



establishment in August 1995. OWCP paid wage-loss compensation for temporary total disability and placed her on the periodic compensation rolls. In October 2012, appellant advised OWCP that effective October 5, 2011 she began receiving Social Security Act (SSA) age-related retirement benefits.

On January 7, 2013 the Social Security Administration provided information regarding appellant's age-related retirement benefits. OWCP received monthly rate calculations based on appellant's private-sector employment contributions, as well as corresponding monthly rates that included both private-sector and Federal Employees Retirement System (FERS) contributions. Beginning October 2011, appellant's SSA rate with FERS was \$972.90 per month, and her SSA rate without FERS contributions was \$543.20; a difference of \$429.70 per month. Effective December 2011, the monthly SSA rate with FERS was \$1,007.90, and without FERS it was \$562.70; a difference of \$445.20. As of December 2012, the corresponding monthly SSA rates were \$1,025.00 with FERS and \$572.20 without FERS; a difference of \$452.80.<sup>2</sup>

Effective March 10, 2013, OWCP reduced appellant's 28-day compensation payment by \$417.97. It explained that as a FECA beneficiary she was not entitled to receive FERS-based retirement benefits. As such, her FECA wage-loss compensation would have to be reduced by the portion of her SSA retirement benefits attributable to her federal service.

On March 18, 2013 OWCP issued a preliminary determination that appellant received an overpayment of \$7,657.03 for the period October 5, 2011 through March 9, 2013. It determined that the FERS/SSA offset had not been applied during the period, resulting in a dual receipt of benefits. Appellant was found not at fault in creating the overpayment.

Appellant requested a prerecoumpment hearing before the Branch of Hearings & Review. She submitted an overpayment recovery questionnaire (OWCP-20), together with various financial documents. A telephonic hearing was scheduled for July 12, 2013, but appellant did not go through with the hearing.<sup>3</sup> OWCP subsequently advised appellant that it was not possible to reschedule the hearing, and it would instead conduct a review of the written record.

Appellant's April 10, 2013 OWCP-20 revealed monthly income of \$3,112.93. Her monthly household expenses included a \$224.31 condominium fee, \$500.00 for food, \$50.00 for clothing, \$125.00 to \$145.00 for utilities and miscellaneous expenses totaling \$922.00.<sup>4</sup> Appellant also reported \$1,800.00 in consumer debt with a monthly installment payment of \$500.00.<sup>5</sup> Her claimed monthly living expenses totaled \$2,341.31. Appellant's assets included

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<sup>2</sup> The above-noted rate changes effective December 2011 and December 2012 were the result of automatic cost-of-living adjustments (COLAs).

<sup>3</sup> Appellant planned on visiting with family members and would be unavailable until August 3, 2013.

<sup>4</sup> Appellant's miscellaneous expenses included \$125.00 for various medications, \$125.00 for automobile-related expenses, \$222.00 for self-storage, and \$450.00 for personal care (cleaning/laundry supplies, paper products, toiletries, hair care and massages). She also reported having just paid \$512.80 in (property) taxes, for which she reportedly filed a homestead exemption. However, appellant did not identify taxes (\$512.80) as a recurring monthly expense.

<sup>5</sup> Appellant purchased a refrigerator from Sears which she planned to pay off in four months. The debt was to be paid in full by October 2013.

\$40.00 cash on hand and checking account balances totaling \$12,710.12. She also provided bank statements and her 2010 federal income tax return (Form 1040A) and associated documents.

By decision dated August 16, 2013, the hearing representative finalized the fact and amount of the overpayment. She also found that appellant was not at fault in creating the \$7,657.03 overpayment. The hearing representative denied waiver of recovery of the overpayment. Appellant's monthly income exceeded her claimed expenses by more than \$50.00, and she had liquid assets in excess of \$12,000.00. Having denied waiver of recovery, the hearing representative directed that \$500.00 be withheld every 28 days from appellant's continuing compensation payments.<sup>6</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

A FECA beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.<sup>7</sup> To avoid payment of a dual benefit, FECA wage-loss compensation benefits shall be reduced by the amount of SSA benefits attributable to the employee's federal service.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The record establishes that appellant received federal retirement benefits beginning October 5, 2011. She also received FECA wage-loss compensation for overlapping periods. Part of appellant's SSA retirement benefits were based on credits she earned as a federal employee. Appellant is not entitled to wage-loss compensation and federal retirement benefits concurrently. Therefore, her FECA benefits must be offset by the amount of any SSA benefits attributable to her federal service.<sup>9</sup> Based on information provided by the Social Security Administration, OWCP calculated a required offset of \$7,657.03 for the period October 5, 2011 through March 9, 2013, which it properly declared an overpayment.

SSA benefits were paid on a monthly basis, whereas FECA benefits were paid every 28 days. OWCP converted the monthly differential to a 28-day FERS offset for the corresponding periods of October 5 to November 30, 2011 (57 days), December 1, 2011 to November 30, 2012 (366 days/Leap year) and December 1, 2012 to March 9, 2013 (99 days).<sup>10</sup> For the 57-day period beginning October 5, 2011, the 28-day FERS offset was \$396.65 or slightly more than \$14.16 per day. The total overpayment for that period was \$807.46. For the 366-day period beginning December 1, 2011, OWCP calculated a 28-day FERS offset of \$410.95, which was

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<sup>6</sup> Appellant had previously indicated that in the event repayment was required, she preferred to repay the overpayment in monthly installment of no more than \$500.00.

