

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

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<b>T.C., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 21-0612</b>
	)	<b>Issued: December 2, 2021</b>
<b>U.S. POSTAL SERVICE, SAINT PETERS POST</b>	)	
<b>OFFICE, St. Peters, MO, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 12, 2021 appellant filed a timely appeal from a December 17, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly denied waiver of recovery of the overpayment of compensation in the amount of \$ 14,822.09.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the December 17, 2020 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.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 1, 2014 appellant, then a 35-year-old clerk, filed a notice of traumatic injury (Form CA-1) alleging that she sustained bilateral knee and back injuries on that date when she fell on ice in the employing establishment parking lot in the performance of duty. OWCP accepted the claim for lumbosacral, cervical, bilateral knee and leg sprains, and tear of the right knee lateral meniscus. It paid appellant intermittent wage-loss compensation on the supplemental rolls from March 27 to November 14, 2014.

On April 26, 2019 OWCP paid appellant schedule award compensation in the net amount of \$33,310.89 for the period June 29, 2018 through March 30, 2019. On April 27, 2019 it paid her schedule award compensation in the net amount of \$3,446.00 for the period March 31 through April 27, 2019.

By decision dated May 3, 2019, OWCP granted appellant a schedule award for nine percent permanent impairment of the left lower extremity. The award was in the amount of \$21,934.80 and ran for a period of 25.92 weeks from June 29 through December 27, 2018. This decision also noted that appellant had received payment in excess of the schedule award and she would be notified of the overpayment under separate cover.

In a preliminary overpayment determination dated May 3, 2019, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$14,822.09 for the period December 28, 2018 through April 27, 2019 because she was overpaid for her schedule award. It explained that she received \$14,822.09 in error because payment of her nine percent schedule award had been extended from the correct end date of December 27, 2018 to April 27, 2019, creating an overpayment for the period December 28, 2018 through April 27, 2019. OWCP advised appellant that she was without fault in the creation of the overpayment. It informed her of her appeal rights and instructed her to complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting documentation within 30 days.

In a memorandum to the file dated May 6, 2019, a claims examiner noted that appellant's schedule award was supposed to be paid for nine percent permanent impairment of the left lower extremity, with a start date of June 29, 2018 for a period of 181.44 days (25.92 weeks) with an end date of December 27, 2018. An error extended the period of the award. As such, there was an overpayment for the period December 28, 2018 through April 27, 2019. The claims examiner noted that appellant had been paid \$33,310.89 initially and \$3,446.00 subsequently on this schedule award, totaling compensation in the amount of \$36,756.89. The total schedule award payment for 181.44 days was \$21,934.80. The difference between these two figures, \$14,822.09, represented the amount of the overpayment.

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<sup>3</sup> Docket No. 20-0302 (issued November 12, 2020).

On May 16, 2019 appellant requested a decision based on the written evidence regarding possible waiver of recovery of the overpayment. She argued that she should be able to keep the overpaid amount because she was without fault in creation of the overpayment. Appellant submitted a completed Form OWCP-20 outlining her income, assets, and expenses, including supporting documentation. She indicated that she had two dependents. Appellant further indicated that her total monthly income included \$1,685.00 in Social Security disability benefits and a total of \$7,900.00 in monthly household income with her spouse's income included. She listed monthly expenses and debt payments totaling \$8,402.00. Appellant indicated that her assets included: \$20.00 cash on hand, checking account balances of \$27,571.46 and \$13,850.00; and savings account balances of \$1,856.00 and \$172.95, for a total of \$43,469.46.

OWCP issued a second preliminary overpayment determination on July 2, 2019. The overpayment amount remained the same at \$14,822.09 for the period December 28, 2018 through April 27, 2019. OWCP, however, advised appellant that she was at fault in the creation of the overpayment, because she accepted a payment she knew or reasonably should have known was incorrect. It noted that it had placed her on notice of the overpayment of compensation by telephone call on April 25, 2019.

By decision dated September 24, 2019, OWCP finalized the preliminary overpayment determination, finding that appellant was overpaid in the amount of \$14,822.09 for the period December 28, 2018 through April 27, 2019 because she received continued schedule award compensation after her schedule award had expired on December 27, 2018. It found that she was at fault in the creation of the overpayment, because she had received a compensation payment deposited by electronic funds transfer (EFT) and over 30 days had elapsed since the EFT deposit was made, and because the dates of the schedule award overlapped with the ending date and she had been placed on notice that she was not entitled to compensation after December 27, 2018. OWCP instructed that the overpayment be recovered in full.

