



December 29, 2016 because she received travel reimbursements to which she was not entitled and (2) whether OWCP properly found that appellant was at fault in creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

This case has previously been before the Board on different issues.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decisions and order are incorporated herein by reference. The relevant facts are as follows.

On February 2, 1996 appellant, then a 39-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained injuries when she was involved in a motor vehicle accident while in the performance of duty. OWCP accepted the claim for cervical strain, left leg contusion, and left wrist fracture. It subsequently expanded the acceptance of the claim to include panic disorder. Appellant stopped work in October 2001 that she developed panic attacks, stress, and bipolar disorder when she attempted to drive her postal route after the work-related motor vehicle accident on February 2, 1996. She noted that she first became aware of her condition on February 2, 1996 and realized its relation to her federal employment on October 22, 2001. OWCP assigned OWCP Filed No. xxxxxx341. On May 24, 2004 an OWCP hearing representative affirmed a decision dated September 26, 2003 denying appellant's claim for compensation.<sup>4</sup>

An investigative report from the employing establishment's Office of the Inspector General (OIG) dated October 23, 2018 analyzing appellant's compensation payments, including travel reimbursements, for the period January 1, 2010 through December 29, 2016 noted that appellant received an unusual amount in mileage reimbursement funds related to her workers' compensation claim. During the course of the investigation, it was determined that she submitted over 800 requests for reimbursement for travel, during the period January 1, 2010 through December 29, 2016, where there were no corresponding medical services, appliances, supplies, or charges from approved medical providers associated with the travel dates. The report noted that appellant admitted that she should not have received mileage reimbursements for unauthorized medical appointments.

The OIG found that the total amount of fraudulent mileage reimbursement funds appellant received was \$17,676.41 during the period January 1, 2010 through December 29, 2016. Under "Table 1 -- Total Paid to [Appellant] for Medical Travel by Calendar Year" for the period 2010 through 2016, it noted total reimbursements as \$17,732.35. For 2010, OIG indicated that appellant

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<sup>3</sup> Docket No. 05-0889 (issued September 29, 2005); *Order Granting Remand and Cancelling Oral Argument*, Docket No. 06-1133 (issued November 1, 2006); Docket No. 09-0888 (issued May 25, 2010).

<sup>4</sup> OWCP assigned the present claim OWCP File No. xxxxxx811. On November 4, 2002 appellant filed an occupational disease claim (Form CA-2) alleging that she developed panic attacks, stress, and bipolar disorder when she attempted to drive her postal route after the work-related motor vehicle accident on February 2, 1996. She noted that she first became aware of her condition on February 2, 1996 and realized its relation to her federal employment on October 22, 2001. OWCP assigned that claim OWCP File No. xxxxxx341, but denied it by decision dated September 26, 2003. It has administratively combined OWCP File Nos. xxxxxx811 and xxxxxx341, with xxxxxx811 serving as the master file.

had received a total fraudulent amount of approximately \$4,954.50, for 2011 OIG concluded that appellant received \$3,379.40 in reimbursement requests for which she was not entitled. OIG found that appellant erroneously received \$4,397.90 in 2012; \$1,410.29 in 2013; \$1,705.56 in 2014, \$915.40 in 2015; and \$969.30 in 2016.

On April 3, 2020 OIG submitted copies of appellant's medical travel refund requests (Form OWCP-957s) for the period January 11, 2010 through June 20, 2016.

On October 1, 2020 OWCP received a large spreadsheet entitled "Exhibit 2" which listed appellant's dates of service for the period January 13, 2010 through December 29, 2016, along with the corresponding payee, address where appellant traveled from, address where appellant traveled to, round trip mileage claimed, round trip mileage allowed, and the amount that OWCP paid for appellant's mileage claims. However, the entries for multiple dates of service, including dates during the period July 6 through December 29, 2016, were left incomplete as they did not include appellant's signature date, the address of where she traveled to, the round trip mileage claimed, and/or the round trip mileage allowed. The total amount paid for the period January 13, 2010 through December 29, 2016 was noted as \$17,730.09.

In a letter dated January 15, 2021, OIG provided records of payments to appellant as reimbursement for travel during the period February 4, 2010 through February 2, 2017. For the period February 4 through July 8, 2010 appellant received \$11,625.75. For the period February 3 through December 22, 2011 appellant received \$7,770.05. For the period January 12 through December 27, 2012 appellant received \$11,912.50. For the period January 17 through December 26, 2013 appellant received \$5,668.00. For the period January 9 through September 4, 2014 appellant received \$1,810.63. For the period February 19 through September 10, 2015 appellant received \$2,373.25. For the period January 21 through October 6, 2016 appellant received \$1,627.20. For the period January 12 through February 2, 2017 appellant received \$669.06.

On December 20, 2021 OWCP notified appellant of its preliminary overpayment determination that appellant received a \$17,730.00 overpayment of compensation because she received travel reimbursements for the period January 1, 2010 through December 29, 2016 to which she was not entitled. It noted that a review and audit of travel reimbursement forms and payments showed that \$17,730.00 was paid as reimbursement for claimed travel expenses for medical treatment that never occurred. OWCP referenced an attached spreadsheet used to calculate the overpayment. It related that it appeared appellant was at fault in the creation of the overpayment because she knowingly received payments for reimbursement for travel expenses for which she knew, or should have known, were incorrect. OWCP advised appellant to complete an accompanying overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, it advised that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a prerecoupment hearing. No response was received.