<sup>7</sup> See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

<sup>8</sup> 5 U.S.C. § 8116(d)(2); 20 C.F.R. § 10.421(d); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4e(2) (January 1997).

<sup>9</sup> 20 C.F.R. § 10.421(d).

<sup>10</sup> The 28-day FERS offset was derived by taking the reported monthly differential for the corresponding periods (\$429.70, \$445.20 and \$452.80, respectively) and multiplying it by 12 (months), and then dividing that annual figure by 52 (weeks). The weekly amount was then multiplied by 4 (weeks) to arrive at the 28-day FERS offset figure.

approximately \$14.67 per day. The overpayment for this period totaled \$5,371.75. For the final 99-day period (December 1, 2012 to March 9, 2013), there was a 28-day FERS offset of \$417.97 or approximately \$14.93 per day. During this period appellant was overpaid \$1,477.82. The combined periods total \$7,657.03. Accordingly, the Board affirmed the fact and amount of the overpayment. As noted, appellant was found to be without fault in the creation of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 2**

An individual who is without fault in creating or accepting an overpayment is nonetheless subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>11</sup> Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a current or former 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>12</sup> Additionally, 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 or when any individual, in reliance on such payment or on notice that such payments would be made, relinquished a valuable right or changed his or her position for the worse.<sup>13</sup>

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP.<sup>14</sup> This information is necessary for determining whether a waiver of recovery of the overpayment is warranted.<sup>15</sup> The information is also used to determine an appropriate repayment schedule, if necessary.<sup>16</sup>

When an overpayment has been made to an individual who is entitled to further payments and 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.<sup>17</sup>

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<sup>11</sup> 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

<sup>12</sup> 20 C.F.R. § 10.436(a), (b). For an individual with no eligible dependents the asset base is \$4,800.00. The base increases to \$8,000.00 for an individual with a spouse or one dependent, plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(b) (June 2009).

<sup>13</sup> *Id.* at § 10.437(a), (b).

<sup>14</sup> *Id.* at § 10.438(a).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> 20 C.F.R. § 10.441(a).

## ANALYSIS -- ISSUE 2

While OWCP found appellant was not at fault in creating the overpayment, this alone does not entitle her to waiver of recovery of the overpayment. In this instance, OWCP properly determined that recovery of the \$7,657.03 overpayment would not defeat the purpose of FECA nor would it be against equity and good conscience.

Appellant's monthly income included FECA wage-loss compensation (\$2,192.89) and social security benefits (\$920.04) for a total of \$3,112.93. Her claimed monthly living expenses (including \$500.00 in short-term consumer debt installment payments) totaled \$2,341.31.<sup>18</sup> Many of the reported expenses are unsubstantiated. But even when fully credited, appellant has sufficient income to meet current ordinary and necessary living expenses. An individual is 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.<sup>19</sup> Appellant's monthly income exceeded his or her claimed expenses by \$771.62.<sup>20</sup> Also, her reported assets as of April 2013 (\$12,750.12) exceeded the \$4,800.00 asset base applicable to individuals with no eligible dependents.<sup>21</sup> Under the circumstances, repayment of the \$7,657.03 overpayment would not defeat the purpose of FECA.

Recovery of the overpayment also would not be against equity and good conscience. As noted, appellant has sufficient income and assets such that she would not experience severe financial hardship in repaying the debt. Appellant did not claim nor does the record demonstrate that she relinquished a valuable right or changed her position for the worse in reliance on her FECA overpayment. Accordingly, OWCP properly denied waiver of recovery of the overpayment.

The Board further finds that OWCP reasonably required withholding of \$500.00 every 28 days from appellant's continuing compensation. Appellant has the financial assets to resolve the debt, and the amount of the 28-day withholding is consistent with her previous request. The withholding rate would allow the debt to be resolved in approximately 15 months.

## CONCLUSION

Appellant received an overpayment of \$7,657.03 for the period October 5, 2011 through March 9, 2013. Although she was without fault in creating the overpayment, appellant is not entitled to waiver of recovery. The Board further finds that OWCP reasonably imposed a

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<sup>18</sup> Assuming appellant adhered to her April 2013 plan of paying off her Sears' debt in four months, the \$1,800.00 debt would have been resolved by the time the hearing representative issued her August 16, 2013 decision. Thus, her claimed monthly expenses would be reduced by \$500.00 to \$1,841.31.

<sup>19</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(b) (June 2009).

<sup>20</sup> Moreover, if one considers the reported property tax (\$512.80) as a monthly expense, appellant still has a monthly surplus of \$258.82.

<sup>21</sup> See *supra* note 12.

repayment schedule of \$500.00 every 28 days to be withheld from appellant's continuing compensation payments.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 16, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 2014  
Washington, DC

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board