

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

K.S., Appellant)	
)	
and)	Docket No. 25-0027
)	Issued: November 5, 2024
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Bedford Park, IL, 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 12, 2024 appellant filed a timely appeal from an August 2, 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.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,612.32 for the period April 5 through 20, 2024, for which she was without fault, because she continued to receive wage-loss compensation for total disability following her return to full-time work; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 2, 2022 appellant, then a 43-year-old postal distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 22, 2022 she sustained a left knee injury when a shelf that she was pulling mail from fell on her while in the performance of duty. By decision dated April 27, 2022, OWCP accepted the claim for strain of unspecified muscle and tendon left knee, and left knee contusion. It paid appellant wage-loss compensation on the supplemental rolls effective April 9, 2022, and on the periodic rolls effective December 4, 2022.

In a letter dated December 14, 2022, OWCP advised appellant of her entitlement to compensation on the periodic rolls, 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 February 22, 2024 duty status report (Form CA-17) and work capacity evaluation, Dr. J. Michael Morgenstern, an orthopedic surgeon, related that appellant was evaluated on that date and that she could return to sedentary work with restrictions.

On March 3, 2024 the employing establishment offered appellant a modified mail processing clerk position which she accepted on March 12, 2024. On April 23, 2024 it informed OWCP that appellant had returned to work on April 5, 2024, in a full-time modified-duty position.

By preliminary overpayment determination dated May 6, 2024, OWCP notified appellant that she had received an overpayment of compensation in the amount \$1,612.32 for the period April 5 through 20, 2024, because she returned to work full time on April 5, 2024, but continued to receive wage-loss compensation for total disability through April 20, 2024. It explained that she received \$2,821.56 in wage-loss compensation for the period April 5 through 20, 2024, while she was only entitled to receive \$1,209.24, which resulted in an overpayment of \$1,612.32. OWCP found that appellant was without fault in the creation of the overpayment. It requested that she 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 appellant 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 her 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 August 2, 2024, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$1,612.32 for the period April 5 through 20, 2024, 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 as she had not responded to the preliminary overpayment determination. 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.² 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.³ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁴

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,612.32 for the period April 5 through 20, 2024, because she continued to receive wage-loss compensation for total disability following her return to full-time work.

Appellant returned to work, full time, on April 5, 2024, but continued to receive wage-loss compensation through April 20, 2024. A claimant is not entitled to receive temporary total disability benefits and actual earnings for the same period.⁵ Accordingly, the Board finds that appellant received an overpayment of compensation.⁶

In the preliminary overpayment decision dated May 6, 2024, OWCP found that appellant was overpaid \$1,612.32 for the period April 5 through 20, 2024. It explained that it subtracted from the amount paid, \$2,821.56, the amount which she was entitled to, \$1,209.24, which resulted in a total overpayment of \$1,612.32.⁷ The Board has reviewed OWCP's calculations and finds

² 5 U.S.C. § 8102(a).

³ 5 U.S.C. § 8116.

⁴ 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).

⁵ See *D.T.*, Docket No. 24-0420 (issued June 24, 2024); see *M.S.*, Docket No. 16-0289 (issued April 21, 2016); *D.B.*, Docket No. 15-0258 (issued February 1, 2016).

⁶ *B.N.*, Docket No. 22-1337 (issued November 7, 2023); *J.M.*, Docket No. 17-1574 (issued February 8, 2018).

⁷ *E.C.*, Docket No. 23-0992 (issued January 19, 2024).

that it properly determined that an overpayment of compensation in the amount of \$1,612.32 was created.⁸

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.⁹

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.¹⁰ 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 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.¹¹

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.¹²

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.¹³

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

⁸ *K.B.*, Docket No. 23-0139 (issued May 18, 2023).

⁹ 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).

¹⁰ 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).

¹¹ *Id.* at § 10.437(a)-(b).

¹² *Id.* at § 10.438(b).

¹³ *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

would defeat the purpose of FECA or be against equity and good conscience.¹⁴ Appellant, however, had the responsibility to provide the appropriate financial information to OWCP.¹⁵

In its preliminary overpayment determination dated May 6, 2024, 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. Appellant, however, did not respond. 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.¹⁶

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.¹⁷

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,612.32 for the period April 5 through 20, 2024, for which she was without fault, because she continued to receive wage-loss compensation for total disability following her return to full-time work. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.¹⁸

¹⁴ 20 C.F.R. § 10.436.

¹⁵ *Id.* at § 10.438; *see N.J.*, Docket No. 19-1170 (issued January 10, 2020).

¹⁶ *R.M.*, Docket No. 19-1570 (issued June 1, 2020); *G.G.*, Docket No. 19-0684 (issued December 23, 2019).

¹⁷ *P.M.*, Docket No. 22-1059 (issued April 28, 2023); *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

¹⁸ 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).

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2024
Washington, DC

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

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

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