

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

T.G., Appellant)	
)	
and)	Docket No. 23-0332
)	Issued: August 2, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
West Allis, WI, 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 January 4, 2023 appellant filed a timely appeal from a November 7, 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 \$3,142.47, for the period February 21, 2021 through August 13, 2022, for which he was without fault, because he improperly received wage-loss compensation at an augmented compensation rate; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$ 770.98 from appellant's continuing compensation payments every 28 days.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 15, 2000 appellant, then a 45-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that on May 18, 2000 he first realized that his bilateral knee problems were employment related.² OWCP accepted the claim for bilateral complete tear of the lateral medial meniscus, and chronic pain syndrome.³ The record reflects that it paid appellant wage-loss compensation on the periodic rolls commencing June 16, 2002.

The case record contains several Form EN-1032 documents, in which OWCP informed appellant that the basic rate of compensation was 66 2/3 percent of the applicable pay rate if he had no eligible dependents within the meaning of FECA. OWCP further noted that compensation was payable at 75 percent of the applicable pay rate if he had one or more eligible dependents. It informed appellant that he could claim additional compensation for a dependent if he had a spouse who was a member of his household or, under specified circumstances, a child or parent dependent upon his support. OWCP paid appellant at the augmented rate, based on his wife as a claimed dependent. Appellant completed EN-1032 forms between July 15, 2002 and August 21, 2020.

In a memorandum of telephone call (Form CA-110) dated March 4, 2021, appellant informed OWCP that his wife passed away on February 20, 2021.

In EN-1032 forms, signed on August 22, 2021 and September 4, 2022, appellant advised OWCP that his wife had passed away on February 20, 2021 and he, therefore, no longer had a dependent for pay rate purposes.

In an October 3, 2022 notice, OWCP advised appellant of its preliminary overpayment determination that he had received an overpayment of compensation in the amount of \$3,142.47, for the period February 21, 2021 through August 13, 2022, because he received augmented compensation at the 75 percent pay rate to which he was not entitled. It provided a calculation of the overpayment, noting that appellant had a weekly pay rate of \$766.67 and that proper application of the 66 2/3 pay rate reflected that he was entitled to \$56,193.00 for the period February 21, 2021 through August 12, 2022. However, appellant actually received \$59,335.47 for this period. OWCP found a \$3,142.47 overpayment by subtracting \$56,193.00 from \$59,335.47. It found that appellant was without fault in the creation of the overpayment, because he promptly informed OWCP that his spouse had passed away within 90 days of her death. OWCP provided an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) for his completion and advised that, in order for OWCP to consider the question of waiver or to determine a reasonable method for collection, he must provide a completed Form OWCP-20 and attach supporting financial documentation. It requested that appellant complete the enclosed Form OWCP-20 and submit supporting financial documentation including copies of income tax

² Appellant related that his knee conditions were directly related to his accepted claim in OWCP File No. xxxxxx436 as his bilateral foot conditions were now affecting his knees.

³ OWCP assigned OWCP File No. xxxxxx882 to this claim. It noted that the accepted conditions were consequential and secondary to a bilateral foot condition accepted under OWCP File No. xxxxxx436. Under OWCP File No. xxxxxx436, OWCP accepted appellant's occupational disease claim for bilateral metatarsalgia, bilateral plantar fasciitis and bilateral ankle and tarsus enthesopathy. OWCP combined OWCP File No. xxxxxx436 with OWCP File No. xxxxxx882, with the latter designated as the master file number.

returns, bank account statements, bills and canceled checks, pay slips, and any other records supporting his reported income and expenses. Additionally, it notified him that, within 30 days of the date of the letter, he could request a final decision based on the written record or a precouplement hearing. No response was received.

By decision dated November 7, 2022, OWCP finalized the preliminary overpayment determination, finding that an overpayment in the amount of \$3,142.47 had occurred because appellant continued to receive compensation at the augmented rate after his spouse had passed away on February 20, 2021. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, noting that he had not responded to the October 3, 2022 preliminary overpayment determination. As of November 7, 2022 appellant received net FECA compensation in the amount of \$3,083.90. OWCP required recovery by deducting \$770.98 from his continuing FECA 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.⁴ 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.⁵

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.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$3,142.37 for the period February 21, 2021 through August 13, 2022, for which he was without fault, because he improperly received wage-loss compensation at an augmented compensation rate.

