

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

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<b>A.N., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-0350</b>
	)	<b>Issued: April 8, 2024</b>
<b>DEPARTMENT OF THE NAVY,</b>	)	
<b>PORTSMOUTH NAVAL SHIPYARD,</b>	)	
<b>Kittery, ME, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 10, 2023 appellant filed a timely appeal from a December 8, 2022 and two December 16, 2022 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 OWCP properly determined that appellant abandoned his request for a prerecoupment hearing; (2) whether appellant received an overpayment of compensation in the amount of \$2,151.63 for the period November 16 through December 4, 2021, for which he was without fault, and whether he received an overpayment of compensation in the amount of \$3,170.82 for the period December 5, 2021 through January 1, 2022, for which he was at fault, because he continued to receive total disability compensation after he returned to work; (3) whether OWCP properly denied waiver of recovery of the \$2,151.63 overpayment; and

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

(4) whether OWCP properly determined that appellant was at fault in the creation of the \$3,170.82 overpayment, thereby precluding waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On July 30, 2021 appellant, then a 35-year-old rigger, filed a traumatic injury claim (Form CA-1) alleging that on July 22, 2021 he injured his left knee when he fell through a hole while in the performance of duty. He stopped work on the claimed date of injury. OWCP accepted the claim for strain of anterior cruciate ligament (ACL) of left knee. Appellant underwent OWCP-authorized left knee ACL reconstruction on September 30, 2021. OWCP paid him wage-loss compensation on the supplemental rolls on September 6, 2021, and on the periodic compensation rolls from October 10, 2021 through January 1, 2022.

In a letter, Form EN-1049, dated October 22, 2021, OWCP notified appellant that he would be receiving compensation payments on the periodic compensation rolls as of October 10, 2021. It advised him of his responsibility to return to work in connection with the accepted employment injury. To minimize the possibility of an overpayment of compensation, OWCP instructed appellant to notify it immediately when he returned to work. For payments sent by electronic funds transfer (EFT), a notification of the date and amount of payment appeared on the statement from his financial institution. Appellant was expected to monitor his EFT deposits carefully, at least every two weeks. If he worked for any portion of the period for which a deposit was made, he was to advise OWCP immediately so that the overpayment could be collected. OWCP noted that appellant's first regular payment would be for the period October 10 to November 6, 2021 in the net amount of \$3,170.82.<sup>2</sup>

Appellant returned to full-time, modified-duty work on November 16, 2021.

On January 3, 2022 OWCP terminated appellant's periodic roll payments effective January 1, 2022.

In a notice dated June 28, 2022, OWCP advised appellant of its preliminary overpayment determination that an overpayment of compensation in the amount of \$2,151.63 had been created during the period November 16 through December 4, 2021, as it paid him temporary total wage-loss compensation after he returned to full-time, modified-duty work on November 16, 2021. It found that he was without at fault in the creation of the overpayment as he lacked the requisite knowledge to accept the resulting overpayment, noting that this was the first direct deposit of incorrect funds deposited into his account, and he could not have been reasonably aware or expected to know that it had incorrectly paid compensation. OWCP further found that appellant received \$3,170.82 every 28 days for the period November 7 through December 4, 2021, but was only entitled to 9 days of compensation as he returned to full-time work on November 16, 2021. It calculated that he was overpaid \$2,151.63 for the 19 days of nonentitlement. OWCP divided the amount received (\$3,170.82) by 28 days to equal daily rate (\$113.24) which it then multiplied by 19 (the days of nonentitlement) resulting in the \$2,151.63 overpayment. It requested that appellant complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit documentation including tax returns, bank account

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<sup>2</sup> OWCP paid appellant a net amount of \$3,850.28 for the period September 6 to October 9, 2021. Thereafter, appellant received regular compensation payments every 28 days in the net amount of \$3,170.82.

statements, bills, cancelled checks, pay slips, and other records which supported income and expenses listed. Additionally, OWCP advised him that, within 30 days of the date of the letter, he could request a final decision based on the written evidence or a prerecoument hearing. In a separate preliminary overpayment determination also dated June 28, 2022, it advised appellant that it overpaid him compensation in the amount of \$3,170.82 for the period December 5, 2021 through January 1, 2022, as he was paid temporary total wage-loss compensation after he returned to full-time, modified-duty work on November 16, 2021. OWCP found that he was at fault in the creation of the overpayment because he failed to monitor his EFT deposits and to provide immediate notification of his immediate return to work as instructed by the October 22, 2021 Form EN-1049 and, thus, he accepted a payment that he knew or reasonably should have known was incorrect. It provided appellant with an overpayment action request form and a Form OWCP-20 for his completion and requested that he submit supporting financial documentation. Additionally, OWCP informed him of the actions he could take and afforded him 30 days to respond.

