

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

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| K.B., Appellant |) | |
| |) | |
| and |) | Docket No. 21-0604 |
| |) | Issued: January 14, 2022 |
| U.S. POSTAL SERVICE, HAMMOND POST |) | |
| OFFICE, Hammond, IN, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 9, 2021 appellant filed a timely appeal from November 4 and December 9, 2020 merit decisions and two January 19, 2021 nonmerit decisions 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.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant forfeited her right to compensation for the period November 19, 2016 through June 7, 2019, pursuant to 5 U.S.C.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 19, 2021 decisions, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the 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." 20C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

§ 8106(b)(2), because she knowingly failed to report her self-employment activities and earnings; (2) whether OWCP properly found that appellant received an overpayment of compensation in the amount of \$28,710.22 for the period November 19, 2016 through June 7, 2019 as she forfeited her entitlement to compensation for this period; (3) whether OWCP properly found appellant at fault in the creation of the \$28,710.22 overpayment, thereby precluding waiver of recovery of the overpayment; (4) whether OWCP properly denied appellant's request for a hearing regarding its forfeiture decision under section 8124 of FECA; and (5) whether OWCP properly denied appellant's request for a precoupment hearing.

FACTUAL HISTORY

On December 21, 2015 appellant, then a 30-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 19, 2015 she sustained a back injury when she bent over a gurney in an attempt to pick up a parcel while in the performance of duty. She stopped work on December 19, 2015 and returned to work on February 4, 2016 in a part-time, limited-duty position. Appellant returned to full-time work on December 14, 2016. OWCP accepted appellant's claim for lumbar strain and paid her wage-loss compensation.

Appellant filed claims for compensation (Form CA-7) alleging disability from work due to her December 19, 2015 employment injury. The forms covered the periods February 4, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019. Each Form CA-7 included a section for the injured worker to make an affidavit regarding employment activity. The forms requested information regarding any and all earnings from employment; including any employment for which a salary, wages, income, sales commissions, or payment of any kind was received during the period(s) claimed. This was to include self-employment, odd jobs, involvement in business enterprises, as well as service with the military. The forms advised that fraudulently concealing employment, or failing to report income, may result in forfeiture of compensation benefits and/or criminal prosecution. The CA-7 forms then provided boxes for the employee to mark "Yes" or "No," and spaces for the name and address of the business, the dates worked, and the type of work. The forms also contained certification clauses as to the truthfulness of the statements made under penalty of criminal prosecution for false or misleading statements. On her CA-7 forms, appellant marked the "No" boxes, except for on a few forms on which she did not respond.

On June 2, 2020 OWCP received an August 27, 2019 investigative report from the employing establishment's Office of the Inspector General. The evidence described in the report revealed that appellant had a business called Krystale's Tastefull Sensationz and that she performed work activities for the business for the time periods covered by several CA-7 forms. A special agent who completed the report noted that agency employees reported to the employing establishment that appellant was self-employed by selling handmade crafts and sweets that she advertised on social media. The investigative report includes several images of crafts and sweets sold by appellant in this manner. The special agent noted that, in one of her social media postings, the caption for one image of a craft tool set included among its hashtags #entrepreneurship, #smallbusinessowner, #smallbusiness, #entrepreneur, and #krystalestastefullsensationz. He advised that the investigation revealed that two coworkers and another individual described various crafts and sweets they had bought from appellant, and the amounts they had paid for such

items. The investigative report contains an invoice for \$210.00 for cowboy hats with names purchased from appellant's business.

The investigative report further revealed that PayPal Holdings was subpoenaed to recover appellant's "Krystale's Tastefull Creationz" PayPal account, and that the special agent subsequently received a spreadsheet of her business transactions using PayPal. The investigative report included the statement, "The PayPal spread-sheet showed [that appellant] received \$3,348.00 for 'Krystale's Tastefull Creationz' starting November 19, 2016 through June 7, 2019." Furthermore, it was noted that information from the website Etsy, "showed a transaction on February 18, 2019, for \$79.00."

