

ISSUE

The issue is whether OWCP properly denied waiver of recovery of an overpayment of wage-loss compensation in the amount of \$5,406.89 for the period July 5 through August 13, 2022.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference.⁴ The relevant facts are as follows.

On October 15, 2019 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 16, 2019 she injured her left shoulder, left arm, left wrist, both knees, both hips, and back while in the performance of duty. She explained that she slipped on detergent and extended her arm out to keep herself from falling. On the reverse side of the claim form, appellant's supervisor controverted the claim noting that appellant's recitation of the injury was inconsistent prior to her filing the CA-1. On November 27, 2019 OWCP accepted the claim for fascia and tendon strain of the lower back, left shoulder sprain, left elbow sprain, and left wrist sprain. It paid appellant wage-loss compensation on the supplemental rolls beginning November 28, 2019 and on the periodic rolls beginning April 26, 2020.

On June 6, 2022 the employing establishment offered appellant a rehabilitation reassignment in accordance with her work restrictions, with an effective date of July 2, 2022. A work status report (Form CA-3) dated July 5, 2022 indicated that appellant accepted the job offer and returned to work beginning July 5, 2022 at full duty with restrictions.

On July 16 and August 23, 2022 OWCP paid appellant wage-loss compensation in the net amounts of \$3,784.82 for the periods June 19 through July 16, 2022 and July 17 through August 13, 2022.

In a fiscal memorandum dated September 6, 2022, OWCP noted that appellant had returned to work on July 5, 2022, but had received net wage-loss compensation during the period July 5 through 16, 2022 in the amount of \$1,622.07, and net wage-loss compensation for the period July 17 through August 13, 2022 in the amount of \$3,784.82. It found that the overpayment amount totaled \$5,406.89.

On November 9, 2022 OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$5,406.89 for the period July 5 through August 13, 2022, because she returned to full-time employment on July 5, 2022, but received wage-loss compensation for total disability through August 13, 2022. Using her net compensation, it determined that she had received an overpayment of \$1,622.07 and \$3,784.82 for the periods July 5 through 16, 2022 and July 17 through August 13, 2022 respectively, to find a total overpayment of \$5,406.89. OWCP further notified appellant of its preliminary finding that she was at fault in the creation of the overpayment, because she accepted a payment that she knew or reasonably should have known, was incorrect. Additionally, it provided an overpayment action request form and informed her that, within 30 days, she could request a final decision based on the written evidence, or a prerecoupment hearing. OWCP

⁴ Docket No. 23-0590 (issued September 13, 2023).

requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses.

On December 5, 2022 appellant requested a decision based on the written evidence and submitted a completed Form OWCP-20 noting her request for waiver. She indicated that her monthly income totaled \$7,819.80 and her monthly expenses totaled \$7,191.59. She also reported a total of \$8,880.09 in assets.

By decision dated February 21, 2023, OWCP finalized its preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$5,406.89 for the period July 5 through August 13, 2022. It found her at fault in the creation of the overpayment because she accepted compensation payments which she knew or should have known were incorrect. OWCP required that appellant forward the full amount of \$5,406.89 within 30 days to repay the overpayment of compensation.

On March 19, 2023 appellant appealed the February 21, 2023 decision to the Board.⁵

By decision dated September 13, 2023,⁶ the Board found that OWCP, in its February 21, 2023 decision, properly determined that appellant received an overpayment of compensation in the amount of \$5,406.89 for the period July 5 through August 13, 2022, but reversed the finding of fault in the creation of the overpayment and remanded the case for OWCP to consider waiver of recovery of the overpayment for that period.

By letter dated January 25, 2024, OWCP noted the amount of appellant's current installment repayment plan and overpayment debt balance of \$2,436.93. It requested that she complete an enclosed Form OWCP-20 and submit updated supporting financial documentation.

In a Form OWCP-20 dated February 22, 2024, appellant indicated that her monthly income totaled \$7,718.00 and her monthly expenses totaled \$5,931.85. She also reported a total of \$1,700.00 in assets. Appellant provided financial documentation, including checking and savings account statements, paystubs, credit card statements, a mortgage statement, and bills for utilities, home security, car payments, and property taxes.

In accordance with the Board's September 13, 2023 decision, OWCP in a March 5, 2024 decision calculated appellant's income and expenses, and denied waiver of recovery of the \$5,406.89 overpayment for the period July 5 through August 13, 2022. It found that appellant's financial documentation established expenses of \$6,868.95 per month. OWCP further found that her monthly income of \$7,178.00 exceeded her monthly expenses by more than \$50.00, and therefore, she would not experience severe financial hardship in attempting to repay the debt. It required her to repay the balance of the overpayment via installments of \$200.00 per month.

⁵ On March 28, 2023 appellant entered a voluntary agreement with OWCP to repay the overpayment debt via installment payments.

⁶ *Id.*

LEGAL PRECEDENT

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.⁷

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.⁸ An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.⁹

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.¹⁰

Section 10.438 of OWCP's regulations provides 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.¹¹ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹²

ANALYSIS

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

The Board preliminarily notes that in its September 13, 2023 decision, it affirmed the fact and amount of the \$5,406.89 overpayment received by appellant for the period July 5 through August 13, 2022. The Board also found that she was without fault in the creation of the

⁷ 5 U.S.C. § 8129(a)-(b).

⁸ 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).

⁹ *Id.* at Chapter 6.400.4.a(3); *see also B.M.*, Docket No. 23-0891 (issued January 30, 2024); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁰ 20 C.F.R. § 10.437(a)-(b).

¹¹ *Id.* at § 10.438(a); *B.M.*, *supra* note 9; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹² *Id.* at § 10.438; *D.L.*, Docket No. 20-1522 (issued July 27, 2023).

overpayment for that period. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.¹³

On remand, appellant submitted a completed Form OWCP-20 outlining her income, expenses, and assets. She indicated that she had monthly income of \$7,178.00 and assets totaling \$1,700.00. Appellant also submitted financial documentation which established monthly expenses of \$6,868.95. As her monthly income exceeded her monthly expenses by more than \$50.00, OWCP properly found that she did not need substantially all of her current income to meet current ordinary and necessary living expenses.¹⁴ Because appellant has not met the first prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it was unnecessary for OWCP to consider the second prong of the test based on her assets.¹⁵

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because she has not shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt or that she relinquished a valuable right or changed her position for the worse in reliance on the payment which created the overpayment.¹⁶ Accordingly, OWCP properly denied waiver of recovery of the overpayment.¹⁷

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$5,406.89 for the period July 5 through August 13, 2022, for which she was without fault, because she continued to receive wage-loss compensation after she returned to work. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.¹⁸

¹³ *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1988).

¹⁴ *Supra* note 7.

¹⁵ *See J.D.*, Docket No. 23-1197 (issued February 7, 2024).

¹⁶ *L.E.*, Docket No. 22-0203 (issued March 17, 2023); *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

¹⁷ *M.T.*, Docket No. 24-0303 (issued April 25, 2024).

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 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 March 5, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 4, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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