On November 25, 2019 appellant appealed the September 24, 2019 decision to the Board. By decision dated November 12, 2020, the Board affirmed OWCP's September 24, 2019 decision in part and reversed it in part.<sup>4</sup> The Board found that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$14,822.09 for the period December 28, 2018 through April 27, 2019 due to receipt of duplicate schedule award compensation. However, the Board further found that OWCP improperly determined that appellant was at fault in the creation of the overpayment of compensation and reversed OWCP's finding of fault. The Board concluded that while an OWCP representative left a voice mail message for appellant on April 25, 2019 that an overpayment in some amount had been created, prior to actual payment by EFT, the schedule award decision containing the precise period and amount of the schedule award compensation to which appellant was actually entitled was not issued until May 3, 2019, after the EFT had been made. The Board found that under these circumstances, the voice mail message alone was insufficient to establish that appellant knew prior to issuance of the actual schedule award decision that she had received an overpayment of

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<sup>4</sup> *Id.*

compensation to which she was not entitled. The Board remanded the case for consideration of whether appellant was entitled to a waiver of recovery of the overpayment.

In a December 17, 2020 final overpayment decision, OWCP found that appellant was overpaid in the amount of \$14,822.09 for the period December 28, 2018 through April 27, 2019 because she received continued schedule award compensation after her schedule award had expired on December 27, 2018. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery because the evidence of record was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment in full within 30 days.

### **LEGAL PRECEDENT**

Section 8129(b) of FECA provides: “Adjustment or recovery [of an overpayment] 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>5</sup>

Recovery of an overpayment will defeat the purpose of FECA when 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.<sup>6</sup> An individual’s liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.<sup>7</sup>

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.<sup>8</sup>

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

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<sup>5</sup> 5 U.S.C. § 8129(b).

<sup>6</sup> 20 C.F.R. § 10.436. OWCP’s procedures provide that a claimant is deemed to need substantially all of his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020). OWCP’s procedures further provide that assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent, plus \$1,200.00 for each additional dependent. *Id.* at Chapter 6.400.4a(2).

<sup>7</sup> *Id.* at Chapter 6.400.4(b)(3).

<sup>8</sup> 20 C.F.R. § 10.437(a)(b).

the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.<sup>9</sup>

### ANALYSIS

The Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation in the amount of \$14,822.09.

The Board preliminarily notes that it found in its November 12, 2020 decision that appellant received an overpayment of compensation in the amount of \$14,822.09 for the period December 28, 2018 through April 27, 2019 for which she was without fault. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.<sup>10</sup> Therefore, the Board's prior finding regarding the fact and amount of the overpayment is not subject to further consideration.

On May 16, 2019 appellant submitted a completed Form OWCP-20 outlining her income, assets, and expenses, and provided supporting documentation. She indicated that she had two dependents and that her assets included: \$20.00 cash on hand, checking account balances of \$27,571.46 and \$13,850.00; and savings account balances of \$1,856.00 and \$172.95, for total of \$43,469.46 in assets.

The Board has reviewed appellant's reported financial information and supporting documentation and finds that her assets of \$43,469.46 exceeded the resource base of \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent, as provided in OWCP's procedures.<sup>11</sup> Because appellant has not met the second prong of the two-prong test, of whether recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider the first prong of the test, *i.e.*, whether she needs substantially all of her current income to meet ordinary and necessary living expenses.<sup>12</sup> She has not established that she was entitled to waiver on the basis of defeating the purpose of FECA.<sup>13</sup>

Additionally, the evidence does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant has not submitted evidence to substantiate that she would experience severe financial hardship in attempting to repay the debt, or that in reliance on such payment she gave up a valuable right or changed her position for the worse. Therefore,

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<sup>9</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>10</sup> *T.W.*, Docket No. 20-0836 (issued July 21, 2021); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998). *See* 20 C.F.R. § 501.6(d).

<sup>11</sup> *Supra* note 6.

<sup>12</sup> *See S.W.*, Docket No. 20-0363 (issued November 23, 2020); *M.H.*, Docket No. 19-1497 (issued September 9, 2020).

<sup>13</sup> *N.B.*, Docket No. 20-0727 (issued January 26, 2021); *R.D.*, Docket No. 19-1598 (issued April 17, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020).

OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.<sup>14</sup>

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>15</sup>

**CONCLUSION**

The Board finds that OWCP properly denied waiver of recovery of an overpayment of compensation in the amount of \$ 14,822.09.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 17, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>14</sup> *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *V.T.*, Docket No. 18-0628 (issued October 25, 2018).

<sup>15</sup> 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. *R.W.*, Docket No. 18-1059 (issued February 6, 2019); *Cheryl Thomas*, 55 ECAB 610 (2004).