

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

C.B., Appellant	)	
	)	
and	)	Docket No. 23-0769
	)	Issued: May 28, 2024
U.S. POSTAL SERVICE, POST OFFICE,	)	
Jacksonville, FL, 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  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 2, 2023 appellant filed a timely appeal from a December 14, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,452.40 during the period June 13 through July 16, 2022 because he continued to receive wage-loss compensation for total disability

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<sup>1</sup> The Board notes that, following the December 14, 2022 decision, OWCP received additional evidence. 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.*

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

following his return to full-time work; and (2) whether OWCP properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On June 29, 2021 appellant, then a 25-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 16, 2021 he sustained a lumbar strain lifting a heavy pool out of the back of his truck while in the performance of duty. He stopped work on that date and returned to full-time modified duty on July 6, 2021. OWCP accepted the claim for lower back strain.

Appellant stopped work again on September 30, 2021. OWCP paid wage-loss compensation on the supplemental rolls beginning September 30, 2021, and on the periodic rolls beginning February 26, 2022.

In a letter dated March 29, 2022, OWCP advised that appellant would receive a net compensation payment of \$2,019.76 for the period February 26 through March 26, 2022, and \$2,019.63 for every 28-day period from March 27 through April 23, 2022 and continuing. An attached EN-1049 instructed that, if appellant worked during any portion of the covered period and compensation payments were received by paper check or electronic funds transfer (EFT), he was to return the payment to OWCP even if he had already advised OWCP that he was working. OWCP noted that he was expected to monitor his EFT deposits carefully, at least every two weeks.

Appellant returned to full-time regular duty on June 13, 2022. The record indicates that on June 18, 2022 the EFT payment for the period May 22 through June 18, 2022 was deposited into his bank account in the net amount of \$2,019.63. On July 16, 2022 the EFT payment for the period June 19 through July 16, 2022 was deposited into appellant's bank account in the net amount of \$2,019.63. OWCP completed a manual adjustment form on September 20, 2022 and found that he had received an overpayment in the amount of \$2,452.40 for the period June 13 through July 16, 2022.

On September 20, 2022 OWCP issued a preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$2,452.40 for the period June 13 through July 16, 2022 because he returned to full-time employment on June 13, 2022 but continued to receive wage-loss compensation through July 16, 2022 *via* EFT. It further notified him of its preliminary finding that he was at fault in the creation of the overpayment as he had accepted payments that he knew or reasonably should have known to be incorrect. Additionally, OWCP provided an overpayment action request form and informed appellant that, within 30 days, he could request a final decision based on the written evidence or a prerecoumpment hearing. It requested that he complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation.

In an overpayment action request form dated October 5, 2022, appellant requested a decision based on the written evidence. He contended that the recovery of the overpayment should be waived, asserting that he could not afford to repay the overpayment amount. On an accompanying Form OWCP-20, appellant listed monthly earnings of \$3,000.00 to \$3,200.00. His monthly expenses included \$1,500.00 for rent or mortgage; \$400.00 for food; \$200.00 for clothing;

\$695.00 for utilities; \$100.00 for toiletries; \$140.00 for other expenses; and debts paid by monthly installments of \$285.00 for a total of \$3,320.00. Appellant indicated that he had \$181.00 in a checking account and \$2,000.00 in a savings account. He provided supporting financial documentation including credit card bills, telephone bills, pay stubs, and bank account statements.

By decision dated December 14, 2022, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$2,452.40 for the period June 13 through July 16, 2022, because he continued to receive compensation *via* EFT following his return to work. It determined that he was at fault in the creation of the overpayment. OWCP required appellant to repay the overpayment in full.

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

Section 8102(a) of FECA<sup>3</sup> 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 duty.<sup>4</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>5</sup>

A claimant is not entitled to receive temporary total disability benefits and actual earnings for the same time period.<sup>6</sup> OWCP regulations provide that compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.<sup>7</sup>

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

The Board finds that appellant received an overpayment of compensation in the amount of \$2,452.40 during the period June 13 through July 16, 2022, because he continued to receive wage-loss compensation for total disability following his return to full-time work.

Appellant returned to work, full time, on June 13, 2022, while continuing to receive wage-loss compensation through July 16, 2022. A claimant is not entitled to receive temporary total

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at § 8102(a).

<sup>5</sup> *Id.* at § 8129(a).

