

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

A.A., Appellant)	
)	
and)	Docket No. 22-0751
)	Issued: December 12, 2022
DEPARTMENT OF AGRICULTURE, FOOD)	
SAFETY & INSPECTION SERVICE,)	
Columbus, OH, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 13, 2022 appellant filed a timely appeal from a March 22, 2022 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.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$7,466.01 for the period July 19, 2020 through October 9, 2021 because she improperly received wage-loss compensation at an augmented compensation rate to which she was not entitled; (2) whether it properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments every 28 days.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 2, 2019 appellant, then a 47-year-old consumer safety inspector, filed a traumatic injury claim (Form CA-1) alleging that on May 2, 2019 she injured her left knee when she missed a step while climbing up concrete steps and fell onto her knee in the performance of duty. OWCP accepted the claim for left knee sprain, contusion, and lateral meniscus tear. It paid appellant wage-loss compensation on the supplemental rolls commencing September 12, 2019 and on the periodic rolls as of December 8, 2019, at the augmented rate of 75 percent.

In a Form EN-1032 dated June 26, 2020, appellant claimed her daughter, P.A., with a date of birth of February 7, 2002, as a dependent noting that her daughter did not reside with her, but that she provided support for college expenses and money for food and clothes. The EN-1032 defined a child as eligible to be considered a dependent for augmented compensation if the child was under the age of 18 and living with her; an unmarried child 18 years or over, but who is unable to support herself or himself because of physical or mental disability; or an unmarried child under 23 years of age who is a full-time student and has not completed four years of school beyond the high school level.

In a Form EN-1032 signed and dated June 28, 2021, appellant indicated that she had an eligible dependent, her daughter P.A., and as such, was entitled to wage-loss compensation at the augmented rate of 75 percent. She indicated her daughter's date of birth was February 7, 2002, that her daughter did not live with her, and that she was applying to attend college. The EN-1032 form again provided the definitions for eligible dependents.

By letter dated June 28, 2021, OWCP advised appellant that augmented compensation was payable for an unmarried child who had reached the age of 18 and was a full-time student who had not completed four years of education beyond high school. It provided her with a form to complete if she was continuing to claim augmented compensation for P.A. as a student.

In a memorandum of telephone call (Form CA-110) dated October 7, 2021, appellant informed OWCP that her daughter graduated high school in June 2020 and did not go to college.

On October 14, 2021 OWCP advised appellant that it had made a preliminary overpayment determination that she received an overpayment of compensation in the amount of \$7,466.01 for the period July 19, 2020 through October 19, 2021 because she received compensation at the augmented three-fourths rate instead of the two-thirds rate when she had no dependents. It noted that she had received a total of \$54,607.00 for wage-loss compensation at the augmented rate based on an eligible dependent from July 19, 2020 through October 9, 2021. Appellant, however, was only entitled to receive \$47,140.99 in compensation based on the appropriate two-thirds rate for lack of an eligible dependent, resulting in a \$7,466.01 overpayment.² OWCP found that she was with fault in the creation of the overpayment because she knew or reasonably should have known that there was no entitlement to compensation at the augmented rate because she did not have an eligible dependent. It indicated that appellant neglected to provide notification within 90 days of the dependency change and knowingly continued to accept compensation payments at the augmented rate despite such knowledge. OWCP advised her that she could submit evidence

² The record contains a manual adjustment form and worksheets regarding the dates and calculations of the overpayment of compensation.

challenging the fact, amount, or finding of fault and request waiver of the overpayment. It provided an overpayment action request form and informed appellant that she could submit additional evidence in writing or at a precoupment hearing, but that a precoupment hearing must be requested within 30 days of the date of the written notice of the overpayment. OWCP requested that she complete and return an enclosed overpayment recovery questionnaire (Form OWCP-20) within 30 days to be considered regarding the questions of waiver and method of recovery of the overpayment. It also requested that appellant submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. No further evidence was received.

By decision dated March 22, 2022, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$7,466.01 for the period July 19, 2020 through October 9, 2021 because she had improperly received augmented compensation without having eligible dependents. It found her at fault in the creation of the overpayment because she had neglected to provide notification of the dependency change within 90 days and she continued to knowingly accept compensation at a rate to which she was not entitled. Therefore, OWCP found that appellant was not entitled to waiver of recovery. It advised her that the overpayment would be recovered by deduction of \$250.00 from her continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from a personal injury sustained while in the performance of duty.³ If the disability is total, the United States shall pay the employee during the period of total disability the basic compensation rate of 66 2/3 percent of her monthly pay. A disabled employee is entitled to an augmented compensation rate of 75 percent if he or she has one or more dependents.⁴

A dependent includes an unmarried child who, while living with the employee or receiving regular contributions from the employee toward his or her support, is either under 18 years of age or over 18 years of age and incapable of self-support due to physical or mental disability.⁵ A child is also considered a dependent if he or she is an unmarried student under 23 years of age who has not completed four years of education beyond the high school level and is currently pursuing a full-time course of study at a qualifying college, university, or training program.⁶

If a claimant received compensation at the augmented rate during a period when he or she did not have an eligible dependent, the difference between the compensation that was disbursed at

³ 5 U.S.C. § 8102(a).