On July 27, 2022 appellant completed an overpayment action request form requesting a prerecoument hearing before a representative of OWCP's Branch of Hearings and Review. Appellant believed that the overpayment occurred through no fault of his own and requested waiver of recovery of the overpayment. In a July 27, 2022 Form OWCP-20, he listed total monthly income of \$12,000.00. Appellant reported monthly expenses of \$5,000.00, which included \$1,100.00 for rent or mortgage, \$1,600.00 for food, \$500.00 for clothing, \$800.00 for utilities, and \$1,000.00 for other expenses. He reported no additional funds or assets. Appellant did not submit any supporting financial documentation.

In an October 17, 2022 letter, an OWCP hearing representative informed appellant that a telephonic hearing was scheduled for November 18, 2022 at 1:45 p.m. Eastern Standard Time (EST). The hearing notice included a toll-free number and pass code to enable access to the telephonic hearing. The hearing notice was mailed to appellant's address of record. Appellant did not appear at the hearing or request postponement of the hearing.

By decision dated December 8, 2022, an OWCP hearing representative found that appellant failed to attend the scheduled hearing and failed to request postponement of the hearing. The hearing representative, therefore, determined that appellant had abandoned his hearing. The hearing representative further finalized the preliminary overpayment determination that appellant received a \$2,151.63 overpayment from November 16 through December 4, 2021, and that he was without fault in the creation of the overpayment. The hearing representative, however, denied waiver of recovery of the overpayment. The hearing representative also finalized the preliminary overpayment determination that appellant received a \$3,170.82 overpayment from December 5, 2021 through January 1, 2022, and that he was at fault in the creation of the overpayment and, thus, precluded from waiver of recovery of the overpayment. The hearing representative required repayment of the overpayments in full.

By decision dated December 16, 2022, OWCP finalized the June 28, 2022 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$2,151.63 for the period November 16 through December 4, 2021, because he returned to full-time, modified-duty work on November 16, 2021, but continued to receive wage-loss compensation for temporary total disability through December 31, 2021. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP noted that

no response had been received to the preliminary overpayment determination and that appellant had not appeared at the scheduled prerecoupment hearing. It required recovery of the overpayment in full within 30 days. In a separate decision also dated December 16, 2022, OWCP finalized the second June 28, 2022 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$3,170.82 for the period December 5, 2021 through January 1, 2022 because he received total disability compensation after he returned to full-time, modified-duty work on November 16, 2021. It further found that he was at fault in the creation of the overpayment because he received a compensation payment deposited by EFT and over 30 days had elapsed since the EFT deposit was made, which allowed ample time to receive and review a statement from his financial institution showing the details of the improper payment. OWCP noted that appellant should have reasonably known that the payment was incorrect because the dates overlapped with a period that he worked. It required repayment of the overpayment in full amount within 30 days.

### **LEGAL PRECEDENT -- ISSUE 1**

A claimant dissatisfied with a decision on his or her claim is entitled, upon timely request, to a hearing before an OWCP representative.<sup>3</sup> Unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the time, place, and method of the oral hearing to the claimant and to any representative at least 30 days before the scheduled hearing date.<sup>4</sup>

A hearing before OWCP's Branch of Hearings and Review can be considered abandoned only under very limited circumstances.<sup>5</sup> With respect to abandonment of hearing requests, Chapter 2.1601.6g of OWCP's procedures<sup>6</sup> and section 10.622(f) of its regulations<sup>7</sup> provide in relevant part that failure of the claimant to appear at the scheduled hearing, failure to request a postponement, and failure to request in writing within 10 days after the date set for the hearing that another hearing be scheduled shall constitute abandonment of the request for a hearing. Under these circumstances, the Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the district office.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant abandoned his request for a prerecoupment hearing.

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<sup>3</sup> *Supra* note 1 at § 8124(b).

<sup>4</sup> 20 C.F.R. § 10.617(b).

<sup>5</sup> *R.L.*, Docket No. 20-0186 (issued September 14, 2020); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *Claudia J. Whitten*, 52 ECAB 483 (2001).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6g (October 2011).