By decision dated November 4, 2020, OWCP determined that appellant forfeited her right to compensation from November 19, 2016 through June 7, 2019, because she knowingly failed to report employment and earnings on CA-7 forms covering this period. It indicated that she was self-employed in her own business, which sold crafts and sweets, and noted that the wording of the CA-7 forms advised her of the need to report such employment and earnings.

On November 4, 2020 OWCP advised appellant of its preliminary overpayment determination that she received a \$28,710.22 overpayment of compensation due to the fact that she forfeited her compensation for the period November 19, 2016 through June 7, 2019.³ It also made a preliminary determination that she was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. OWCP indicated that the CA-7 forms completed by her advised her of the type of employment activities and earnings that needed to be reported. It advised appellant that she could submit evidence challenging the fact, amount, or finding of fault and request waiver of the overpayment. OWCP provided her with an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). It notified appellant that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoumment hearing. Appellant did not respond within the afforded period.

By decision dated December 9, 2020, OWCP finalized its preliminary overpayment determination, finding that appellant received a \$28,710.22 overpayment of compensation for the period November 19, 2016 through June 7, 2019. It further determined that she was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

By appeal request form postmarked December 18, 2020, appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review in connection with OWCP's November 4, 2020 forfeiture decision.

By Form OWCP-20 postmarked December 18, 2020, she requested a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review in connection with the overpayment matter.

³ The record contains payment records and worksheets showing that appellant received \$28,710.22 in compensation from November 19, 2016 through June 7, 2019.

By decision dated January 19, 2021, OWCP denied appellant's request for a hearing in connection with its November 4, 2020 forfeiture decision. It found that her request was untimely as it was filed on December 18, 2020, which was more than 30 days after the issuance of the November 4, 2020 decision. OWCP indicated that, in its discretion, it had considered appellant's request and determined that the forfeiture issue could be equally-well addressed by requesting reconsideration and submitting additional evidence.

By separate decision dated January 19, 2021, OWCP denied appellant's request for a prerecoumpment hearing finding that it was untimely filed. It noted that the request was postmarked on December 18, 2010, which was more than 30 days after the November 4, 2020 preliminary overpayment determination. OWCP further noted that, while a final overpayment decision was issued on December 9, 2020, a final decision concerning an overpayment was not subject to the hearing provision of 5 U.S.C. § 8124(b).

LEGAL PRECEDENT -- ISSUE 1

Section 8106(b) of FECA provides that an employee who fails to make an affidavit or report when required or knowingly omits or understates any part of his or her earnings, forfeits his or her right to compensation with respect to any period for which the affidavit or report was required.⁴ An employee, however, can only be subjected to the forfeiture provision of 5 U.S.C. § 8106(b) if he or she knowingly failed to report employment or earnings. It is not enough to merely establish that there were unreported earnings.⁵ OWCP's procedures recognize that, forfeiture is a penalty, and, as a penalty provision, it must be narrowly construed.⁶ The term knowingly is defined within OWCP's regulations as with knowledge, consciously, willfully, or intentionally.⁷

OWCP's regulations define earnings from employment or self-employment as: (1) gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses, and any other goods or services received in kind as remuneration; or (2) a reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration."⁸ Neither lack of profits, nor the characterization of the duties as a hobby, removes an unremunerated individual's responsibility to report the estimated cost to have someone else perform his or her duties."⁹

⁴ 5 U.S.C. § 8106(b).

⁵ *T.G.*, Docket No. 19-0051 (issued August 20, 2019); *P.H.*, Docket No. 17-1362 (issued March 13, 2018).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Forfeiture*, Chapter 2.1402.5, 8 (May 2012). *See also M.G.*, Docket No. 20-0735 (issued October 23, 2020); *T.P.*, Docket No. 17-0717 (issued April 11, 2018); *Christine P. Burgess*, 43 ECAB 449 (1992).

⁷ 20 C.F.R. § 10.5(n). *See also R.A.*, Docket No. 18-0406 (issued January 28, 2019); *I.S.*, Docket No. 17-0897 (issued April 9, 2018); *Anthony A. Nobile*, 44 ECAB 268 (1992).

⁸ 20 C.F.R. § 10.5(g).

