

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

S.W., Appellant

and

**U.S. POSTAL SERVICE, FLORENCE POST
OFFICE, Florence, SC, Employer**

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**Docket No. 25-0005
Issued: January 30, 2025**

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 September 30, 2024, appellant filed a timely appeal from an August 15, 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 \$3,349.36 for the period February 28 through March 27, 2021, because he received schedule award compensation to which he was not entitled; and (2) whether OWCP properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 7, 2016, appellant, then a 62-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed degenerative right knee joint arthritis due to factors of his federal employment, including performing repetitive movements as part of the duties of his federal employment. He noted that he first became aware of his condition and realized its relation to factors of his federal employment on November 19, 2015. OWCP assigned the claim OWCP File No. xxxxxx915 and accepted it for aggravation of osteoarthritis of the right knee. On August 14, 2018, appellant underwent OWCP-authorized right total knee arthroplasty.³

On February 13, 2020, appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated June 12, 2020, OWCP granted appellant a schedule award for 21 percent permanent impairment of the right lower extremity. The period of the award ran from January 15, 2020 through March 13, 2021. OWCP paid appellant \$15,345.53 for the period January 15 through May 23, 2020. Appellant's compensation history establishes that between June 20, 2020 through February 27, 2021, OWCP paid appellant further schedule award payments on the periodic rolls in the amount of \$3,305.19 each, covering the period May 24 through February 27, 2021. On March 26, 2021, OWCP paid appellant a supplemental rolls payment of \$1,598.92 for the period February 28 through March 13, 2021. On March 27, 2021, OWCP paid appellant \$3,349.36 for the period February 28 through March 27, 2021.⁴

In a preliminary overpayment determination dated April 16, 2021, OWCP notified appellant of its preliminary finding that he had received an overpayment of compensation in the amount of \$3,349.36 for the period February 28 through March 27, 2021, because he received schedule award compensation to which he was not entitled. It also made a preliminary overpayment determination that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed Form OWCP-20 to determine a reasonable recovery

² Docket No. 21-1406 (issued September 2, 2022).

³ Appellant previously filed a Form CA-2 for degenerative arthritis of the left knee, which OWCP assigned OWCP File No. xxxxxx349. It accepted that claim for aggravation of osteoarthritis of the left ankle/foot subtalar joint, and a aggravation of osteoarthritis of the left knee. On March 24, 2016, appellant underwent OWCP-authorized left total knee arthroplasty. By decision dated October 11, 2017, OWCP granted appellant a schedule award for 23 percent permanent impairment of the left leg. The period of the award ran from September 17, 2017 through December 24, 2018. By decision dated March 11, 2019, OWCP granted appellant an additional schedule award for 10 percent permanent impairment of the left leg. The period of the award ran from March 3 through September 20, 2019.³ OWCP has administratively combined OWCP File Nos. xxxxxx915 and xxxxxx349, with the latter serving as the master file.

⁴ The case record establishes that appellant's schedule award payments were received *via* electronic funds transfer (EFT).

method and advised him that he could request waiver of recovery of the overpayment. It 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 to support his reported income and expenses. Additionally, OWCP 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.

On May 6, 2021, OWCP received an April 28, 2021 overpayment action request form. Appellant requested that OWCP make a decision based on the written evidence regarding possible waiver of recovery of the overpayment. He also submitted a completed Form OWCP-20 dated April 28, 2021, wherein he reported his total monthly income, total monthly expenses, and total assets.

By decision dated September 1, 2021, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$3,349.36 for the period February 28 through March 27, 2021, because he received schedule award compensation to which he was not entitled. In the calculation of overpayment section of the decision, it further noted that the overpayment amount was “\$3,305.19” due to the additional amount received after the award coverage date. OWCP determined that although appellant was not at fault in the creation of the overpayment, the overpayment was not subject to waiver because appellant did not provide the requested information regarding income, expenses, and assets necessary to determine whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. It requested that recovery of the overpayment be in a lump-sum payment of \$3,349.36.

