

fault; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$100.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On October 31, 2000 appellant, then a 32-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 16, 2000 she injured her neck, back, and right shoulder when she caught her foot in a crack and fell in a customer's driveway when delivering mail while in the performance of duty. OWCP accepted the claim for cervical, thoracic, and right shoulder/upper arm sprains.³ Appellant stopped work on October 30, 2000 and returned to a light-duty job on October 31, 2000. She stopped work and returned to work again intermittently. OWCP continued to pay appellant compensation for intermittent periods of disability on the supplemental rolls through December 19, 2002 and then again from October 19, 2018 until January 11, 2019.

On October 22, 2018 appellant filed an occupational disease claim (Form CA-2) alleging that on September 25, 2018 she first became aware of the connection between her right shoulder condition and the factors of her federal employment. On February 14, 2019 OWCP accepted the claim for right shoulder rotator cuff muscle and tendon strains, cervical spinal stenosis, cervical disc disorder with radiculopathy, cervical radiculopathy, cervical spondylosis without myelopathy or radiculopathy, lumbar intervertebral disc degeneration, and lumbosacral spondylosis without radiculopathy or myelopathy.⁴ It paid appellant wage-loss compensation for the period December 8, 2018 through March 30, 2019 on the supplemental rolls and on the periodic rolls as of March 31, 2019.

Under OWCP File No. xxxxxx685 appellant filed a series of claims for wage-loss compensation (Form CA-7). On December 22, 2019 she filed a Form CA-7 claiming wage-loss compensation for the period December 8 through 21, 2018. On January 7, 2019 appellant filed a Form CA-7 claiming wage-loss compensation from December 22, 2018 through January 4, 2019. On January 21, 2019 appellant filed a Form CA-7 claiming wage-loss compensation for the period January 5 through 18, 2019.

On January 11, 2019 OWCP paid appellant wage-loss compensation for the period December 8, 2018 through January 11, 2019 in the amount of \$2,897.50, under OWCP File No. xxxxxx685, based on a weekly pay rate of \$613.87.

On March 1, 2019 OWCP paid appellant \$6,887.42 under OWCP File No. xxxxxx954 for the period December 8, 2018 through February 15, 2019, based on a weekly pay rate of \$1,238.71.

In a March 1, 2019 manual adjustment form, OWCP noted that appellant was not entitled to wage-loss compensation under the current claim, OWCP File No. xxxxxx685, for the period

³ This claim was assigned File No. xxxxxx685 by OWCP.

⁴ This claim was assigned File No. xxxxxx954 by OWCP. The current claim, OWCP File No. xxxxxx685, has been administratively combined with OWCP File No. xxxxxx954, with the latter designated as the master file.

December 8, 2018 through January 11, 2019 as she was subsequently paid wage-loss compensation for this same period under OWCP File No. xxxxxxx954, with a new date of disability pay rate. Therefore an overpayment of compensation had been created in the amount of \$2,897.50.

On April 3, 2019 OWCP issued a preliminary overpayment determination finding that appellant received an overpayment of compensation in the amount of \$2,897.50 because she received temporary total disability for the period December 8, 2018 through January 11, 2019, but was subsequently paid compensation under OWCP File No. xxxxxx954 for the same period. It further found that she “appeared” to be at fault in the creation of the overpayment. OWCP provided appellant with an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20).

Appellant submitted an overpayment action request form dated April 27, 2019 in which she requested a telephonic prerecoumpment hearing before a representative of OWCP’s Branch of Hearings and Review. She did not dispute that an overpayment had occurred, however, she contended that she was not at fault in the creation of the overpayment, and requested that the overpayment be waived. In an attached Form OWCP-20, appellant listed monthly income of FECA compensation of \$2,752.11, monthly expenses of \$2,973.00, and assets totaling \$496.00.

A telephonic prerecoumpment hearing was held on August 16, 2019.

