

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

_____)	
B.F., Appellant)	
)	
and)	Docket No. 22-0857
)	Issued: December 9, 2022
U.S. POSTAL SERVICE, ROY ROYALL POST)	
OFFICE, Houston, TX, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 13, 2022 appellant filed a timely appeal from a May 4, 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 to consider the merits of this case.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$21,524.43 for the period March 31, 2017 through June 19, 2021 for which she was without fault, because she improperly received wage-loss compensation at an augmented rate to

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that OWCP received additional evidence on appeal. 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.*

which she was not entitled; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$551.91 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On April 29, 2008 appellant, then a 43-year-old postal carrier, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome (CTS) in both wrists due to factors of her federal employment, including the repetitive movement of grabbing, pushing and pulling mail. She noted that she first became aware of her claimed condition and realized its relationship to her federal employment on June 28, 2005.

OWCP accepted appellant's claim for CTS. On June 14, 2017 it expanded acceptance of the claim to include rheumatoid myopathy with rheumatoid arthritis of left hand; rheumatoid myopathy with rheumatoid arthritis of right hand; contusion of right elbow initial encounter; complete rotator cuff tear or rupture of right shoulder, not specified as traumatic; other cervical disk displacement, unspecified cervical region; sprain of unspecified parts of lumbar spine and pelvis, initial encounter; superior glenoid labrum lesion of left shoulder, initial encounter; superior glenoid labrum lesion of right shoulder, initial encounter; sprain of left rotator cuff capsule, initial encounter; unspecified sprain of right shoulder joint, initial encounter; lesion of ulnar nerve, unspecified upper limb CTS; rheumatoid arthritis; and other tenosynovitis of the hand and wrist. Appellant stopped work on January 13, 2017 and did not return.

OWCP initially paid appellant wage-loss compensation on the supplemental rolls following January 13, 2017 and on the periodic rolls, effective June 25, 2017. Appellant's initial payment for the period January 14 through March 30, 2017 was paid at the basic 2/3 rate. As of March 31, 2017, OWCP paid appellant at the augmented 3/4 rate.

In an October 30, 2010 claim for compensation (Form CA-7), appellant noted that she had a dependent daughter living with her, born on June 11, 1994. On March 6 and April 6, 2017 she completed CA-7 forms, noting she no longer had an eligible dependent.

In a June 28, 2021 manual adjustment form, OWCP determined that an overpayment of compensation occurred because appellant was paid at the augmented 3/4 rate, but did not have any dependents. It explained that she could not have known that an error occurred in the payment setup. The June 28, 2021 manual adjustment form showed that, during the relevant period, OWCP paid appellant gross compensation of \$193,642.03 and net compensation of \$176,893.48, but that she should have been paid gross compensation of \$172,117.60 and net compensation of \$155,369.05. OWCP subtracted the net compensation of \$155,369.05 that appellant was entitled to receive from the net compensation of \$176,893.48 that appellant was paid, which resulted in an overpayment of \$21,524.43.

On March 3, 2022 OWCP advised appellant that it had made a preliminary determination that she received an overpayment of compensation in the amount of \$21,524.43, for the period March 31, 2017 through June 19, 2021. It stated that she received compensation at the augmented rate, when she should have been paid at the basic rate as she no longer had an eligible dependent. In an accompanying memorandum, OWCP stated, "You were entitled to \$172,117.60 at the

augmented 2/3 rate” for the relevant period. It explained, “So, the overpayment is calculated by subtracting \$172,117.60 (the amount that you were entitled to) from \$176,893.48 (the amount that you were paid).” OWCP calculated that “\$176,893.48 - \$172,117.60 = \$21,524.43.”³

OWCP found that appellant was without fault in the creation of the overpayment, as she promptly notified OWCP in good faith and showed a high degree of care in regard to receipt of her benefits, there was no evidence to demonstrate that she knew or should have known the proper course of action to be followed. It provided an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) for her completion and advised that, in order for OWCP to consider the question of waiver or to determine a reasonable method for collection, she must provide a completed Form OWCP-20 and attach supporting financial documentation. OWCP 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.