Appellant appealed to the Board. By decision dated September 2, 2022,⁵ the Board affirmed in part and set aside in part the September 1, 2021 decision and remanded the case for further proceedings. The Board explained that appellant received a schedule award payment for the period February 28 through March 27, 2021 and another payment for the period February 28 through March 13, 2021, but was only entitled to receive compensation for the period February 28 through March 13, 2021. Therefore, the Board found that the fact of overpayment had been established for the period February 28 through March 27, 2021. However, the Board further found that this case was not in posture for decision regarding the amount of the overpayment. The Board indicated that, in the cover letter and final overpayment memorandum, OWCP noted that appellant received a payment of \$3,349.36 for the period February 28 through March 27, 2021. However, in the “calculation of overpayment” section of the September 1, 2021 decision, OWCP found the period of overpayment was May 24 through June 20, 2020 in the amount of “\$3,305.19.” Due to these inconsistencies, the Board remanded the case to OWCP for further development regarding the amount of the overpayment.

In a preliminary overpayment determination dated October 18, 2022, OWCP notified appellant of its preliminary finding that he had received an overpayment of compensation in the amount of \$3,349.36 for the period February 28 through March 27, 2021, because he received schedule award compensation to which he was not entitled. It explained that he received both a

⁵ *Supra* note 2.

full periodic rolls payment of \$3,349.36 for the period February 28 through March 27, 2021 and a supplemental rolls payment for the period February 28 through March 13, 2021, which represented the correct period for the final payment of the schedule award. OWCP also made a preliminary overpayment determination that he was without fault in the creation of the overpayment. It requested that appellant submit a completed 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 to support his reported 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 prerecoupment hearing.

On November 15, 2022, OWCP received a November 4, 2022 overpayment action request form. Appellant requested a prerecoupment hearing and requested waiver of recovery of the overpayment. He submitted a completed Form OWCP-20 dated November 9, 2022, wherein he again reported his total monthly income, total monthly expenses, and total assets.

Following a preliminary review, by decision dated March 7, 2023, OWCP's hearing representative set aside the October 18, 2022 preliminary overpayment determination and remanded the case for further development. The hearing representative noted that the fault finding made by OWCP was incorrect.

In a preliminary overpayment determination dated February 22, 2024, OWCP notified appellant that he had received an overpayment of compensation in the amount \$3,349.36 for the period February 28 through March 27, 2021 because he received schedule award compensation to which he was not entitled. It explained that he received both a full periodic rolls payment of \$3,349.36 for the period February 28 through March 27, 2021 and a supplemental rolls payment for the period February 28 through March 13, 2021, which represented the correct period for the final payment of the schedule award. OWCP also made a preliminary finding that he was at fault in the creation of the overpayment as he accepted a payment that he knew or reasonable should have known to be incorrect. It requested that appellant complete an overpayment action request form and a Form OWCP-20 and submit supporting financial documentation including copies of income tax returns, bank account statement, bills, canceled checks, pay slips, and any other records that supported income and expenses. Additionally, OWCP advised him that, within 30 days of the date of the letter, he could request a final decision based on the written evidence or a prerecoupment hearing.⁶

On March 22, 2024, appellant submitted a completed overpayment action request form dated March 13, 2024, wherein he requested a prerecoupment hearing. He also submitted a completed Form OWCP-20 dated July 12, 2024, wherein he reported total monthly income of

⁶ OWCP explained that, pursuant to Chapter 6.300.4g(6) of the Federal (FECA) Procedure Manual, it issued a schedule award decision on June 12, 2020 that advised appellant as to the length of the schedule award. It noted that an overpayment was subsequently declared on April 16, 2021, less than one year later, and therefore concluded that appellant should have been aware of the schedule award's expiration date and found with fault in the creation of the overpayment.

\$3,929.00, total monthly expenses of \$5,986.00, and total assets of \$315.15.00. Appellant submitted supporting financial documentation.

By decision dated August 15, 2024, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$3,349.36 for the period February 28 through March 27, 2021 because OWCP continued to pay schedule award compensation after March 13, 2021, the date the award expired. It determined that he was at fault in the creation of the overpayment as he accepted compensation payments which he knew or should have known were incorrect. OWCP explained that the June 12, 2020 schedule award decision advised appellant as to the length of the schedule award. It noted that as an overpayment was subsequently declared on April 16, 2021, less than one year later, appellant should have been aware of the schedule award's expiration date and found at fault in the creation of the overpayment. OWCP determined that a previously-agreed upon installment plan should be resumed for recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA⁷ 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 his duty.⁸ Section 8129(a) of FECA provides, in pertinent part: "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."⁹

OWCP's procedures provide that an overpayment is created when a schedule award expires, but compensation continues to be paid.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$3,349.36 for the period February 28 through March 27, 2021, because he received schedule award compensation to which he was not entitled.

