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M.L., Appellant)	
)	
and)	Docket No. 25-0078
)	Issued: January 28, 2025
DEPARTMENT OF JUSTICE, BUREAU OF)	
PRISONS, FEDERAL CORRECTIONAL)	
INSTITUTION VICTORVILLE, Victorville, CA,)	
Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On October 31, 2024 appellant filed a timely appeal from a September 24, 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

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$10,652.53 for the period July 10, 2020 through

² The Board notes that, following the September 24, 2024 decision, appellant submitted additional evidence on appeal to the Board. 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.*

November 7, 2021, for which she was not at fault, because she improperly received wage-loss compensation at an augmented rate; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On November 19, 2019 appellant, then a 50-year-old correctional treatment specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 13, 2019 she sustained a right knee injury when she was running to a body alarm and felt her right knee tear while in the performance of duty. She stopped work on November 13, 2019, and did not return. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective December 29, 2019, and on the periodic rolls, effective July 19, 2020.³

Beginning on January 13, 2020, appellant completed claims for compensation (Form CA-7) for disability commencing December 29, 2019. On the initial Form CA-7, she listed a minor child, F.L., born December 15, 2010, as a dependent, noting her relationship as grandchild.

On July 10, 2020 appellant provided OWCP copies of her temporary guardianship paperwork for her granddaughter. The July 9, 2020 Order from the Superior Court of California County of San Bernardino appointed appellant as the temporary legal guardian of, F.L., her minor granddaughter. OWCP initially paid appellant compensation based on the statutory 66 2/3 percent (2/3) rate. After receipt of the court order, OWCP paid wage-loss compensation on the supplemental rolls at the augmented 75 percent (3/4 rate) commencing July 10, 2020. It paid wage-loss compensation on the periodic rolls at the augmented rate, effective July 19, 2020. In a July 20, 2020 letter, OWCP advised appellant that if the status of any dependent changed, she was to provide OWCP with signed notification including the name of the dependent whose status changed, the effective date of the change, and the nature of the change in status.

By decision dated March 19, 2021, OWCP expanded the acceptance of appellant's claim to include right knee contracture.

In November 2021, appellant elected to receive Office of Personnel Management retirement (OPM) benefits in lieu of FECA benefits.

By decision dated February 22, 2023, OWCP expanded the acceptance of appellant's claim to include right knee unilateral post-traumatic osteoarthritis, right knee sprain of the anterior cruciate ligament, and left knee sprain.

In an April 29, 2024 manual adjustment form, OWCP determined that an overpayment of compensation occurred because appellant was paid at the augmented 3/4 rate (75 percent), but did not have any dependents. The form also showed that, during the relevant period, July 10, 2020 through November 7, 2021, OWCP paid appellant net compensation of \$86,795.28, but that she

³ The record reflects that on September 5, 2019 appellant filed an occupational disease claim (Form CA-2) for repetitive motion injuries to her hands due to factors of her federal employment as a result of turning keys, typing on computers, and opening large steel doors, to which OWCP assigned OWCP File No. xxxxxx070. By decision dated October 10, 2019, OWCP accepted the claim for right upper limb carpal tunnel syndrome and left upper limb carpal tunnel syndrome. OWCP administratively combined OWCP File No. xxxxxx070 with the current claim, OWCP File No. xxxxxx365, designating the latter as the master file.

should have been paid net compensation of \$76,142.75. It subtracted the net compensation of \$76,142.75 that appellant was entitled to receive from the net compensation of \$86,795.28 that she was paid, which resulted in an overpayment of \$10,652.53.

On June 25, 2024 OWCP issued a preliminary overpayment determination, finding an overpayment of compensation in the amount of \$10,652.53 for the period July 10, 2020 through November 7, 2021 because appellant received compensation at the augmented 3/4 (75 percent) rate instead of the basic 2/3 (66 2/3 percent) rate as she did not have an eligible dependent. It noted that although she claimed her granddaughter as a dependent, she had never legally adopted her. OWCP further noted that appellant had received a net compensation of \$86,795.28 for wage-loss compensation at the augmented rate based on an eligible dependent from July 10, 2020 through November 7, 2021 but was only entitled to receive \$76,142.75 in net compensation based on the appropriate basic 2/3 rate for lack of an eligible dependent, resulting in an \$10,652.53 overpayment. It further advised her of its preliminary determination that she was without fault in the creation of the overpayment. OWCP provided an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) for appellant's completion and advised that, for OWCP to consider the question of waiver or to determine a reasonable method for collection, she must provide a completed Form OWCP-20 and attach supporting financial documentation. OWCP requested that she complete the enclosed Form OWCP-20 and submit supporting financial documentation including copies of income tax returns, bank account statements, bills, and canceled checks, pay slips, and any other records supporting her reported income and expenses. Additionally, it 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 July 23, 2024 appellant requested review of the written evidence. She disagreed that an overpayment occurred and requested waiver of recovery of the overpayment because she was found to be without fault in the creation of the overpayment. Appellant asserted that she was appointed the temporary legal guardian of her granddaughter who qualified as a child and dependent. She also completed a Form OWCP-20 and indicated that she supported herself and her minor granddaughter. Appellant reported monthly income of \$5,000.00 and monthly expenses of \$2,700.00. She further noted assets of \$6,500.00. No supporting financial documentation was received.