<sup>7</sup> 20 C.F.R. § 10.622(f).

<sup>8</sup> *Id.*

On July 27, 2022 appellant requested a telephonic prerecoupment hearing before a representative of OWCP’s Branch of Hearings and Review. In an October 17, 2022 letter, OWCP provided his 30 days written notice of the hearing, which was scheduled for November 18, 2022 at 1:45 p.m. EST. It mailed the October 17, 2022 notice of hearing to appellant’s last known address of record, and it was not returned as undeliverable. Absent evidence to the contrary, a notice mailed in the ordinary course of business is presumed to have been received by the intended recipient.<sup>9</sup> The presumption is commonly referred to as the “mailbox rule.”<sup>10</sup> It arises when the record reflects that the notice was properly addressed and duly mailed.<sup>11</sup> The current record is devoid of evidence to rebut the presumption that appellant received OWCP’s October 17, 2022 notice of hearing.

The hearing notice was properly addressed to appellant’s last known address of record.<sup>12</sup> Appellant did not call-in as instructed for the November 18, 2022 scheduled telephonic hearing and there is no indication that he requested postponement of the telephonic hearing.<sup>13</sup> Moreover, he did not submit a written request within 10 days after the date set for the telephonic hearing and request that another telephonic hearing be scheduled. Under the circumstances, OWCP’s hearing representative properly found that appellant abandoned his telephonic hearing request.<sup>14</sup>

### **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.<sup>15</sup> Section 8129(a) of FECA provides, in pertinent part, that 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.<sup>16</sup> Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.<sup>17</sup> OWCP’s

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<sup>9</sup> *A.R.*, Docket No. 21-1000 (issued March 25, 2022); *C.Y.*, *supra* note 5; *Kenneth E. Harris*, 54 ECAB 502 (2003).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*; *K.F.*, Docket No. 17-1035 (issued August 24, 2017).

<sup>13</sup> 20 C.F.R. § 10.622(c).

<sup>14</sup> *A.R.*, *supra* note 9; *C.Y.*, *supra* note 5; *M.V.*, Docket No. 17-1795 (issued March 1, 2018).

<sup>15</sup> 5 U.S.C. § 8102(a).

<sup>16</sup> *Id.* at § 8129(a).

<sup>17</sup> *Id.* at § 8116(a).

procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,151.63 for the period November 16 through December 4, 2021, and in the amount of \$3,170.82 for the period December 5, 2021 through January 1, 2022 because he continued to receive total disability compensation after he returned to work. The record establishes that appellant returned to full-time, modified-duty work at the employing establishment on November 16, 2021. OWCP, however, continued to pay him wage-loss compensation for total disability through January 1, 2022. As noted above, appellant was not entitled to receive total disability benefits and actual earnings for the same time period.<sup>19</sup> Thus, an overpayment of compensation was created in this case.<sup>20</sup>

With regard to the amount of the overpayment, the Board finds that OWCP calculated appellant's net wage-loss compensation paid for the period November 16 through December 4, 2021 as \$2,151.63. OWCP properly noted that it paid him \$3,170.82 for the period November 16 through December 4, 2021 although he was not entitled to compensation for 19 days he worked during that period. OWCP divided the amount received, \$3,170.82, by 28 days to equal daily rate (\$113.24) which it then multiplied by 19 (the days of nonentitlement) resulting in the \$2,151.63 overpayment. It also properly calculated appellant's net wage-loss compensation paid for the period December 5, 2021 through January 1, 2022 as \$3,170.82. OWCP explained that on January 1, 2021 it issued a direct deposit payment of \$3,170.82 as wage-loss compensation for the period December 5, 2021 through January 1, 2022. The Board has reviewed these calculations and finds that OWCP properly determined that overpayments of \$2,151.63 for the period November 16 through December 4, 2021 and \$3,170.82 for the period December 5, 2021 through January 1, 2022 were created.<sup>21</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

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."<sup>22</sup>

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<sup>18</sup> *Supra* note 6 at Chapter 6.300.4g (September 2020); *see also D.L.*, Docket No. 20-1522 (issued July 27, 2023); *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *K.P.*, Docket No. 19-1151 (issued March 18, 2020).

<sup>19</sup> *See supra* note 6; 20 C.F.R. § 10.500(a); *see V.J.*, Docket No. 20-1335 (issued March 11, 2021); *D.L., id.*; *K.K.*, Docket No. 19-0978 (issued October 21, 2019); *E.V.*, Docket No. 17-1328 (issued December 11, 2017).

