

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

D.T., Appellant)	
)	
and)	Docket No. 24-0420
)	Issued: June 24, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
WEST HAVEN VA MEDICAL CENTER,)	
West Haven, CT, 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
JANICE B. ASKIN, Judge

JURISDICTION

On March 12, 2024 appellant filed a timely appeal from a February 28, 2024 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.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,321.91 for the period September 18 through

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the February 28, 2024 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. *Id.*

October 7, 2023, for which she was without fault, because she continued to receive wage-loss compensation following her return to full-time work; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On January 7, 2023 appellant, then a 58-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a right knee and leg injury when transferring a patient from a stretcher to a chair while in the performance of duty. She stopped work on January 7, 2023. By decision dated February 3, 2023, OWCP accepted the claim for right knee complex tear of medial meniscus, and chondromalacia of the right knee. It paid appellant wage-loss compensation on the supplemental rolls, effective February 22, 2023, and on the periodic rolls, effective March 26, 2023.

In a letter dated April 11, 2023, OWCP advised appellant of her entitlement to compensation, and that she should notify OWCP immediately when she returned to work, and that she should return any payment covering a period after she returned to work. In the accompanying EN-1049 form, it advised her that “[f]or payments sent by electronic funds transfer (EFT), a notification of the date and amount of payment will appear on the statement from your financial institution. You are expected to monitor your EFT deposits carefully, at least every [two] weeks. If you have worked for any portion of the period for which a deposit was made, advise OWCP immediately so that the overpayment can be collected.”

In a September 7, 2023 work capacity status report, Dr. Todd A. Morrison, a Board-certified orthopedic surgeon, reported that appellant was released to full-time sedentary/sitting work only. He reported that her restrictions were in place until her next appointment scheduled on October 25, 2023. In a work note of even date, Dr. Morrison advised that appellant could return to work on September 18, 2023 with sedentary restrictions of sitting work only.

In a September 26, 2023 work note, Dr. Morrison reported that appellant was evaluated on that date and advised that she could return to sedentary work on September 26, 2023 with restrictions of sitting and remote work only as a result of her right knee chondromalacia.

In a report of work status (Form CA-3) dated October 5, 2023, the employing establishment informed OWCP that appellant had returned to full-time modified-duty work on September 18, 2023.

In an October 5, 2023 overpayment memorandum, OWCP indicated that an overpayment had occurred for the period September 18 through October 7, 2023 as appellant had returned to full-time work.

In a preliminary overpayment determination dated December 1, 2023, OWCP notified appellant that she had received an overpayment of compensation in the amount \$4,321.91 for the period September 18 through October 7, 2023 because she returned to work full time on September 18, 2023 but continued to receive wage-loss compensation through October 7, 2023. It explained that she received \$6,050.67 in compensation for the period September 10 through October 7, 2023, and was overpaid in the amount of \$4,321.91 for the period September 18

through October 7, 2023.³ OWCP found that she 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 her that she could request a waiver of the overpayment. OWCP further requested that she provide financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income and expenses. Additionally, it further provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a precoupment hearing.

On December 13, 2023 appellant requested waiver of recovery of the overpayment and a decision based on the written evidence. No financial information was received.

By decision dated February 28, 2024, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$4,321.91 for the period September 18 through October 7, 2023 because she continued to receive wage-loss compensation following her return to full-time work. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP required recovery of the overpayment in full within 30 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.⁴ Section 8116 limits the right of an employee to receive compensation: While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁵ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,321.91 for the period September 18 through October 7, 2023

³ It related that appellant was receiving a net compensation payment every 28 days in the amount of \$6,050.67 for the period September 10 through October 7, 2023. OWCP then calculated \$6,050.67 divided by 28 days and then multiplied by 20 days for the period September 18 through October 7, 2022, which equaled \$4,321.91, resulting in a total overpayment of \$4,321.91.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ *See L.H.*, Docket No. 20-0115 (issued September 4, 2020); *E.R.*, Docket No. 19-1365 (issued December 23, 2019); *J.L.*, Docket No. 18-1266 (issued February 15, 2019); *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *B.H.*, Docket No. 09-0292 (issued September 1, 2009); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying Calculating an Overpayment*, Chapter 6.200.1(a) (September 2020).

because she received wage-loss compensation for total disability following her return to full-time work.

Appellant returned to work, full-time, on September 18, 2023 while continuing to receive wage-loss compensation through October 7, 2023. A claimant is not entitled to receive temporary total disability benefits and actual earnings for the same period.⁷ Accordingly, the Board finds that appellant received an overpayment of compensation.⁸

In the preliminary overpayment decision dated December 1, 2023, OWCP found that appellant was overpaid \$4,321.91 for the period September 18 through October 7, 2023. It explained how it calculated the amount of the overpayment. OWCP related that appellant was receiving a net compensation payment every 28 days in the amount of \$6,050.67 for the period September 10 through October 7, 2023. It then calculated \$6,050.67 divided by 28 days and then multiplied by 20 days for the period September 18 through October 7, 2022, which equaled \$4,321.91, resulting in a total overpayment of \$4,321.91.⁹ The Board has reviewed these calculations and finds that OWCP properly determined that an overpayment of compensation in the amount of \$4,321.91 was created.¹⁰

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery 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 if 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 Additionally, 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

⁷ *See M.S.*, Docket No. 16-0289 (issued April 21, 2016); *D.B.*, Docket No. 15-0258 (issued February 1, 2016).

⁸ *B.N.*, Docket No. 22-1337 (issued November 7, 2023); *J.M.*, Docket No. 17-1574 (issued February 8, 2018).

⁹ *E.C.*, Docket No. 23-0992 (issued January 19, 2024).

¹⁰ *K.B.*, Docket No. 23-0139 (issued May 18, 2023).

¹¹ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see A.S.*, Docket No. 17-0606 (issued December 21, 2017).

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) (September 2020).

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.¹³

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.¹⁴ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁶

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, however, had the responsibility to provide the appropriate financial information to OWCP.¹⁸

In its preliminary overpayment determination dated December 1, 2023, OWCP explained the importance of providing the completed overpayment questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver if she failed to furnish the requested information within 30 days. Appellant, however, did not respond with supporting financial documentation. As such, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.¹⁹

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

¹³ *Id.* at § 10.437(a)-(b).

¹⁴ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁵ *Id.* at § 10.438(b).

¹⁶ *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹⁷ 20 C.F.R. § 10.436.

¹⁸ *Id.* at § 10.438; *see N.J.*, Docket No. 19-1170 (issued January 10, 2020).

¹⁹ *R.M.*, Docket No. 19-1570 (issued June 1, 2020); *G.G.*, Docket No. 19-0684 (issued December 23, 2019).

²⁰ *P.M.*, Docket No. 22-1059 (issued April 28, 2023); *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,321.91 for the period September 18 through October 7, 2023. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.²¹

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 24, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

²¹ With respect to recovery of the overpayment of compensation, the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA. As appellant is no longer receiving wage-loss compensation, the Board does not have jurisdiction with respect to the recovery of the overpayment under the Debt Collection Act. *See D.R.*, Docket No. 23-0914 (issued February 6, 2024); *T.C.*, Docket No. 21-0612 (issued December 2, 2021); *R.W.*, Docket No. 18-1059 (issued February 6, 2019); *Cheryl Thomas*, 55 ECAB 610 (2004).