

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

C.P., Appellant)	
)	
)	
and)	Docket No. 22-1248
)	Issued: June 14, 2024
U.S. POSTAL SERVICE, MORRIS POST)	
OFFICE, Morris, IL, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 25, 2022 appellant, through counsel, filed a timely appeal from an August 16, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the August 16, 2022 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$7,898.11 for the period June 6, 2019 through January 2, 2021, for which he was without fault, because he was paid augmented compensation when he had no dependent; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$138.46 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On December 13, 2013 appellant then a 42-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 12, 2013 he sustained an injury to his back, neck and right arm when he fell on snow covered ice delivering mail while in the performance of duty.⁴ OWCP accepted his claim for right-sided strain of the lumbar and right-sided strain of the neck and subsequently expanded the acceptance of his claim to include permanent aggravation of cervical disc disease at C5-6 and C6-7, permanent aggravation of cervical spondylosis with myelopathy, permanent aggravation of spinal stenosis in cervical region at C7-T1 and thoracic region at T1. Appellant did not immediately stop work. OWCP paid appellant wage-loss compensation on the supplemental rolls from February 27 through May 31, 2014 and on the periodic rolls beginning June 1, 2014.

OWCP paid appellant wage-loss compensation at the augmented rate as he claimed his wife, R.P.; son, A.P., born March 18, 1997; and daughter, A.P., born March 28, 2001, as dependents on a claim for compensation (Form CA-7) dated March 5, 2014.

In a letter dated November 24, 2014, OWCP requested that appellant complete a financial disclosure statement (Form EN-1032), which included questions regarding appellant's dependents in order to verify that his compensation was paid at the proper rate. It specifically indicated that compensation at the augmented rate of 75 percent of the applicable pay rate may be paid for "an unmarried child, including an adopted child or stepchild, who lives with you and is under 18 years of age." OWCP also advised that if he had no eligible dependents, he would be paid wage-loss compensation at the basic 66 2/3 percent of the applicable pay rate.

On December 24, 2014 appellant informed OWCP that his wife and daughter no longer lived with him. He indicated that he was, however, still legally married and his son, age 17, still lived with him and was in high school.

Appellant subsequently completed the Form EN-1032 on December 15, 2014 and advised that he was married and indicated that he had a dependent son, who was born on March 18, 1997, and a daughter, who was born on March 28, 2001.

Appellant continued to submit completed EN-1032 forms. In an EN-1032 form dated January 8, 2016, he noted he had a dependent son, who was born on March 18, 1997, and as such, was entitled to receive wage-loss compensation at the augmented rate. He further noted changes in his dependency status in that on December 23, 2014, he and his spouse separated, and she moved

⁴ Appellant noted dependents including a wife and two minor children.

out of the residence with their daughter. In Form EN-1032's dated December 19, 2016, December 21, 2017, December 17, 2018, and January 18, 2019, appellant noted that he had a dependent daughter, who was born March 28, 2001, and was in high school and was an eligible dependent.

In a development letter dated January 11, 2021, OWCP sought additional information from appellant to determine whether his daughter had continuing eligibility for compensation beyond her eighteenth birthday. It noted that compensation may continue to be paid on behalf of an unmarried child aged 18 or older who is either a full-time student or incapable of self-support. OWCP requested verification of student status at least once each year and provided a statement and certification of school enrollment to be prepared by appellant and an official at the school.

On January 11, 2021 appellant explained that he and his wife were married but were no longer living together, and he has not provided support since 2019. He indicated that his daughter, who was born March 28, 2001 and turned 18 on March 28, 2019, immediately enrolled in college full time after high school. Appellant reported that his daughter was currently enrolled in college part time, and he would submit a school transcript to confirm her status.

On January 11, 2021 appellant completed an updated EN-1032 form and advised that his daughter was no longer a full-time student and was no longer a dependent. He also noted that he was married and had no other dependents.