<sup>20</sup> *See T.H.*, Docket No. 23-0194 (issued July 17, 2023); *A.C.*, Docket No. 22-0118 (issued December 15, 2022).

<sup>21</sup> *See K.L.*, Docket No. 23-0149 (issued July 13, 2023); *T.H., id.*; *D.R.*, Docket No. 21-0234 (issued November 17, 2022).

<sup>22</sup> 5 U.S.C. § 8129(a)-(b); *see D.D.*, Docket No. 20-1522 (issued July 27, 2023); *R.Q.*, Docket No. 18-0964 (issued October 8, 2019); *D.C.*, Docket No. 7-0559 (issued June 21, 2018).

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his income (including compensation benefits) to meet current ordinary and necessary living expenses, and also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.<sup>23</sup>

Section 10.437 provides that 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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>24</sup>

Section 10.438 of 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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>25</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that appellant was not entitled to waiver of recovery of the \$2,151.63 overpayment for the period November 16 through December 4, 2021. As OWCP found him without fault in the creation of the \$2,151.63 overpayment for the period November 16 through December 4, 2021, 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.<sup>26</sup>

In its preliminary overpayment determination dated June 28, 2022, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial information. It advised him that waiver of recovery would be denied if he failed to furnish the requested financial information within 30 days. Appellant returned the Form OWCP-20 and reported total monthly income of \$12,000.00 and total monthly expenses of \$5,000.00. He did not submit any supporting financial documentation. While OWCP indicated that appellant had not responded to the preliminary overpayment determination, the Board notes that he did submit an incomplete Form OWCP-20. The form submitted reflected that his income exceeded his expenses by more than \$50.00, as his income exceeded his expenses by \$7,000.00 monthly. The evidence of record does

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<sup>23</sup> 20 C.F.R. § 10.436. OWCP's procedures provide that a claimant is deemed to need substantially all of his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Its procedures further provide that 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. *Supra* note 6 at Chapter 6.400.4a(2) and (3) (September 2020).

<sup>24</sup> *Id.* at § 10.437.

<sup>25</sup> *Id.* at § 10.438.

<sup>26</sup> *Id.* at § 10.436.

not demonstrate that appellant needed all of his income for ordinary and necessary living expenses.<sup>27</sup>

The Board further finds that appellant has not established that recovery of the overpayment would be against equity and good conscience because it has not been shown, for the reasons noted above, that he would experience severe financial hardship in attempting to repay the debt, or that a valuable right had been relinquished, or that a position had been changed for the worse in reliance on the payment, which created the overpayment.<sup>28</sup> Therefore, OWCP properly denied waiver of recovery of the \$2,151.63 overpayment.

#### **LEGAL PRECEDENT -- ISSUE 4**

Section 8129(b) of FECA provides as follows that 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.<sup>29</sup> No waiver of recovery of an overpayment is possible if the claimant is at fault in the creation of the overpayment.<sup>30</sup>

On the issue of fault, 20 C.F.R. § 10.433(a) provides that an individual is with fault in the creation of an overpayment who: (1) made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; (2) failed to furnish information which the individual knew or should have known to be material; or (3) with respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.<sup>31</sup>

With respect to whether an individual is without fault, section 10.433(b) of OWCP regulations provides that 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.<sup>32</sup>

The Board has held that an employee who receives payments from OWCP in the form of a direct deposit may not be at fault the first time incorrect funds are deposited into his or her

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<sup>27</sup> See *D.L.*, *supra* note 18.

<sup>28</sup> *D.L.*, *id.*; *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

<sup>29</sup> 5 U.S.C. § 8129(b).

<sup>30</sup> *S.S.*, Docket No. 20-0776 (issued March 15, 2021); *B.W.*, Docket No. 19-0239 (issued September 18, 2020); *R.G.*, Docket No. 18-1251 (issued November 26, 2019); *C.L.*, Docket No. 19-0242 (issued August 5, 2019).

<sup>31</sup> 20 C.F.R. § 10.433(a).