For the period February 21, 2021 through August 13, 2022 appellant received augmented compensation at the 75 percent pay rate to which he was not entitled because his wife had passed away on February 20, 2021 and, as such, he no longer had a dependent within the meaning of FECA.⁷ OWCP provided a calculation of the overpayment, noting that appellant had a weekly pay rate of \$766.67 and that proper application of the 66 2/3 pay rate meant that he was entitled to

⁴ *Supra* note 1 at § 8102(a).

⁵ A.A., Docket No. 22-0751 (issued December 12, 2022); 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).

⁶ A.A., *id.*; S.D., Docket No. 17-0309 (issued August 7, 2018); *Ralph P. Beachum, Sr.*, 55 ECAB 442, 445 (2004).

⁷ *Supra* notes 5 and 6.

\$56,193.00 for the period February 21, 2021 through August 13, 2022. It properly determined that the difference yielded an overpayment of compensation in the amount of \$3,142.47. The Board thus finds that OWCP properly determined the fact, period, and amount of the overpayment in this case.⁸

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.⁹

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.¹⁰ 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 \$50.00.¹¹ 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.¹² 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.¹³

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.¹⁴ 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

⁸ *P.M.*, Docket No. 20-1262 (issued October 15, 2021); *O.B.*, Docket No. 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).

⁹ 5 U.S.C. § 8129.

¹⁰ 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).

¹¹ *Id.* at Chapter 6.400.4a(3); *R.R.*, Docket No. 22-1055 (issued January 17, 2023); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹² *Id.* at Chapter 6.400.4a(2).

¹³ *Id.* at Chapter 6.400.4a(3).

¹⁴ 20 C.F.R. § 10.437(a)-(b); *R.R.*, *supra* note 11; *E.H.*, Docket No. 18-1009 (issued January 29, 2019).

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.¹⁵

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 or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.¹⁶ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁷

ANALYSIS -- ISSUE 2

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

The fact that a claimant is without fault in the creation of an overpayment does not preclude OWCP from recovering the overpayment.¹⁸ 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, has the responsibility to provide the appropriate financial information and documentation to OWCP.²⁰

In its October 3, 2022 preliminary overpayment determination, OWCP explained the importance of providing the completed Form OWCP-20 and supporting financial information. It advised appellant that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant did not respond to the preliminary overpayment determination before OWCP issued its final overpayment determination on November 7, 2022. 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.²¹

¹⁵ *Supra* note 10 at Chapter 6.400.4c(3).

¹⁶ 20 C.F.R. § § 10.438(a); *R.R.*, *supra* note 11; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁷ *Id.* at § 10.438.

¹⁸ *See R.R.*, *supra* note 11; *W.H.*, Docket No.21-0490 (issued July 12, 2022); *George A. Rodriguez*, 57 ECAB 224 (2005); *Joyce O. Diaz*, 51 ECAB 124 (1999).

¹⁹ 20 C.F.R. § 10.436.

²⁰ *Id.* at § 10.438; *see also R.R.*, *supra* note 11; *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

²¹ *B.A.*, Docket No. 20-0947 (issued July 15, 2021); *B.G.*, Docket No. 20-0541 (issued April 28, 2021); *G.G.*, Docket No. 19-0684 (issued December 23, 2019).

As appellant did not submit the information required under 20 C.F.R. § 10.438, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.²²

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.²³

Section 10.441(a) of OWCP's regulations²⁴ 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.²⁵

“When an individual fails to provide requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines. OWCP's procedures provide 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.”²⁶

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required repayment of the overpayment by deducting \$770.98 from appellant's compensation payments every 28 days.

OWCP's regulations provide that the overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²⁷ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁸

²² *W.H.*, Docket No. 21-0490 (issued July 12, 2022); *B.A.*, *id.*; *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

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

²⁴ *Id.* at § 10.441(a).

²⁵ *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²⁶ Federal (FECA) Procedure Manual, *supra* note 10 at Chapter 6.500.8c(1) (September 2018).

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

²⁸ *See id.*; *see also A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

OWCP provided appellant a Form OWCP-20 with its October 3, 2022 preliminary overpayment determination and afforded him the opportunity to provide appropriate financial information and documentation.²⁹ Appellant did not complete the Form OWCP-20 prior to the November 7, 2022 final overpayment decision.

The record establishes that as of November 7, 2022 appellant received net FECA compensation in the amount of \$3,083.90. 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 25 percent rate of \$770.98 every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,142.47 for the period February 21, 2021 through August 13, 2022, for which he was without fault, because he improperly received wage-loss compensation at an augmented compensation rate. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and required recovery by deducting \$770.98 from his continuing compensation payments every 28 days.

²⁹ 20 C.F.R. § 10.438.

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2023
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