⁹ *Id.*

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant forfeited her right to compensation for the periods November 19, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019, pursuant to 5 U.S.C. § 8106(b)(2), because she knowingly failed to report her self-employment activities and earnings.

The evidence of record establishes that appellant had earnings and employment outside her federal employment during the period November 19, 2016 through June 7, 2019 that she failed to report on the CA-7 forms she completed, which covered the periods November 19, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019. An investigative report from the employing establishment's Office of Inspector General described evidence, which showed that appellant had a business called Krystale's Tastefull Sensationz and that she performed work activities for the business for the time periods covered by several CA-7 forms. The special agent who completed that report noted that agency employees reported to the employing establishment that appellant was self-employed by selling handmade crafts and sweets that she advertised on Facebook. The investigative report includes several images of crafts and sweets sold by appellant in this manner. The special agent advised that the investigation revealed that two coworkers and another individual described various crafts and sweets they had bought from appellant, and the amounts they had paid for such items. The investigative report contains an invoice for \$210.00 for cowboy hats with names purchased from appellant's business. The investigative report further revealed that PayPal Holdings was subpoenaed to recover appellant's "Krystale's Tastefull Creationz" PayPal account, and that the special agent subsequently received a spreadsheet of her business transactions using PayPal. The investigative report included the statement, "The PayPal spread-sheet showed [appellant] received \$3,348.00 for 'Krystale's Tastefull Creationz' starting November 19, 2016 through June 7, 2019." Furthermore, the report noted that information from the website Etsy, "showed a transaction on February 18, 2019, for \$79.00."

The case record therefore establishes that appellant earned monies from her self-employment in her own business. However, she did not report such earnings on the forms submitted to OWCP, which covered the periods November 19, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019.

As noted above, an employee can only be subjected to the forfeiture penalty provision of 5 U.S.C. § 8106(b) if he or she knowingly failed to report employment or earnings, and the term knowingly is defined within OWCP's regulations as with knowledge, consciously, willfully, or intentionally.¹⁰ Regarding whether appellant knowingly failed to report earnings from outside her federal employment, the Board notes that the language on the CA-7 forms instructed her to report all earnings, whether from salaries, self-employment, or sales commissions. The Board finds that the plain language on the CA-7 forms was sufficient to put her on notice that she was required to report all earnings outside her federal employment.¹¹

¹⁰ See *supra* notes 8 through 10.

¹¹ *T.G.*, Docket No. 16-1379 (issued August 4, 2017); *K.Z.*, Docket No. 12-0784 (issued August 27, 2012).

The explicit language of the CA-7 forms advised appellant that the nature of her self-employment work selling crafts and sweets would require her to report such employment activities on the forms. Appellant's signing of the strongly-worded certification clauses on the CA-7 forms further shows that she was aware of the materiality of her failure to report her employment. As the CA-7 forms signed by appellant informed her that she must report self-employment, this evidence is persuasive evidence that she knowingly failed to report earnings and employment information.¹²

Under these circumstances, the Board concludes that appellant "knowingly" omitted her earnings under section 8106(b)(2) of FECA by failing to report her employment activities and earnings in self-employment on the applicable CA-7 forms covering the periods November 21, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019. Accordingly, the Board finds that OWCP properly determined that she forfeited her right to compensation for the periods November 19, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019.

The Board further finds, however, that OWCP improperly determined that appellant forfeited her right to compensation for the period January 7 through June 23, 2017.

The case record does not contain CA-7 forms or any other type of form requiring the reporting of earnings/employment activity covering the period January 7 through June 23, 2017. As the case record does not establish made omissions or misrepresentations on such forms regarding earnings/employment activities for the period January 7 through June 23, 2017, the Board finds that OWCP improperly found forfeiture of entitlement to compensation for that period.¹³

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.¹⁴ 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."¹⁵

Section 10.529 of OWCP's implementing regulation provides as follows:

“(a) If an employee knowingly omits or understates any earnings or work activity in making a report, he or she shall forfeit the right to compensation with respect to any period for which the report was required. A false or evasive statement,

¹² See *T.G.*, *id.*

¹³ In light of the Board's disposition of Issue 1, Issue 4 is rendered moot with regard to the period January 7 through June 23, 2017.