Appellant responded to the preliminary overpayment determination listing her monthly income as \$2,890.94. She listed her monthly expenses as \$200.00 for food, \$250.00 for utilities, \$450.00 for other expenses, and \$89.00 for credit card debt, for total monthly expenses of \$989.00. Appellant indicated she had no assets. She requested a waiver of recovery of the overpayment because she was found to be without fault in the creation of the overpayment. Appellant noted that she submitted paperwork stating that her “child was over the age limit and she was in the military.” She did not submit any supporting financial documentation.

The record reflects that, beginning March 2022, appellant received continuing compensation payments, every 28 days, in the gross amount of \$3,476.93 and the net amount of \$3,124.63.

By decision dated May 4, 2022, OWCP finalized the preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$21,524.43 had occurred during the period March 31, 2017 through June 19, 2021 because appellant continued to receive compensation at the augmented rate after she no longer had eligible dependents. It explained that the error was made when appellant’s payments were paid at the 3/4 rate as of March 31, 2017, when she should have been paid at the 2/3 rate. OWCP reiterated the explanation provided in the preliminary overpayment determination regarding the calculation of the overpayment.⁴

OWCP further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, noting that she had not provided any supporting documentation in response to the preliminary overpayment determination. It required recovery of

³ The OWCP calculation showed the net amount that appellant received of \$176,893.48; however, it showed the gross amount that appellant should have received (\$172,117.60) rather than the net amount of \$155,369.05. The overpayment amount of \$21,524.43 is the result when the net compensation figures are compared ($\$176,893.48 - \$155,369.05 = \$21,524.43$). Appellant also received a copy of the June 28, 2021 worksheet, showing the actual payments.

⁴ As noted, the June 28, 2021 manual adjustment form was received on March 3, 2022 and showed that appellant received net compensation of \$176,893.48, and should have received net compensation of \$155,369.05 for an overpayment of \$21,524.43.

the overpayment by deducting \$551.91 every 28 days from appellant's continuing FECA compensation payments.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA⁵ provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁶ 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 his or 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.⁷ Under FECA a dependent includes an unmarried child, while living with the employee or receiving regular contributions from the employee toward their support, who is under 18 years of age.⁸ FECA further provides that compensation payable for a child that would otherwise end at the time he or she reaches 18 years of age shall continue if he or she is a student as defined therein.⁹ 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 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$21,542.43 during the period March 31, 2017 through June 19, 2021 for which she was without fault, because she improperly received wage-loss compensation at the augmented compensation rate to which she was not entitled.

OWCP paid appellant wage-loss compensation on the supplemental rolls commencing January 13, 2017. Appellant's initial payment for the period January 14 through March 30, 2017 was paid at the basic 2/3 rate. As of March 31, 2017, however, OWCP incorrectly paid appellant at the augmented 3/4 rate, due to an error in setting up appellant's roll payments. Appellant informed OWCP *via* CA-7 forms beginning in March 2017 that her dependent daughter was no longer in school and had joined the military. As appellant did not have an eligible dependent as of March 31, 2017, OWCP properly determined that the start date of the overpayment was March 31, 2017.

The record supports that OWCP erroneously paid appellant compensation based on the augmented rate for the period March 31, 2017 through June 19, 2021. The manual adjustment

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ *Id.* at § 8102(a).

⁷ *See* 5 U.S.C. § 8110(b).

⁸ *Id.* at § 8110(a)(3).

⁹ *Id.* at § 8101.

¹⁰ *See V.R.*, Docket No. 20-0571 (issued July 6, 2021); *see Ralph P. Beachum, Sr.*, 55 ECAB 442, 445 (2004).

form indicated that OWCP paid appellant \$176,893.48 in net FECA compensation for that period at the augmented rate of 75 percent, but that appellant was only entitled to net compensation of \$155,369.05 at the basic rate of 66 2/3 percent. OWCP properly determined that the difference yielded an overpayment of compensation in the amount of \$21,524.43.