By decision dated September 24, 2024, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$10,652.53 for the period July 10, 2020 through November 7, 2021 because she improperly received augmented compensation without having eligible dependents. 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

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from a personal injury sustained while in the performance of duty.⁴ If the disability is total, the United States shall pay the employee during the period of total disability the

⁴ 5 U.S.C. § 8102(a).

basic compensation rate of 66 2/3 percent of her monthly pay. A disabled employee is entitled to an augmented compensation rate of 75 percent if he or she has one or more dependents.⁵

A dependent includes an unmarried child who, while living with the employee or receiving regular contributions from the employee toward his or her support, is either under 18 years of age or over 18 years of age and incapable of self-support due to physical or mental disability.⁶ A child is also considered a dependent if he or she is an unmarried student under 23 years of age who has not completed four years of education beyond the high school level and is currently pursuing a full-time course of study at a qualifying college, university, or training program.⁷

If a claimant received compensation at the augmented rate during a period when he or she did not have an eligible dependent, the difference between the compensation that was disbursed at the 75 percent augmented rate and the compensation that should have been disbursed at the 66 2/3 percent basic rate constitutes an overpayment of compensation.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$10,652.53 for the period July 10, 2020 through November 7, 2021, for which she was without fault, because she improperly received wage-loss compensation at an augmented rate.

The Board notes that a grandchild is not recognized as an eligible dependent for purposes of augmented compensation.⁹ As noted, pursuant to section 8101(9) of FECA, the term child may include stepchildren, adopted children, or posthumous children. The Board has specifically held that, when a claimant has legal guardianship over a grandchild, this does not qualify the child as a dependent if the recipient of compensation has not adopted the child.¹⁰ Although appellant's granddaughter may be living with her and she may be her legal guardian, appellant has not legally adopted her granddaughter. Therefore, the granddaughter does not qualify as an eligible dependent.¹¹

OWCP paid appellant compensation at the augmented rate for the period July 10, 2020 through November 7, 2021 despite the fact that she did not have a qualifying dependent under FECA. It explained that she had received a net compensation of \$86,795.28 for wage-loss

⁵ A.A., Docket No. 22-0751 (issued December 12, 2022); *E.B.*, Docket No. 19-1571 (issued December 31, 2020); *R.G.*, Docket No. 18-1251 (issued November 26, 2019); *O.R.*, 59 ECAB 432, 436 (2008); *id.* at §§ 8105(a) and 8110(b).

⁶ *Id.* at § 8110(a).

⁷ *G.E.*, Docket No. 21-0515 (issued August 24, 2021); *R.G.*, *supra* note 5; *see also E.G.*, 59 ECAB 599, 603 n.10 (2008).

⁸ *S.D.*, Docket No. 17-0309 (issued August 7, 2018); *Ralph P. Beachum, Sr.*, 55 ECAB 442, 445 (2004).

⁹ *G.E.*, *supra* note 7.

¹⁰ *Aretha Hudson*, 28 ECAB 423 (1988).

¹¹ *See C.V.*, Docket No. 13-2108 (issued June 17, 2014).

compensation at the augmented rate based on an eligible dependent from July 10, 2020 through November 7, 2021 but was only entitled to receive \$76,142.75 in net compensation based on the appropriate basic 2/3 rate for lack of an eligible dependent, resulting in an \$10,652.53 overpayment. OWCP subtracted the net compensation of \$76,142.75 that appellant was entitled to receive from the net compensation of \$86,795.28 that she was paid, which resulted in an overpayment of \$10,652.53 for the period July 10, 2020 through November 7, 2021. The record contains compensation payment records, as well as overpayment worksheets explaining the overpayment calculation and how the overpayment occurred. The Board has reviewed these calculations and finds that OWCP properly determined that an overpayment of \$10,652.53 was created.¹²

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.¹³

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.¹⁴ 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.¹⁵

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.¹⁶ 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.¹⁷

¹² *G.E.*, Docket No. 23-0995 (issued January 5, 2024).

¹³ 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).

¹⁴ 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).

¹⁵ *Id.* at § 10.437(a)-(b).

¹⁶ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁷ *Id.* at § 10.438(b).

ANALYSIS -- ISSUE 2

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

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.¹⁸

Appellant reported \$6,500.00 in assets, as well as a total monthly income of \$5,000.00 and total monthly expenses of \$2,700.00. Based on the information of record, appellant's monthly income exceeds her monthly expenses by approximately \$2,300.00. An individual is deemed to need substantially all of her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁹ Therefore, recovery of the overpayment would not defeat the purpose of FECA.

Additionally, the evidence does not demonstrate that recovery of the overpayment would be against equity and good conscience. The record does not support that appellant would experience severe financial hardship in attempting to repay the debt.²⁰ Moreover, appellant has not presented evidence that she relinquished a valuable right or changed her position for the worse in reliance on the overpayment.²¹ As the evidence fails to support that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP did not abuse its discretion by denying waiver of recovery of the overpayment.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$10,652.53 for the period July 10, 2020 through November 7, 2021, for which she was without fault, because she improperly received wage-loss compensation at an augmented rate. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

¹⁸ See *B.G.*, Docket No. 20-0541 (issued April 28, 2021); *R.H.*, Docket No. 15-0392 (issued February 3, 2016).

¹⁹ 20 C.F.R. § 10.436(a); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) (September 2020).

²⁰ See *id.*; see also *D.D.*, Docket No. 12-675 (issued October 9, 2012); *Jan K. Fitzgerald*, 51 ECAB 659 (2000).

²¹ 20 C.F.R. § 10.437(b).

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 28, 2025
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