¹⁴ 5 U.S.C. § 8102(a).

¹⁵ *Id.* at § 8129(a).

omission, concealment, or misrepresentation with respect to employment activity or earnings in a report may also subject an employee to criminal prosecution.

“(b) Where the right to compensation is forfeited, OWCP shall recover any compensation already paid for the period of forfeiture pursuant to 5 U.S.C. § 8129 and other relevant statutes.”¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation for the period January 7 through June 23, 2017.

As explained above, OWCP improperly found that appellant forfeited her right to compensation for the period January 7 through June 23, 2017. Therefore, it did not have a basis to find an overpayment for that period. The Board, thus, finds that OWCP improperly determined that appellant received an overpayment of compensation for the period January 7 through June 23, 2017.

The Board further finds, however, that OWCP properly determined that appellant received an overpayment of compensation for the periods November 19, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019.

As explained above, appellant forfeited her compensation for the periods November 19, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019. Due to this forfeiture of compensation, she is not entitled to wage-loss compensation for these periods. Thus, OWCP has established fact of overpayment for the periods November 19, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019.

The case is not in posture for decision, however, with regard to the amount of the overpayment of compensation for the periods November 19, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019. The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated. Accordingly, the case must be remanded to OWCP.¹⁷ On remand, OWCP shall recalculate the amount of the overpayment of compensation for the periods November 19, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019 and issue a new preliminary overpayment determination. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁸

¹⁶ 20 C.F.R. § 10.529.

¹⁷ See *L.D.*, Docket No. 21-0447 (issued September 28, 2021); *S.H.*, Docket No. 20-1189 (issued January 27, 2021).

¹⁸ In light of the Board’s disposition of Issue 2, Issue 3 regarding fault is rendered moot only with regard to the period January 7 through June 23, 2017, and Issue 5 regarding the denial of a prerecoupment hearing is rendered moot.

LEGAL PRECEDENT -- ISSUE 3

Section 8129(a) of FECA provides that where an overpayment of compensation has been made “because of an error of fact or law,” adjustment shall be made by decreasing later payments to which an individual is entitled.¹⁹ The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): “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 this subchapter or would be against equity and good conscience.”²⁰ No waiver of payment is possible if the claimant is not “without fault” in helping to create the overpayment.²¹

In determining whether an individual is not “without fault” or alternatively, “with fault,” section 10.433(a) of Title 20 of the Code of Federal Regulations provides in relevant part:

“An individual is with fault in the creation of an overpayment who--

- (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or
- (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 to be incorrect....”²²

Section 10.433(c) of OWCP’s regulations provides:

“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 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.”²³

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly found appellant at fault in the creation of the overpayment for the periods November 19, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019, thereby precluding waiver of recovery of the overpayment.

¹⁹ 5 U.S.C. § 8129(a).

²⁰ *Id.* at § 8129(b).

²¹ *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *Robert W. O’Brien*, 36 ECAB 541, 547 (1985).

²² 20 C.F.R. § 10.433(a).

²³ *Id.* at § 10.433(c).

Appellant failed to provide information that she knew or should have known to be material on CA-7 forms covering the periods November 19, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019. As discussed above, the record supports that appellant had earnings and employment activity when she was self-employed with her own business for these periods covered by CA-7 forms signed by her, but she failed to report the relevant earnings/employment activities on these forms.

The explicit language of the CA-7 forms demonstrates that appellant knew or should have known that the nature of her self-employment would require her to report such employment activities and earnings on the forms. Since appellant had unreported earnings/employment activity during the periods November 19, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019, she knowingly failed to furnish this material information to OWCP. By signing these forms, she is deemed to have acknowledged her duty to fill out the forms properly, including the duty to report any employment, self-employment, or involvement in a business enterprise. As appellant represented that she had no earnings from employment during the covered periods, she failed to furnish information that she knew or should have known to be material to OWCP.²⁴ As she is at fault in the creation of the overpayment of compensation received during the periods November 19, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019, it is not subject to waiver of recovery.