By decision dated January 27, 2022, OWCP finalized its determination that appellant received an overpayment of compensation in the amount of \$17,730.00, for which she was at fault, because she received travel reimbursements for the period January 1, 2010 through December 29, 2016 to which she was not entitled. It required recovery of the overpayment in full.

### LEGAL PRECEDENT -- ISSUE 1

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.<sup>5</sup>

With respect to travel expenses for medical treatment, OWCP's regulations provide:

“(a) The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what a reasonable distance to travel is, OWCP will consider the availability of services, the employee's condition, and the means of transportation. Generally, a roundtrip distance of up to 100 miles is considered a reasonable distance to travel. Travel taken by the shortest route, and if practical, by public conveyance. If the medical evidence shows that the employee is unable to use these means of transportation, OWCP may authorize travel by taxi or special conveyance.”<sup>6</sup>

In interpreting section 8103(a) of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP's authority is that of reasonableness.<sup>7</sup>

### ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation because she received reimbursements for travel to which she was not entitled.

OWCP accepted appellant's claim for cervical strain, left leg contusion, left wrist fracture, and panic disorder. Appellant subsequently requested reimbursement for travel related to medical treatment. OWCP approved her claims for reimbursement of travel during periods, including January 1, 2010 through December 29, 2016 and paid her accordingly. An OIG investigation dated October 23, 2018, however, revealed that claims for travel during the period January 1, 2010 through December 29, 2016 were improperly paid as there was no evidence of corresponding medical services, appliances, supplies, or charges from approved medical providers associated with the claimed travel dates. As the case record establishes that at least some of the claimed travel dates were paid incorrectly, the Board finds that an overpayment of compensation was created.

The Board further finds, however, that the case is not in posture for decision with regard to the period and the amount of the overpayment. On October 1, 2020 OWCP received a large

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<sup>5</sup> 5 U.S.C. § 8103; *see Dona M. Mahurin*, 54 ECAB 309 (2003).

<sup>6</sup> 20 C.F.R. § 10.315(a).

<sup>7</sup> *R.L.*, Docket No. 08-0855 (issued October 6, 2008).

spreadsheet entitled “Exhibit 2” which listed appellant’s dates of service for the period January 13, 2010 through December 29, 2016, along with the corresponding payee, address where appellant traveled from, address where appellant traveled to, round trip mileage claimed, round trip mileage allowed, and the amount that OWCP paid for appellant’s mileage claims. However, the entries for multiple dates of service, including dates during the period July 6, 2016 through December 29, 2016, were left incomplete as they did not include appellant’s signature date, the address of where she traveled to, the round trip mileage claimed, and/or the round trip mileage allowed. The total amount paid for the period January 13, 2010 through December 29, 2016 was noted as \$17,730.09. Thus, it remains unclear whether OWCP properly determined the period and amount of the overpayment.

A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.<sup>8</sup> The case must therefore be remanded for OWCP to further explain its calculation of the amount of the overpayment.

On remand OWCP shall clarify the amount of the overpayment of compensation and thoroughly explain its calculations. It shall then issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, and instructions for appellant to provide the necessary financial information and supporting documentation. After this, and other such further development as deemed necessary, it shall issue a *de novo* decision.

### **LEGAL PRECEDENT -- ISSUE 2**

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.<sup>9</sup> 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.”<sup>10</sup> No waiver of payment is possible if the claimant is not “without fault” in helping to create the overpayment.<sup>11</sup>

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<sup>8</sup> *D.K.*, Docket No. 22-0736 (issued December 6, 2022); *R.B.*, Docket No. 20-0022 (issued October 28, 2020); *O.R.*, 59 ECAB 432 (2008).

<sup>9</sup> 5 U.S.C. § 8129(a).

<sup>10</sup> *Id.* at § 8129(b).

<sup>11</sup> *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *Robert W. O’Brien*, 36 ECAB 541, 547 (1985).

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....”<sup>12</sup>

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.”<sup>13</sup>

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

The Board finds that OWCP properly found appellant at fault in the creation of the overpayment of compensation, thereby precluding waiver of recovery of the overpayment.

OWCP properly determined that appellant was at fault in the creation of the overpayment because she accepted a payment which she knew or should have known was incorrect. As discussed above, the record supports that appellant improperly received reimbursements for travel to which she was not entitled. Although OWCP may have erred in issuing the travel reimbursement payments, this does not relieve appellant from her obligation to repay the overpayment. Fault can be established if the circumstances show that the claimant accepted a payment she should have known was incorrect.<sup>14</sup> It has been established that appellant has not substantiated that the claimed travel was for treatment of her accepted conditions. The report noted that appellant admitted that she should not have received mileage reimbursements for unauthorized medical appointments. Therefore, appellant knew that the medical reimbursements were incorrect.<sup>15</sup> Thus, OWCP properly found her at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

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<sup>12</sup> 20 C.F.R. § 10.433(a).

<sup>13</sup> *Id.* at § 10.433(c).

<sup>14</sup> *E.K.*, Docket No. 18-0599 (issued February 26, 2020); *P.B.*, Docket No. 17-1046 (issued January 2, 2018); *B.G.*, Docket No. 14-850 (issued September 17, 2014).

<sup>15</sup> *Id.*

**CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation because she received reimbursement for travel to which she was not entitled. The Board further finds, however, that this case is not in posture for decision with regard to the period and the amount of the overpayment. The Board also finds that OWCP properly found that appellant was at fault in creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 27, 2022 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 11, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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