Initially, the Board notes that it previously determined in its September 2, 2022 decision that OWCP had established fact of overpayment for the period February 28 through

⁷ *Supra* note 1.

⁸ 5 U.S.C. § 8102(a).

⁹ *Id.* at § 8129(a).

¹⁰ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1f(1)(i) (September 2020).

March 27, 2021. Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.¹¹

By decision dated June 12, 2020, OWCP granted appellant a schedule award for 21 percent permanent impairment of the right lower extremity. The period of the award ran from January 15, 2020 through March 13, 2021. Appellant's compensation history establishes that on March 26, 2021 OWCP properly issued appellant a supplemental rolls payment of \$1,598.92 for the period February 28 through March 13, 2021, representing the final payment of the schedule award. However, on March 27, 2021, OWCP incorrectly paid appellant a periodic rolls payment of \$3,349.36 for the period February 28 through March 27, 2021. As appellant's schedule award had been fully paid as of March 26, 2021, the entire March 27, 2021 payment constituted an overpayment.¹²

The Board thus finds that OWCP properly determined that appellant received an overpayment in the amount of \$3,349.36 for the period February 28 through March 27, 2021 because he was overpaid for his schedule award.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 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 FECA or would be against equity and good conscience. A claimant who is at fault in the creation of the overpayment is precluded from waiver of recovery of the overpayment.¹³

On the issue of fault, 20 C.F.R. § 10.433(a) provides that an individual will be found at fault if he or she has done any of the following: (1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) failed to provide information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have known was incorrect.¹⁴

Even if an overpayment resulted from negligence by OWCP, this does not excuse the employee from accepting payment, which the employee knew or should have been expected to know he or she was not entitled.¹⁵

The Board has held that an employee who receives payments from OWCP in the form of direct deposit may not be at fault the first time incorrect funds are deposited into his or her account,

¹¹ *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

¹² *See K.H.*, Docket No. 18-0171 (issued August 2, 2018).

¹³ *J.S.*, Docket No. 19-1363 (issued April 10, 2020); *B.R.*, Docket No. 18-0339 (issued January 24, 2019); *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *Gregg B. Manston*, 45 ECAB 344, 354 (1994); *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

¹⁴ 20 C.F.R. § 10.433(a).

¹⁵ *Diana L. Booth*, 52 ECAB 370 (2001).

as the acceptance of the resulting overpayment lacks the requisite knowledge.¹⁶ The Board has also held in cases involving a series of incorrect payments, where the requisite knowledge is established by a letter or telephone call from OWCP or simply with the passage of time and a greater opportunity for discovery, the claimant will be at fault for accepting the payments subsequently deposited.¹⁷ Previous cases have held that receiving one or two erroneous direct deposit payments does not necessarily create the requisite knowledge to find that a claimant was at fault in the creation of the overpayment.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly found appellant at fault in the creation of the overpayment.

The case record establishes that OWCP paid appellant his schedule award compensation *via* EFT. The evidence of record does not establish that he knew or should have known that he was accepting a payment to which he was not entitled. Following an initial lump-sum payment, OWCP paid appellant his schedule award compensation. On March 26, 2021, OWCP paid appellant a final payment of \$1,598.92 for the period February 28 through March 13, 2021. There is no documentation or other evidence to demonstrate that appellant had knowledge at the time he received the March 27, 2021 payment the following day that it was incorrect. Therefore, the Board finds that appellant is without fault in the acceptance of the payments covering the period of the overpayment from February 28 through March 27, 2021.¹⁹

The case shall therefore be remanded for OWCP to determine whether appellant is entitled to waiver of recovery of the overpayment.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$3,349.36 for the period February 28 through March 27, 2021, because he received schedule award compensation to which he was not entitled. The Board further finds that OWCP improperly found appellant at fault in the creation of the overpayment.

¹⁶ See *Tammy Craven*, 57 ECAB 689 (2006).

¹⁷ *Id.*

¹⁸ V.S., Docket No. 13-1278 (issued October 23, 2013).

¹⁹ *Supra* note 17.

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2024 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 30, 2025
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