Subsequent to the prerecoumpment hearing, appellant submitted an updated Form OWCP-20 and supporting financial documentation including copies of bank statements and bills.⁵ She reported that she had recently made approximately \$800.00 from a yard sale. Appellant reported monthly income of \$2,752.11. She listed monthly expenses of \$1,500.00 for rent, \$300.00 for food, \$50.00 for clothing, \$328.34 for utilities and trash, \$577.60 in miscellaneous expenses, and credit card debt of \$121.00 resulting in total monthly expenses of \$2,876.94. Appellant noted assets of \$5.00 cash on hand and \$40.00 in a checking account, resulting in total assets of \$45.00.

By decision dated November 22, 2019, OWCP’s hearing representative finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$2,897.50 as she received wage-loss compensation under both the present claim and OWCP File No. xxxxxx954. She further found that appellant was without fault in the creation of the overpayment as there was no evidence demonstrating that she had clear knowledge at the time that the direct deposit payment received on January 8, 2019 was incorrect. The hearing representative also found that the financial documentation was insufficient to establish miscellaneous monthly expenses of \$577.60. She found the evidence established average monthly utility expenses of \$328.34. The hearing representative determined that the evidence established

⁵ The supporting documentation included energy bills covering the period January to August 2019 totaling \$615.75 or an average of \$76.97 per month; itemized trash/recycling statements totaling \$209.90 or averaging \$26.24; documentation of a monthly payment of \$25.00; itemized gas bills covering the period January to August 2019 totaling \$755.45 or an average of \$94.45 per month; monthly auto insurance of \$74.50; and an average monthly water bill of \$46.55. The documentation also included \$237.12 in overdue medical bills with a nine-month repayment arrangement; \$59.05 for medical bills with a 3-month repayment arrangement; and \$281.37 for medical services with a 6-month repayment arrangement, resulting in outstanding medical bills of \$577.54 with a monthly payment over a 12-month period of \$48.13.

monthly rent expenses of \$1,500.00, monthly clothing/food expenses of \$350.00, monthly auto insurance/utilities/monthly expenses of \$427.74 and miscellaneous expenses/creditor of \$169.13, resulting in total monthly expenses of \$2,446.87. Thus, she denied waiver of recovery of the overpayment as appellant's income of \$2,752.11 exceeded her monthly expenses totaling \$2,446.87 by \$300.00. The hearing representative noted that appellant was not in receipt of wage-loss compensation under the current claim, but was in receipt of wage-loss compensation under the master file number, OWCP File No. xxxxxx954. She required recovery of the overpayment by deduction of \$100.00 every 28 days from appellant's continuing compensation payments under the master file, OWCP File No. xxxxxx954.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA⁶ 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 duty.⁷ Section 8129(a) of FECA provides, in pertinent part, that 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.⁸

OWCP procedures explain that an overpayment is created if the claimant is determined not to be entitled to compensation already paid.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,897.50 during the period December 8, 2018 through January 11, 2019 because she received a duplicate payment, for which she was without fault.

OWCP found that appellant received an overpayment of compensation because she was not entitled to wage-loss compensation under the current claim, OWCP File No. xxxxxxx685, for the period December 8, 2018 through January 11, 2019 as she had subsequently been paid wage-loss compensation for this same period under her master file, OWCP File No. xxxxxx954, at a higher pay rate. Appellant was entitled to receive wage-loss compensation for her disability; however, the dual wage-loss compensation payments she received for the same time period created an overpayment of compensation.¹⁰ As she received \$2,897.50 during this period under OWCP File No. xxxxxx685 at a lower weekly pay rate than the wage-loss compensation she received

⁶ *Supra* note 1.

⁷ *Id.* at § 8102(a).

⁸ *Id.* at § 8129(a).

⁹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200(2) (2004).

¹⁰ *Id.*

under OWCP File No. xxxxxx954 for the same time period, the Board finds that an overpayment of compensation occurred in the amount of \$2,897.50.

