

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

A.B., Appellant)	
)	
and)	Docket No. 23-0197
)	Issued: August 1, 2023
U.S. POSTAL SERVICE, DECATUR MAIN)	
POST OFFICE, Decatur, GA, 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, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 22, 2022 appellant filed a timely appeal from a May 31, 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 appellant received an overpayment of compensation in the amount of \$3,766.15 for the period February 28 through March 27, 2021, for which he was without fault, because he received schedule award compensation to which he was not entitled; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 21, 2018 appellant, then a 64-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day he sustained a swollen left knee, sore left ankle, and right shoulder ligament damage when he slipped and fell on wet pavement and debris when delivering a parcel while in the performance of duty. OWCP accepted the claim for left knee sprain, right rotator cuff tendon, and muscle strain, complete right rotator cuff tear, and left ankle ligament sprain. It paid appellant wage-loss compensation through January 8, 2020.

By decision dated December 16, 2020, OWCP granted appellant a schedule award for 12 percent permanent impairment of the right arm. The period of the award ran for 37.44 weeks from June 26, 2020 to March 15, 2021. It noted that appellant would initially be paid \$21,633.19 for the period June 26 through December 5, 2020 and then \$3,716.13 every four weeks thereafter.

On January 2, 2021 OWCP issued a schedule award payment in the amount of \$3,716.13 for the period December 6, 2020 through January 3, 2021. On January 30, 2021 it issued a schedule award payment in the amount of \$3,716.13 covering the period January 3 through 30, 2021. On February 27, 2021 OWCP issued a schedule award payment in the amount of \$3,716.13 covering the period January 31 through February 27, 2021. On March 26, 2021 it issued payment for a schedule award in the amount of \$2,029.32 covering the period February 28 through March 15, 2021.

On March 27, 2021 OWCP issued a schedule award payment for the period February 28 through March 27, 2021 in the amount of \$3,766.15.

On April 16, 2021 OWCP notified appellant of its preliminary overpayment determination that he had received an overpayment in the amount of \$3,766.15 for the period February 28 through March 27, 2021 because it issued an extra schedule award payment. It further advised him of its determination that he 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 recovery method and informed him that he could request waiver of recovery of the overpayment. It further requested that he 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, he could request a final decision based on the written evidence, or a precoupment hearing.

On March 25, 2022 OWCP advised appellant that the April 16, 2021 preliminary overpayment determination contained a calculation error in the amount of the debt. Therefore, it informed appellant that the April 16, 2021 preliminary overpayment determination was rescinded and cancelled and that a new preliminary overpayment determination would be issued with the correct overpayment amount.

In an April 26, 2022 corrected schedule award determination, OWCP informed appellant that he should have been paid schedule award compensation in the amount of \$35,613.37 for the period June 26, 2020 through March 5, 2021. It noted that appellant was entitled to cost-of-living

adjustments to his weekly compensation. Therefore, OWCP found appellant was entitled to an additional payment of \$802.47.

In an April 27, 2022 memorandum to file, OWCP noted that an extra payment of \$3,766.15 had been issued for the period February 28 through March 27, 2021. It therefore found that a \$3,766.15 overpayment of compensation had been created during the period February 28 through March 27, 2021.

On April 27, 2022 OWCP notified appellant of its preliminary overpayment determination that he had received an overpayment in the amount of \$3,766.15 for the period February 28 to March 27, 2021 because it had issued an extra schedule award payment. It advised him of its determination that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed Form OWCP-20 to determine a reasonable recovery method and informed him that he could request waiver of recovery of the overpayment. It further requested that he 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, he could request a final decision based on the written evidence or a precoupment hearing.

On May 21, 2022 appellant requested waiver of recovery of the overpayment. In a completed Form OWCP-20 dated May 21, 2022, he reported total monthly income of \$5,515.00; total monthly expenses of \$3,585.00 and total assets of \$5,300.00. Appellant also noted that he needed to purchase a new roof for his home, which would cost \$5,000.00, and a new automobile. He requested a precoupment hearing. Appellant submitted a copy of an April 2022 statement from the Atlanta Postal Credit Union.

By decision dated May 31, 2022, OWCP finalized its preliminary overpayment determination, finding that appellant had received a \$3,766.15 overpayment of a schedule award compensation because it issued an extra schedule award. It found him without fault in the creation of the overpayment, but denied waiver of recovery. OWCP required recovery of the overpayment by payment in-full within 30 days.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA² and its implementing regulations³ 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.⁴ FECA provides for 312 weeks of compensation for 100

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.*

percent loss or loss of use of an upper extremity⁵ and the implementing regulations provide that compensation for proportionate periods of time is payable for partial loss.⁶

OWCP's procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,766.15 during the period February 28 through March 27, 2021, for which he was without fault, as he received schedule award compensation to which he was not entitled.

