

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

V.R., Appellant

and

U.S. POSTAL SERVICE, HERITAGE
STATION, San Antonio, TX, Employer

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Docket No. 22-0086
Issued: May 3, 2022

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, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 27, 2021 appellant filed a timely appeal from a September 29, 2021 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 appellant received an overpayment of schedule award compensation in the amount of \$3,096.46 for the period February 28 through March 27, 2021, for which she was without fault; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On July 27, 2016 appellant, then a 55-year-old sales service associate, filed an occupational disease claim (Form CA-2) alleging that she sustained a right hand and wrist condition causally related to factors of her federal employment, including repetitive standing, typing, and lifting

¹ 5 U.S.C. § 8101 *et seq.*

packages. She did not stop work. OWCP accepted the claim for right trigger thumb, a ganglion cyst of the right wrist, and other synovitis and tenosynovitis of the right hand. It subsequently expanded its acceptance of the claim to include trigger finger of the right middle and index fingers.

By decision dated September 12, 2019, OWCP granted appellant a schedule award for 28 percent permanent impairment of the right middle finger. The period of the award ran for seven weeks from September 5 to October 23, 2018.

By decision dated December 23, 2020, OWCP granted appellant a schedule award for an additional 11 percent permanent impairment of the right upper extremity, for a total right upper extremity permanent impairment rating of 26 percent. It noted that she had previously received a schedule award for 28 percent right middle finger impairment, which converted to 5 percent right upper extremity impairment. OWCP further found that appellant had previously received 10 percent right upper extremity impairment for carpal tunnel syndrome on April 6, 1998.² The period of the award ran for 34.32 weeks from July 8, 2020 to March 5, 2021.

On March 26, 2021 OWCP paid appellant schedule award compensation of \$579.72 for the period February 28 through March 5, 2021. On March 27, 2021 it paid her schedule award compensation of \$3,096.46 for the period February 28 through March 27, 2021.

In a preliminary overpayment determination dated April 16, 2021, OWCP notified appellant of its preliminary finding that she had received a \$3,096.46 overpayment of schedule award compensation for the period February 28 through March 27, 2021 because it had issued an “extra,” full schedule award payment. It advised her of its preliminary determination that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method and informed her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records supporting income and expenses. Additionally, OWCP provided an overpayment action request form and 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 preresumption hearing.

In a May 10, 2021 overpayment action request form, appellant requested waiver of recovery of the overpayment, noting that OWCP had found her without fault in the creation of the overpayment. In an OWCP-20 form of even date, she listed monthly income of \$2,601.91, monthly expenses of \$2,442.65, and assets in cash, checking, and savings accounts totaling \$8,123.00. Appellant asserted that she needed to use the money in her savings account for tax and home expenses. She indicated that she had no dependents.

By decision dated September 29, 2021, OWCP finalized its preliminary overpayment determination, finding that appellant had received a \$3,096.46 overpayment of schedule award compensation because it paid her an extra, full schedule award payment. It noted that her schedule award ended on March 5, 2021. OWCP advised that it had issued a schedule award payment for the period February 28 through March 5, 2021, but that, due to technical error, it had subsequently issued an additional full schedule award payment for the period February 28 through

² Under OWCP File No. xxxxxx129, on April 6, 1998 Dr. Henry Mobley, an internist serving as a district medical adviser, found that appellant had 10 percent permanent impairment of the right upper extremity.

March 27, 2021. It denied waiver of recovery of the overpayment, finding that appellant had sufficient assets to repay the debt. OWCP required recovery of the overpayment by directing her to submit repayment for the full amount within 30 days of the date of the decision.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA³ and its implementing regulations⁴ 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.⁵ FECA provides for 312 weeks' of compensation for 100 percent loss or loss of use of an upper extremity⁶ and the implementing regulations provides that compensation for proportionate periods of time is payable for partial loss.⁷

OWCP's procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of schedule award compensation in the amount of \$3,096.46 for the period February 28 through March 27, 2021 for which she was without fault.