In a note dated January 29, 2021, appellant indicated that his daughter was in high school until May/June 2019 when she graduated and then took classes in college. He submitted a school transcript from a junior college, which noted that from spring 2018 through spring 2021 appellant's daughter earned 18 college credits.

On February 24, 2021 OWCP requested additional information from appellant, specifically, the exact date in 2019 that his daughter graduated high school in order to calculate the overpayment relating to a change in dependent status.

On March 22, 2021 appellant submitted a high school transcript for his daughter, which noted that her graduation date from high school was June 5, 2019.

In a preliminary overpayment determination dated February 17, 2022, OWCP notified appellant of its preliminary finding that appellant received an overpayment of compensation in the amount of \$7,898.11 for the period June 6, 2019 through January 2, 2021, because he received compensation at the augmented three-fourths rate instead of the basic two-thirds rate when he had no dependents. It noted that he had received a total of \$59,839.20 in wage-loss compensation at the augmented rate based on an eligible dependent from June 6, 2019 through January 2, 2021. Appellant, however, was only entitled to receive \$51,941.09 in compensation based on the appropriate two-thirds rate for lack of an eligible dependent, resulting in a \$7,898.11 overpayment. OWCP determined that he was without fault in the creation of the overpayment. It requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable recovery method and advised him that he could request waiver of recovery of the overpayment. OWCP further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records that support income and expenses. Additionally, it provided an overpayment

action request form and further 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.

In an overpayment action request form dated March 3, 2022, appellant requested a precoupment hearing. He disagreed with the overpayment and requested waiver of recovery of the overpayment.

In a Form OWCP-20 completed on March 8, 2022, appellant reported that his monthly income totaled \$3,608.30 and his monthly expenses totaled \$3,603.00. He also reported assets totaling \$4,012.00. Appellant provided copies of bills and bank statements in support thereof. In a statement dated March 8, 2022, he asserted that as soon as he learned of a change in the dependent status of his daughter, he contacted OWCP by phone and in writing and provided school transcripts in support of the change of circumstances.

The precoupment hearing was held on June 6, 2022.

On June 24, 2022 appellant submitted another Form OWCP-20 and reported that his total monthly income from Social Security Administration (SSA) benefits was \$1,231.00 and workers' compensation benefits of \$2,621.34, resulting in total monthly income of \$3,852.34. He reported total monthly expenses of \$3,809.43. Appellant further noted cash on hand of \$26.00, a checking account balance of \$755.42, and value of other personal property of \$3,800.00. He submitted copies of bills and credit card statements in support thereof.

In an accompanying statement, appellant noted workers' compensation benefits of \$2,621.34 every 28 days and SSA benefits of \$1,231.00 for total monthly income of \$3,852.34. He submitted a bank statement dated June 14, 2022, which noted credits of \$4,076.00, which included deposits from the Department of Treasury for \$2,621.34, a store return for \$52.68, another deposit from the Department of Treasury of \$150.98, and SSA benefits of \$1,231.00.

By decision dated August 16, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$7,898.11, for the period June 6, 2019 through January 2, 2021, because he was paid augmented compensation when he had no dependent. 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 an overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$138.46 every 28 days from appellant's continuing compensation payments.

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.⁵ If the disability is total, the United States shall pay the employee during the period of total disability the

⁵ 5 U.S.C. § 8102(a).

basic compensation rate of 66 2/3 percent of his or 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.⁶

A dependent includes a student, which under 5 U.S.C. § 8101 means an individual under 23 years of age who has not completed four years of education beyond high school and is pursuing a full-time course of study.⁷

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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$7,898.11, for the period June 6, 2019 through January 2, 2021, because he was paid augmented compensation when he had no dependent.

The evidence of record reflects that appellant continued to receive compensation at the augmented rate from June 6, 2019 through January 2, 2021, despite the fact that his children, turned 18 years old and were not enrolled full time in college and, therefore, no longer qualified as dependents under FECA. Fact of overpayment is, therefore, established.