On December 16, 2020 OWCP granted appellant a schedule award for 12 percent permanent impairment of the right arm. The period of the award ran for 37.44 weeks from June 26, 2020 through March 15, 2021. Following the initial payment of \$21,633.19 for the period June 26 through December 5, 2020, OWCP was to pay appellant \$3,716.13 every four weeks thereafter until the expiration of the schedule award. On January 2, 2021 it issued a schedule award payment in the amount of \$3,716.13 for the period December 6, 2020 through January 3, 2021. On January 30, 2021 OWCP issued a schedule award payment in the amount of \$3,716.13 covering the period January 3 through 30, 2021. On February 27, 2021 it issued a schedule award payment in the amount of \$3,716.13 covering the period January 31 through February 27, 2021. On March 26, 2021 OWCP issued a schedule award payment in the amount of \$2,029.32 covering the period February 28 through March 15, 2021. It, however, subsequently issued an extra schedule award payment covering the period February 28 through March 27, 2021 in the amount of \$3,766.15. Appellant was not entitled to the \$3,766.15 payment as he had already been fully compensated for the schedule award.⁸ Consequently, he received an overpayment of compensation in the amount of \$3,766.15 for the period February 28 through March 27, 2021.⁹ The Board thus finds that OWCP properly determined the fact, period, and amount of the overpayment.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA¹⁰ 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

⁵ 5 U.S.C. § 8107(c)(2).

⁶ *Supra* note 2.

⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1f(1)(i) (September 2020); *see V.R.*, Docket No. 22-0086 (issued May 3, 2022); *T.C.*, Docket No. 20-0302 (issued November 12, 2020).

⁸ *See T.S.*, Docket No. 19-1895 (issued September 22, 2020); *M.J.*, Docket No. 19-1665 (issued July 29, 2020).

⁹ *See V.R.*, *supra* note 7; *S.L.*, Docket No. 21-0902 (issued December 22, 2021).

¹⁰ 5 U.S.C. § 8129.

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.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

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

¹¹ *R.K.*, Docket No. 22-1193 (issued December 14, 2022); *I.R.*, Docket No. 22-0088 (issued May 5, 2022); *G.L.*, Docket No. 19-0297 (issued October 23, 2019).

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).

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.¹⁸

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.¹⁹ Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.²⁰

In its preliminary overpayment determination dated April 27, 2022, OWCP explained the importance of providing the completed overpayment recovery questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support appellant's reported income and expenses. On May 21, 2022 appellant requested waiver of recovery of the overpayment. In a completed Form OWCP-20 dated May 21, 2022, he reported total monthly income of \$5,515.00 and total monthly expenses of \$3,585.00. An individual is deemed to need substantially all of his or her monthly income to meet current and ordinary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.²¹ As appellant's reported income exceeds his reported ordinary and necessary living expenses by more than \$50.00, he does not need substantially all of his income for ordinary and necessary living expenses such that recovery would defeat the purpose of FECA.²²

Additionally, the evidence of record does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant submitted no evidence that he relied upon the incorrect payments to his detriment or that he would experience severe financial hardship attempting to repay the debt.²³ Consequently, OWCP properly denied waiver of recovery of the overpayment.

¹⁸ 20 C.F.R. § 10.438.

¹⁹ *Id.* at § 10.436.

²⁰ *Id.*

²¹ *Supra* note 13; *see also E.C.*, Docket No. 23-0089 (issued June 13, 2023); *M.P.*, Docket No. 18-0902 (issued October 16, 2018); *Desiderio Martinez*, 55 ECAB 336 (2004).

²² *See A.S.*, Docket No. 22-0384 (issued March 13, 2023); *V.G.*, Docket No. 20-1520 (issued September 21, 2021); *see also M.C.*, Docket No. 19-0699 (issued February 12, 2020). As appellant's income exceeds her ordinary and necessary living expenses by more than \$50.00, it is not necessary for OWCP to consider whether her assets exceed the allowable resource base. *See J.W.*, Docket No. 16-1355 (issued January 10, 2017).

²³ 20 C.F.R. § 10.437; *see also D.C.*, Docket No. 17-0559 (issued June 21, 2018).

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$3,766.15 for the period February 28 through March 27, 2021, for which he was without fault, because he received schedule award compensation to which he was not entitled. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 2023
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