LEGAL PRECEDENT -- ISSUE 4

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before an OWCP representative, provides in pertinent part: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."²⁵ As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.²⁶ The date of filing is fixed by postmark or other carrier's date marking.²⁷

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.²⁸ Specifically, the Board has held that OWCP has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to FECA which provided the right to a hearing,²⁹ when the request is made after the

²⁴ *A.T.*, Docket No. 17-0953 (issued December 20, 2017); *Harold F. Franklin*, 57 ECAB 387 (2006).

²⁵ 5 U.S.C. § 8124(b)(1).

²⁶ *C.K.*, Docket No. 18-0607 (issued October 18, 2018); *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

²⁷ See 20 C.F.R. § 10.616(a).

²⁸ *D.T.*, Docket No. 18-0871 (issued February 11, 2019); *Henry Moreno*, 39 ECAB 475, 482 (1988).

²⁹ *T.R.*, Docket No. 18-1272 (issued February 15, 2019); *Rudolph Bemann*, 26 ECAB 354, 360 (1975).

30-day period for requesting a hearing,³⁰ when the request is for a second hearing on the same issue,³¹ and when the request is made after a reconsideration request was previously submitted.³² In these instances, OWCP will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.³³

ANALYSIS -- ISSUE 4

The Board finds that OWCP properly denied appellant's request for a hearing regarding its forfeiture decision for the periods November 19, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019 under section 8124 of FECA.

In the present case, appellant's December 18, 2020 hearing request was made more than 30 days after the date of issuance of OWCP's November 4, 2020 decision regarding forfeiture and, thus, she was not entitled to a hearing as a matter of right. She requested such a hearing before an OWCP hearing representative in a letter postmarked December 18, 2020. OWCP properly found in its January 19, 2021 decision that appellant was not entitled to a hearing as a matter of right because her December 18, 2020 hearing request was not made within 30 days of OWCP's November 4, 2020 decision. While it also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, OWCP, in its January 19, 2021 decision, properly exercised its discretion by indicating that it had carefully considered her request and had determined that the forfeiture issue could equally well be addressed by requesting reconsideration and submitting additional medical evidence. The Board has held that as the only limitation on OWCP's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.³⁴ In the present case, the evidence of record does not indicate that OWCP committed any act in connection with its denial of appellant's hearing request which could be found to be an abuse of discretion.

CONCLUSION

The Board finds that OWCP properly determined that appellant forfeited her right to compensation for the periods November 29, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019, pursuant to § 8106(b)(2), because she knowingly failed to report her self-employment activities and earnings. However, OWCP improperly determined that she forfeited her right to compensation for the period January 7 through June 23, 2017. The Board also finds that OWCP improperly determined that she received an overpayment of compensation for the

³⁰ See *C.K.*, *supra* note 33; *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

³¹ See *T.R.*, *supra* note 36; *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

³² *R.H.*, Docket No. 07-1658 (issued December 17, 2007); *S.J.*, Docket No. 07-1037 (issued September 12, 2007). Section 10.616(a) of OWCP's regulations provides that the claimant seeking a hearing must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision. 20 C.F.R. § 10.616(a).

³³ See *C.K.*, *supra* note 33.

³⁴ *A.M.*, Docket No. 21-0256 (issued July 22, 2021); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

period January 7 through June 23, 2017. OWCP properly determined that she received an overpayment of compensation for the periods November 29, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019; however, the case is not in posture for decision with regard to the amount of the overpayment for the periods November 29, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019. The Board further finds that OWCP properly found appellant at fault in the creation of the overpayment for the periods November 29, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019, thereby precluding waiver of recovery of the overpayment. The Board also finds that OWCP properly denied her request for a hearing under section 8124 of FECA with regard to the periods November 29, 2016 through January 6, 2017 and June 24, 2017 through June 7, 2019.

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2020 forfeiture decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part. The December 9, 2020 final overpayment determination of the Office of Workers' Compensation Programs is reversed in part, affirmed in part, and set aside in part. The January 19, 2021 decision of the Office of Workers' Compensation Programs regarding denial of a forfeiture hearing is affirmed in part and set aside in part as moot. The January 19, 2021 decision of the Office of Workers' Compensation Programs regarding denial of a prerecoupment hearing is set aside as moot.

Issued: January 14, 2022
Washington, DC

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

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

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