Compensation records confirm that OWCP continued to pay appellant compensation at the augmented rate from June 6, 2019 through January 2, 2021, which amounted to a total of \$59,839.20 in paid wage-loss compensation. Appellant, however, was only entitled to receive \$51,941.09 in compensation at the basic rate, resulting in an overpayment in the amount of \$7,898.11. Accordingly, the Board finds that OWCP properly determined that he received an overpayment of compensation in the amount of \$7,898.11 for the period June 6, 2019 through January 2, 2021. The Board, thus, finds that OWCP properly determined the fact and amount of the overpayment in this case.⁹

⁶ *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 (2008); *id.* at §§ 8105(a) and 8110(b).

⁷ 5 U.S.C. § 8110(a).

⁸ *B.W.*, Docket No. 18-1412 (issued February 8, 2019); *see Ralph P. Beachum, Sr.*, 55 ECAB 442, 445 (2004).

⁹ *W.A.*, Docket No. 18-0070 (issued May 14, 2018); *see D.S.*, Docket No. 17-1224 (issued August 28, 2017).

LEGAL PRECEDENT -- ISSUE 2

The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.¹⁰ Section 8129 of FECA¹¹ 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." Thus, a finding that appellant was without fault does not automatically result in waiver of recovery of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹²

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 or her 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.¹³ An individual's liquid assets include, but are not limited to, cash on hand, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits. Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.¹⁴

According to 20 C.F.R. § 10.437, 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 worse¹⁵ To establish that a valuable right has been relinquished, it must be shown that the right was, in fact, valuable, that it cannot be regained, and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.¹⁶

¹⁰ See *T.D.*, Docket No. 20-0972 (issued January 28, 2021); *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *P.J.*, Docket No. 18-0248 (issued August 14, 2018); *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹¹ 5 U.S.C. § 8129(1)-(b); *T.D.*, *id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019); see *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹² *T.D.*, *id.*; *A.C.*, *id.*; see *V.T.*, Docket No. 18-0628 (issued October 25, 2018).

¹³ 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020). OWCP's 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. *Id.* at Chapter 6.400.4a(2).

¹⁴ *Id.* at Chapter 6.400.4b(3)(a), (b).

¹⁵ 20 C.F.R. § 10.437(a), (b).

¹⁶ *Id.* at § 10.437(b)(1).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for 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.¹⁷

Appellant had income totaling \$4,070.79 and he listed total monthly expenses of \$3,809.43. It determined that appellant's income exceeded expenses by \$261.36. As his monthly income exceeded his monthly expenses by \$261.36, OWCP properly found that he did not need substantially all of his monthly income to meet current and ordinary living expenses.

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.¹⁸ Therefore, OWCP properly denied waiver of recovery of the overpayment.

Because it has not been established that, recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP has not abused its discretion by denying waiver of recovery of the overpayment.

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.¹⁹

Section 10.441(a) of OWCP's regulations²⁰ 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

¹⁷ 5 U.S.C. § 8129.

¹⁸ *J.K.*, Docket No. 20-1190 (issued January 8, 2021); *L.D.*, *supra* note 10; *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

¹⁹ 20 C.F.R. § 10.441; *see R.L.*, Docket No. 23-0110 (issued July 28, 2023); *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²⁰ *Id.* at § 10.441(a).

circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”²¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$138.46 from appellant’s continuing compensation payments, every 28 days.

In setting the recovery rate at \$136.46, OWCP gave due regard to the financial information submitted, as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize resulting hardship.²² Therefore, it properly required recovery of the overpayment by deducting \$138.46 from appellant’s continuing compensation payments, every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$7,898.11 for the period June 6, 2019 through January 2, 2021, for which he was without fault. The Board further finds that OWCP properly denied waiver of

²¹ *Id.*; see *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²² *M.S.*, Docket No. 20-0068 (issued May 14, 2021); *M.B.*, Docket No. 20-1578 (issued March 25, 2021).

recovery of the overpayment and properly required recovery of the overpayment by deducting \$138.46 from his continuing compensation payments, every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the August 16, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 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