⁴ *E.B.*, Docket No. 19-1571 (issued December 31, 2020); *R.G.*, Docket No. 18-1251 (issued November 26, 2019); *O.R.*, 59 ECAB 432, 436 (2008); *id.* at §§ 8105(a) and 8110(b).

⁵ *Id.* at § 8110(a).

⁶ *E.B.*, *supra* note 4; *R.G.*, *supra* note 4; *see also E.G.*, 59 ECAB 599, 603 n.10 (2008).

the 75 percent augmented rate and the compensation that should have been disbursed at the 66 2/3 percent basic rate constitutes an overpayment of compensation.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$7,466.01 for the period July 19, 2020 through October 9, 2021 because she received wage-loss compensation at an augmented compensation rate to which she was not entitled.

The evidence of record reflects that appellant continued to receive compensation at the augmented rate from July 19, 2020 through October 9, 2021, despite the fact that her daughter, P.A., who was initially claimed as a dependent, turned 18 years old on February 7, 2020, graduated high school in June 2020, but did not attend college. Therefore, she no longer qualified as an eligible dependent under FECA.

Compensation records confirm that OWCP continued to pay appellant compensation at the augmented rate from July 19, 2020 through October 9, 2021, which amounted to a total of \$54,607.00. Appellant, however, was only entitled to receive \$47,140.99 in compensation at the basic rate, resulting in an overpayment of compensation in the amount of \$7,466.01. Accordingly, the Board finds that OWCP properly determined that she received an overpayment of compensation in the amount of \$7,466.01 for the period July 19, 2020 through October 9, 2021.

LEGAL PRECEDENT -- ISSUE 2

5 U.S.C. § 8129(b) provides: “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.”⁸ A claimant who is at fault in the creation of the overpayment is not entitled to waiver.⁹ 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.¹⁰

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

⁷ *S.D.*, Docket No. 17-0309 (issued August 7, 2018); *Ralph P. Beachum, Sr.*, 55 ECAB 442, 445 (2004).

⁸ 5 U.S.C. § 8129(b).

⁹ *See C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

¹⁰ 20 C.F.R. § 10.433(a).

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.¹¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant was at fault in the creation of the overpayment of compensation for the period July 19, 2020 through October 9, 2021, thereby precluding waiver of recovery of the overpayment.

In a Form EN-1032 dated June 26, 2020, appellant claimed her daughter, P.A., with a date of birth of February 7, 2002, as a dependent noting that her daughter did not reside with her, but that she provided support for college expenses and money for food and clothes. The EN-1032 form contained a definition of a dependent child for augmented compensation as an unmarried child under the age of 18 and living with appellant; an unmarried child 18 years or over, but who is unable of supporting herself or himself because of physical or mental disability; or an unmarried child under 23 years of age who is a full-time student and has not completed four years of school beyond the high school level. By June 26, 2020 appellant's daughter, P.A., was 18 years of age, had graduated from high school and was not attending college. Appellant again on an EN-1032 dated June 28, 2021 noted her daughter turned 18 on February 7, 2020 and was applying to attend college. It was not until October 7, 2021 that appellant informed OWCP that her daughter graduated high school in June 2020 and did not go to college.

The Board finds that OWCP properly determined that appellant was at fault in the creation of the overpayment because she knew or should have known that she improperly continued to claim her daughter as a dependent when she no longer had an eligible dependent as of June 2020. OWCP's procedures provide that if the claimant promptly notifies it of a dependency change, she should be found without fault. However, if notice is not provided within 90 days of such a change, the claimant is with fault because she has knowingly continued to receive compensation at the augmented compensation rate when she had no eligible dependents.¹²

Given the circumstances of this case, the Board finds that appellant failed to notify OWCP of the dependency change within 90 days and accepted compensation at a rate she knew or should have known that she was not entitled to receive. Appellant was therefore at fault in the creation of the overpayment and OWCP properly denied waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.¹³

¹¹ *Id.* at § 10.433(b); *see also D.M.*, Docket No. 17-0983 (issued August 3, 2018).

¹² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.300.4g(2) (September 2020).

¹³ 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

Section 10.441(a) of OWCP's regulations¹⁴ provides in pertinent part:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”¹⁵

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required repayment of the overpayment by deducting \$250.00 every 28 days from appellant's compensation payments.

OWCP's regulations provide that the overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁶ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.¹⁷

OWCP provided appellant a Form OWCP-20 with its October 14, 2021 preliminary overpayment determination and afforded her the opportunity to provide appropriate financial information and documentation.¹⁸ Appellant did not complete the Form OWCP-20 prior to the March 22, 2022 final overpayment decision.

As appellant did not submit a completed Form OWCP-20 and supporting financial documentation as requested, the Board finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$250.00 every 28 days to minimize hardship.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$7,466.01 for the period July 19, 2020 through October 9, 2021 because she improperly received wage-loss compensation at an augmented compensation rate to which she was not entitled. The Board further finds that she was at fault in the creation of the overpayment for the period July 19, 2020 through October 9, 2021, thereby precluding waiver of the recovery of the overpayment. OWCP also properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments every 28 days.

¹⁴ *Id.* at § 10.441(a).

¹⁵ *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

¹⁶ 20 C.F.R. § 10.438. *See also F.B.*, Docket No. 21-0680 (issued February 23, 2022).

¹⁷ *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

¹⁸ 20 C.F.R. § 10.438.

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board