<sup>32</sup> *Id.* at § 10.433(b); *R.G.*, *supra* note 30; *C.L.*, *supra* note 30; *D.M.*, Docket No. 17-0983 (issued August 3, 2018); see also *supra* note 23 at Chapter 6.300.4(d) (September 2020).



account, as the acceptance of the resulting overpayment lacks the requisite knowledge.<sup>33</sup> The Board has also held in cases involving a series of incorrect payments, where the requisite knowledge is established by a letter or telephone call from OWCP, or simply with the passage of time and a greater opportunity for discovery, the claimant will be at fault for accepting the payments subsequently deposited.<sup>34</sup> Previous cases have held that receiving one or two erroneous direct deposit payments does not necessarily create the requisite knowledge to find that a claimant was at fault in the creation of the overpayment.<sup>35</sup>

#### **ANALYSIS -- ISSUE 4**

The Board finds that OWCP properly determined that appellant was at fault in the creation of the \$3,170.82 overpayment for the period December 5, 2021 through January 1, 2022, thereby precluding waiver of recovery of the overpayment. OWCP determined that he was without fault in the creation of the \$2,151.63 overpayment for the period November 16 through December 4, 2021 because the record did not establish that he had clear knowledge that the first direct deposit he received after he returned to work, which was made on December 4, 2021 was incorrect. It, however, determined that appellant was at fault in the creation of the overpayment resulting from the subsequent direct deposit payment in the amount of \$3,170.82 for the period December 5, 2021 through January 1, 2022. OWCP found that he received a compensation payment deposited by EFT and over 30 days had elapsed since the EFT deposit was made, which allowed ample time to receive and review a statement from his financial institution showing the details of the improper payment.

In an October 22, 2021 Form EN-1049 letter, OWCP notified appellant that, to avoid an overpayment of compensation, he must immediately notify it of his return to work and that he was required to reimburse OWCP for compensation paid during a period which he worked. It further informed him that he should monitor his EFT deposits carefully. Although OWCP may have been negligent in making incorrect payments, this does not excuse a claimant from accepting payments he or she knew or should have known to be incorrect.<sup>36</sup> In cases involving a series of incorrect payments, where the requisite knowledge is established by documentation from OWCP or simply with the passage of time and opportunity for discovery, the claimant will be at fault for accepting the payments subsequently deposited.<sup>37</sup> By the time of the payments covering the period December 5, 2021 through January 1, 2022, appellant knew or should have known that he was not entitled to receive wage-loss compensation for temporary total disability following his return to work. As he accepted a payment which he knew or should have known to be incorrect for the

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<sup>33</sup> *M.T.*, Docket No. 20-1353 (issued May 9, 2022); *R.S.*, Docket No. 20-0177 (issued September 3, 2021); *M.J.*, Docket No. 19-1665 (issued July 29, 2020); *C.H.*, Docket No. 19-1470 (issued January 24, 2020); *Tammy Craven*, 57 ECAB 689 (2006); *see also A.B.*, Docket No. 18-0922 (issued January 3, 2019).

<sup>34</sup> *Id.*

<sup>35</sup> *L.G.*, Docket No. 20-1342 (issued September 3, 2021); *V.S.*, Docket No. 13-1278 (issued October 23, 2013).

<sup>36</sup> *See G.H.*, Docket No. 22-0890 (issued January 9, 2023); *M.T.*, *supra* note 33; *C.G.*, Docket No. 15-0701 (issued December 9, 2015).

<sup>37</sup> *See G.H.*, *id.*; *C.W.*, Docket No. 19-1653 (issued March 23, 2021); *S.D.*, Docket No. 17-0309 (issued August 7, 2018).

period December 5, 2021 through January 1, 2022, the Board finds that OWCP properly found that he was at fault in the creation of the overpayment for this period.<sup>38</sup>

**CONCLUSION**

The Board finds that OWCP properly determined that appellant abandoned his request for a prerecoupment hearing. The Board further finds that he received an overpayment of compensation in the amount of \$2,151.63 for the period November 16 through December 4, 2021, and in the amount of \$3,170.82 for the period December 5, 2021 through January 1, 2022, for which he was without fault, because he continued to receive total disability compensation after he returned to work. The Board also finds that OWCP properly denied waiver of recovery of the \$2,151.63 overpayment. Lastly, the Board finds that OWCP properly determined that appellant was at fault in the creation of the \$3,170.82 overpayment, thereby precluding waiver of recovery of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 8 and 16, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 8, 2024  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>38</sup> See *G.H., id.*; *L.G., supra* note 35; *V.S., supra* note 35; *J.K.*, Docket No. 20-0606 (issued March 11, 2021).