

(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 to be incorrect. (This provision applies only to the overpaid individual.)

(b) Whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.

§ 10.434 If OWCP finds that the recipient of an overpayment was not at fault, what criteria are used to decide whether to waive recovery of it?

If OWCP finds that the recipient of an overpayment was not at fault, repayment will still be required unless:

(a) Adjustment or recovery of the overpayment would defeat the purpose of the FECA (see § 10.436), or

(b) Adjustment or recovery of the overpayment would be against equity and good conscience (see § 10.437).

§ 10.435 Is an individual responsible for an overpayment that resulted from an error made by OWCP or another Government agency?

(a) The fact that OWCP may have erred in making the overpayment, or that the overpayment may have resulted from an error by another Government agency, does not by itself relieve the individual who received the overpayment from liability for repayment if the individual also was at fault in accepting the overpayment.

(b) However, OWCP may find that the individual was not at fault if failure to report an event affecting compensation benefits, or acceptance of an incorrect payment, occurred because:

(1) The individual relied on misinformation given in writing by OWCP (or by another Government agency which he or she had reason to believe was connected with the administration of benefits) as to the interpretation of a pertinent provision of the FECA or its regulations; or

(2) OWCP erred in calculating cost-of-living increases, schedule award

length and/or percentage of impairment, or loss of wage-earning capacity.

§ 10.436 Under what circumstances would recovery of an overpayment defeat the purpose of the FECA?

Recovery of an overpayment will defeat the purpose of the FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because:

(a) 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

(b) The beneficiary's assets do not exceed a specified amount as determined by OWCP from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents.

§ 10.437 Under what circumstances would recovery of an overpayment be against equity and good conscience?

(a) Recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.

(b) Recovery of an overpayment is also considered to be against equity and good conscience when any 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. In making such a decision, OWCP does not consider the individual's current ability to repay the overpayment.

(1) 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. Donations to charitable causes or gratuitous transfers of funds to other individuals are not considered relinquishments of valuable rights.

(2) To establish that an individual's position has changed for the worse, it must be shown that the decision made would not otherwise have been made

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but for the receipt of benefits, and that this decision resulted in a loss.

§ 10.438 Can OWCP require the individual who received the overpayment to submit additional financial information?

(a) 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 the FECA, or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.

§ 10.439 What is addressed at a pre-recoupment hearing?

At a pre-recoupment hearing, the OWCP representative will consider all issues in the claim on which a formal decision has been issued. Such a hearing will thus fulfill OWCP's obligation to provide pre-recoupment rights and a hearing under 5 U.S.C. 8124(b). Pre-recoupment hearings shall be conducted in exactly the same manner as provided in § 10.615 through § 10.622.

§ 10.440 How does OWCP communicate its final decision concerning recovery of an overpayment, and what appeal right accompanies it?

(a) OWCP will send a copy of the final decision to the individual from whom recovery is sought; his or her representative, if any; and the employing agency.

(b) The only review of a final decision concerning an overpayment is to the Employees' Compensation Appeals Board. The provisions of 5 U.S.C. 8124(b) (concerning hearings) and 5 U.S.C. 8128(a) (concerning reconsiderations) do not apply to such a decision.

§ 10.441 How are overpayments collected?

(a) When an overpayment has been made to an individual who is entitled to further payments, the individual

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shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to 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 any hardship. Should the individual die before collection has been completed, collection shall be made by decreasing later payments, if any, payable under the FECA with respect to the individual's death.

(b) When an overpayment has been made to an individual who is not 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 same. The overpayment is subject to the provisions of the Federal Claims Collection Act of 1966 (as amended) and may be reported to the Internal Revenue Service as income. If the individual fails to make such refund, OWCP may recover the same through any available means, including offset of salary, annuity benefits, or other Federal payments, including tax refunds as authorized by the Tax Refund Offset Program, or referral of the debt to a collection agency or to the Department of Justice.

Subpart F—Continuing Benefits

RULES AND EVIDENCE

§ 10.500 What are the basic rules governing continuing receipt of compensation benefits and return to work?

(a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. Payment of medical benefits is available for all treatment necessary due to a work-related medical condition.

(b) Each disabled employee is obligated to perform such work as he or