<sup>6</sup> *See S.R.*, Docket No. 23-0150 (issued October 16, 2023); *M.S.*, Docket No. 16-0289 (issued April 21, 2016); *D.B.*, Docket No. 15-0258 (issued February 1, 2016).

<sup>7</sup> *See C.V.*, Docket No. 16-0986 (issued September 1, 2016); 20 C.F.R. § 10.500.

disability benefits and actual earnings for the same time period.<sup>8</sup> Accordingly, the Board finds that appellant received an overpayment of compensation.<sup>9</sup>

The record reflects that OWCP calculated that, from June 13 through July 16, 2022, appellant received \$2,452.40 in total compensation. The Board has reviewed OWCP's calculations and finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,452.40 for the period June 13 through July 16, 2022.

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

Section 8129(b) of FECA provides 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>10</sup> No waiver of recovery of an overpayment is possible if the claimant is at fault in the creation of the overpayment.<sup>11</sup>

Section 10.433(a) of OWCP's regulations provides that an individual is at 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>12</sup> With respect to whether an individual is not at fault, section 10.433(b) 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>13</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 or second time that incorrect funds are deposited into his or her account, as he or she lacks the requisite knowledge in accepting payment.<sup>14</sup>

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<sup>8</sup> *Supra* note 6.

<sup>9</sup> *J.M.*, Docket No. 17-1574 (issued February 8, 2018).

<sup>10</sup> 5 U.S.C. § 8129(b).

<sup>11</sup> *Gregg B. Manston*, 45 ECAB 344, 354 (1994).

<sup>12</sup> 20 C.F.R. § 10.433(a); *see C.L.*, Docket No. 19-0242 (issued August 5, 2019); *see also* 20 C.F.R. § 10.430.

<sup>13</sup> *Id.* at § 10.433(b); *C.L., id.*; *see also* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.300.4d (September 2020).

<sup>14</sup> *See R.S.*, Docket No. 20-0177 (issued September 3, 2021); *L.G.*, Docket No. 20-1342 (issued September 3, 2021); *M.J.*, Docket No. 19-1665 (issued July 29, 2020); *Tammy Craven*, 57 ECAB 689 (2006).

## ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly determined that appellant was at fault in the creation of the overpayment for the period June 13 through July 16, 2022.

Appellant returned to work on June 13, 2022, but continued to receive compensation *via* EFT every 28 days. The first EFT deposit following her return to work was made by OWCP on June 18, 2022, and covered the period May 22 through June 18, 2022. The second EFT deposit following appellant's return to work was made by OWCP on July 16, 2022, and covered the period June 19 through July 16, 2022.

As noted above, the Board has held that an employee who receives payments from OWCP in the form of a direct deposit may not be at fault for the first or second incorrect deposit since at the time of receipt of the direct deposit, the employee lacks the requisite knowledge.<sup>15</sup> Given the short period of time following appellant's return to work, there is no documentation to demonstrate that appellant had knowledge at the time his bank received direct deposits from OWCP on June 18 and July 16, 2022 that the payments were incorrect.<sup>16</sup> The Board thus finds that he was without fault in accepting the two direct deposits covering the period of the overpayment from June 13 through July 16, 2022.<sup>17</sup>

As the case is not in posture for decision regarding the issue of waiver of recovery of the overpayment for the period June 13 through July 16, 2022, the case must be remanded for OWCP to determine whether appellant is entitled to waiver of recovery of the overpayment covering that period.<sup>18</sup> Following any further development deemed necessary, it shall issue a *de novo* decision regarding waiver.

## CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$2,452.40 during the period June 13 through July 16, 2022, because he continued to receive wage-loss compensation for disability following his return to full-time work. The Board further finds that he was without fault in the creation of the overpayment for the period June 13 through July 16, 2022. The case will be remanded to OWCP to consider waiver of recovery of the overpayment for the period June 13 through July 16, 2022.

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<sup>15</sup> See *L.G., id.*; *M.J., id.*; see also *Karen Dixon*, 56 ECAB 145 (2004); *George A. Hirsch*, 47 ECAB 520 (1996).

<sup>16</sup> See *M.T.*, Docket No. 20-1353 (issued May 9, 2022); *B.W.*, Docket No. 19-0239 (issued September 18, 2020); *K.E.*, Docket No. 19-0978 (issued October 25, 2018).

<sup>17</sup> See *R.S., L.G., supra* note 14.

<sup>18</sup> *D.R.*, Docket No. 21-0234 (issued November 17, 2022); *C.C.*, Docket No. 19-1268 (issued April 2, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part; the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 28, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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