The Board notes that OWCP's preliminary and final overpayment determinations contain an improper explanation regarding the calculation of the overpayment. However, the overpayment amount was correctly calculated as \$21,524.43, based on the manual adjustment arm, which correctly compared the net paid compensation amounts of \$176,893.48 and the net owed amount of \$155,369.05. The Board, thus, finds that OWCP properly determined the fact and amount of the overpayment in this case.¹¹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment of 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."¹²

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 on 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 and no further request for waiver shall be considered until the requested information is furnished.¹³

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 conscious.¹⁴ Appellant, however, had the responsibility to timely provide financial information to OWCP, but did not do so.¹⁵

In its preliminary overpayment determination dated March 3, 2022, OWCP requested that appellant provide a completed overpayment recovery questionnaire and supporting financial

¹¹ *O.B.*, Docket 19-0034 (issued April 22, 2019); *W.A.*, Docket No. 18-0070 (issued May 14, 2018); *see D.S.*, Docket No. 17-1224 (issued August 28, 2017).

¹² 5 U.S.C. § 8129.

¹³ 20 C.F.R. § 10.436.

¹⁴ *Id.*; *see also B.G.*, Docket No. 20-0541 (issued April 28, 2021); *R.H.*, Docket No. 15-0392 (issued February 3, 2016).

¹⁵ *Id.* at § 10.438; *see N.J.*, Docket No. 19-1170 (issued January 10, 2020).

information. It advised her that waiver of recovery of the overpayment would be denied if she failed to furnish the requested financial information within 30 days. Appellant responded to the preliminary overpayment determination; however, she did not submit any supporting documentation prior to the May 4, 2022 final overpayment decision. As a result, OWCP did not have the necessary financial information to determine whether recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.¹⁶ Consequently, as appellant did not submit the financial information required under section 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.¹⁷

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides that 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 the 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 hardship.¹⁸

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by withholding \$551.91 every 28 days from appellant's continuing compensation payments.

Although OWCP provided appellant an overpayment recovery questionnaire with the March 3, 2022 preliminary overpayment determination, she did not submit any supporting financial information prior to the May 4, 2022 final overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁹ When an individual fails to provide the required financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁰ The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount, until the balance of the overpayment is paid in full.²¹ The record reflects that, beginning March 2022, OWCP paid appellant continuing compensation payments every 28 days in the gross amount of \$3,476.93 and

¹⁶ *B.G.*, *supra* note 14; *G.G.*, Docket No. 19-0684 (issued December 23, 2019).

¹⁷ 20 C.F.R. § 10.438; *see L.D.*, Docket No. 19-0606 (issued November 21, 2019); *S.A.*, Docket No. 15-0592 (issued April 9, 2015).

¹⁸ *Id.* at § 10.441; *see J.C.*, Docket No. 19-0122 (issued June 11, 2019); *Steven R. Cofrancesco*, 57 ECAB 662 (2006).

¹⁹ *Id.* at § 10.438; *see also A.F.*, Docket No. 19-0054 (issued June 12, 2019).

²⁰ *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

²¹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.500.8c(1) (September 2018).

the net amount of \$3,124.63. Therefore, deducting \$551.91 every 28 days from her continuing compensation is not in excess of the 25 percent repayment rate.²²

As appellant had not submitted the required financial documentation to OWCP as requested, the Board finds that OWCP properly required recovery of the \$21,524.43 overpayment by deducting \$551.910 every 28 days from her continuing compensation payments.²³

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$21,524.43 for the period March 31, 2017 through June 19, 2021, for which she was without fault, because she improperly received wage-loss compensation at an augmented rate to which she was not entitled. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and required recovery by deducting \$551.91 every 28 days from her continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2022 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2022
Washington, DC

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

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

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

²² *B.G.*, *supra* note 14; *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

²³ *M.D.*, Docket No. 19-1500 (issued February 24, 2020).