020 and \$3,369.24 from March 1 through 28, 2020, which constituted an overpayment of compensation in the amount of \$5,366.89.¹³

The Board accordingly affirms OWCP's findings as to the fact and amount of the overpayment.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA¹⁴ provides that an overpayment must be recovered 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. Thus, a finding that appellant was without fault does not automatically result in waiver 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.¹⁵

⁹ *Id.*

¹⁰ 5 U.S.C. § 8107(c)(2).

¹¹ *Supra* note 8.

¹² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1f (1)(i) (September 2018). See *T.C.*, Docket No. 20-0302 (issued November 12, 2020).

¹³ *T.C.*, *id.*

¹⁴ *Supra* note 2.

¹⁵ *G.L.*, Docket No. 19-0297 (issued October 23, 2019).

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her income (including compensation benefits) to meet current ordinary and necessary living expenses, and also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹⁶

Section 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes her position for the worse.¹⁷

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁸ 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. The information is also used to determine the repayment schedule, if necessary.¹⁹ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery of the overpayment, and no further request for waiver shall be considered until the requested information is furnished.²⁰

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.²¹ Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.²²

In its preliminary overpayment determination dated April 16, 2020, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to

¹⁶ 20 C.F.R. § 10.436. OWCP procedures provide that assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(2) (September 2018).

¹⁷ 20 C.F.R. § 10.437(b)(1).

¹⁸ *Id.* at 10.438(a).

¹⁹ *Id.*; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²⁰ *Id.* at § 10.438(b).

²¹ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

²² 20 C.F.R. § 10.438; *V.B.*, Docket No. 20-0976 (issued January 26, 2021).

support income and expenses. It advised appellant that it would deny waiver if he failed to furnish the requested financial information within 30 days. Appellant submitted a May 13, 2020 OWCP-20 form in which he listed some expenses and assets, but provided no information concerning his monthly income. Appellant further submitted no supporting financial documentation. While appellant submitted a completed Form OWCP-20, he did not submit supporting financial documentation. OWCP, therefore, did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.²³

Consequently, the Board finds that OWCP properly denied waiver of recovery of the overpayment.²⁴

CONCLUSION

The Board finds that appellant received an overpayment of schedule award compensation in the amount of \$5,366.89 from February 13 through March 28, 2020, for which he was without fault. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

²³ *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

²⁴ The Board's jurisdiction over recovery of an overpayment is limited to those cases where OWCP seeks recovery from continuing compensation under FECA. 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018). As appellant is no longer in receipt of wage-loss compensation, the Board lacks jurisdiction over OWCP's recovery of the overpayment. *L.C.*, Docket No. 19-1094 (issued February 25, 2020); *D.R.*, 59 ECAB 148 (2007).

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 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