On December 23, 2020 OWCP granted appellant a schedule award for an additional 11 percent permanent impairment of the right upper extremity. The period of the award ran for 34.32 weeks from July 8 to March 5, 2021. The Board notes 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. OWCP paid appellant schedule award compensation for 34.32 weeks, from July 8 through March 5, 2021. It subsequently issued an extra schedule award payment covering the period February 28 through March 27, 2021 in the amount of \$3,096.46. Appellant was not entitled to the \$3,096.46 payment as she had already been fully compensated for the schedule award.⁹ Consequently, she received an overpayment of compensation in the amount of \$3,096.46 for the period February 28 through March 27, 2021.¹⁰ The Board, thus, finds that OWCP properly determined the fact and amount of overpayment.

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.*

⁶ 5 U.S.C. § 8107(c)(2).

⁷ *Supra* note 4.

⁸ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1f(1)(i) (September 2020); *see T.C.*, Docket No. 20-0302 (issued November 12, 2020).

⁹ *See T.S.*, Docket No. 19-1895 (issued September 22, 2020); *M.J.*, Docket No. 19-1665 (issued July 29, 2020).

¹⁰ *See S.L.*, Docket No. 21-0902 (issued December 22, 2021).

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA 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.¹¹

Recovery of an overpayment will defeat the purpose of FECA when such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹² An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹³ Also, 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.¹⁴ An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.¹⁵

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 in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁶ OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.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. This information is needed to determine whether recovery of an overpayment would defeat the

¹¹ 5 U.S.C. § 8129.

¹² 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2)(3) (September 2020).

¹³ *Id.* at Chapter 6.400.4(a)(3); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁴ *Id.* at Chapter 6.400.4(a)(2).

¹⁵ *Id.* at Chapter 6.400.4(b)(3)

¹⁶ 20 C.F.R. § 10.437(a)(b); *E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁷ *Supra* note 12 at Chapter 6.400.4c(3).

purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

OWCP found appellant without fault in the creation of the overpayment; however, 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.¹⁹

On May 10, 2021 appellant submitted a completed Form OWCP-20 detailing her income, assets, and expenses. She indicated that she had no dependents and had assets in cash, checking, and savings accounts totaling \$8,123.00. The Board finds that appellant's assets of \$8,123.00 exceed the resource base of \$6,200.00 for an individual without dependents, as provided in OWCP's procedures.²⁰ As appellant has not met the second prong of the two-prong test for determining whether recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider the first prong of the test, *i.e.*, whether she needs substantially all of her current income to meet ordinary and necessary living expenses.²¹ She has not established that she was entitled to waiver on the basis of defeating the purpose of FECA.²²

Additionally, the evidence does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant has not submitted evidence to substantiate that she would experience severe financial hardship in attempting to repay the debt, or that in reliance on such payment she gave up a valuable right or changed her position for the worse. Therefore, OWCP properly found that recovery of the overpayment would not be against equity and good conscience.²³

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, and thus the Board finds that OWCP properly denied waiver of recovery of the overpayment.

On appeal, appellant contends that she has experienced severe financial hardship repaying the debt and argues that she was without fault in the creation of the overpayment. A finding that she was without fault does not automatically result in waiver of recovery of the overpayment.²⁴

¹⁸ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁹ *Id.* at § 10.436.

²⁰ *Supra* note 12; *see also T.C.*, Docket No. 21-0612 (issued December 2, 2021).

²¹ *See S.W.*, Docket No. 20-0363 (issued November 23, 2020); *M.H.*, Docket No. 19-1497 (issued September 9, 2020).

²² *N.B.*, Docket No. 20-0727 (issued January 26, 2021); *R.D.*, Docket No. 19-1598 (issued April 17, 2020).

²³ *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *V.T.*, Docket No. 18-0628 (issued October 25, 2018).

²⁴ *See A.F.*, Docket No. 20-0842 (issued February 2, 2021); *L.G.*, Docket No. 19-1274 (issued July 10, 2020).

As explained, OWCP properly denied waiver of recovery as it would not defeat the purpose of FECA or be against equity and good conscience.²⁵

CONCLUSION

The Board finds that appellant received an overpayment of schedule award compensation in the amount of \$3,096.46 for the period February 28 through March 27, 2021 for which she was without fault. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

²⁵ With respect to recovery of the overpayment of compensation, the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA. As appellant is no longer receiving wage-loss compensation, the Board does not have jurisdiction with respect to the recovery of the overpayment under the Debt Collection Act. *R.W.*, Docket No. 18-1059 (issued February 6, 2019); *Cheryl Thomas*, 55 ECAB 610 (2004).