Appellant has not contested the amount of the overpayment.¹¹ The Board accordingly affirms OWCP's findings as to the fact and amount of the overpayment.¹²

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless 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.¹³ 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.¹⁴ 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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁵

The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of OWCP's regulations.¹⁶ Section 10.436 provides that recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her income (including compensation benefits) to meet current ordinary and necessary living expense, and, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹⁷ For waiver of recovery of the overpayment under the defeat the purpose of FECA standard, appellant must show that he or she needs substantially all of his or her current income to meet current ordinary and necessary living expenses, and that assets do not exceed the resource base.¹⁸ An individual is

¹¹ See *N.L.*, Docket No. 20-0254 (issued July 6, 2020); *A.B.*, Docket No. 18-0922 (issued January 3, 2019); *R.S.*, Docket No. 17-1985 (issued March 23, 2018).

¹² *Supra* note 8.

¹³ *Id.* at § 8129.

¹⁴ 20 C.F.R. § 10.438.

¹⁵ *Id.*

¹⁶ *Id.* at §§ 10.434-10.437.

¹⁷ *Id.* at § 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, *supra* note 9 at Chapter 6.400.4(a)(3) (September 2018). 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 6.400.4(a)(2).

¹⁸ *Id.*

deemed to need substantially all of his or 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

Section 10.437 provides that 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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right, or changes his or her position for the worse.²⁰ To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.²¹

ANALYSIS -- ISSUE 2

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

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.²²

The Board finds that OWCP properly determined that appellant did not require substantially all of her income to meet ordinary and necessary living expenses. The hearing representative found, after subtracting \$577.60 for unexplained and undocumented miscellaneous expenses, that she had monthly income of \$2,752.11 and monthly expenses of 2,446.87, and that as such her income exceeded her expenses by more than \$300.00. As appellant's monthly income exceeds her ordinary and necessary living expenses by more than \$50.00, the Board finds that she did not need substantially all of her income for ordinary and necessary living expenses.²³

Additionally, the evidence does not demonstrate that repayment of the overpayment would be against equity and good conscience. Appellant submitted no evidence that she relied upon the incorrect payments to her detriment or that she would experience severe financial hardship attempting to repay the debt. Consequently, OWCP properly denied waiver of the overpayment.²⁴

On appeal appellant argues that she is unable to repay the overpayment due to life circumstances. She also notes that she was without fault in creating the overpayment. Appellant also argues that the employing establishment should be held responsible for the overpayment due to its delay in sending in her paperwork, which caused the overpayment. A finding that appellant

¹⁹ *Id.*

²⁰ *Id.* at 10.437.

²¹ *Id.* at § 10.437(b)(1).

²² *Id.* at. § 10.436.

²³ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *M.C.*, Docket No. 19-0699 (issued February 12, 2020).

²⁴ *Id.*; *see also B.S.*, Docket No. 16-0712 (issued November 7, 2016).

was without fault, however, does not automatically result in waiver of the overpayment.²⁵ OWCP must determine whether recovery of the overpayment without defeat the purpose of FECA or be against equity and good conscience. As explained, OWCP properly denied waiver as recovery would not defeat the purpose of FECA or be against equity and good conscience.

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.²⁶

Section 10.441 of OWCP's regulations provides that, when an overpayment of compensation has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors so as to minimize hardship.²⁷

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$100.00 from appellant's continuing compensation payments every 28 days.

OWCP took into consideration appellant's submitted financial information as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize any resulting hardship on her. Therefore, it properly required recovery of the overpayment by deducting \$100.00 from her continuing compensation payments every 28 days.²⁸

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,897.50 during the period December 8, 2018 through January 11, 2019, because she received a duplicate payment, for which appellant was without fault. The Board further finds that OWCP properly waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$100.00 every 28 days from her continuing compensation payments.

²⁵ See *L.G.*, Docket No. 19-1274 (issued July 10, 2020).

²⁶ 20 C.F.R. § 10.441; see *R.B.*, Docket No. 19-0571 (issued June 12, 2021); *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²⁷ *Id.*

²⁸ *Id.*; see also *O.B.*, Docket No. 20-0105 (issued September 11, 2020).

ORDER

IT IS HEREBY ORDERED THAT the November 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2021
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