

FACTUAL HISTORY

The Office accepted that on November 24, 2003 appellant, then a 61-year-old information technology specialist, sustained a lumbar injury when she stepped into a hole in a parking lot. She did not return to work following the injury. Appellant received compensation on the daily rolls beginning in December 2003 and on the periodic rolls beginning on January 9, 2004. She remained under medical care.

In October 2007 the Office contacted the Social Security Administration (SSA) to ask for dual benefits calculations. On November 2, 2007 the SSA informed the Office that, effective April 2005, the amount of appellant's checks were \$882.00 with Federal Employees' Retirement System (FERS) and would have been \$507.10 without FERS. Effective December 2005, appellant's checks were \$918.10 with FERS and would have been \$527.90 without FERS. Effective December 2006, her checks were \$948.30 with FERS and would have been \$545.30 without FERS.

By notice dated December 10, 2007, the Office advised appellant of its preliminary determination that she was overpaid benefits in the amount of \$16,381.56 because she was in receipt of both full social security benefits payments and full disability wage-loss compensation during the period April 1, 2005 to December 27, 2007, for which she was not at fault. It calculated that the FERS offset for this period was \$16,381.56.¹ The Office advised appellant that if she agreed with the amount of the overpayment she could send a check for the full amount in repayment. If appellant disagreed, she could contest the overpayment and submit financial information. The Office enclosed an overpayment recovery questionnaire (Form OWCP-20).

In a letter dated January 5, 2008, appellant requested a telephonic prerecoupment hearing. She did not submit any financial information. On January 7, 2008 appellant fully repaid the overpayment by submitting a check in the amount of \$16,381.56 to the Office. In an accompanying letter, she acknowledged receiving a prohibited dual benefit. Appellant stated that she wished to repay the debt in full, although it would create a financial loss.

A telephonic hearing was held on April 1, 2008. At the hearing, appellant's attorney noted that appellant had repaid the overpayment in full at his instruction. He stated that, therefore, the waiver "issue [was] no longer in contention" and requested dismissal of the hearing. In an April 2, 2008 letter, counsel confirmed his withdrawal of the hearing request.

By decision dated April 22, 2008, the hearing representative affirmed the preliminary determination that appellant received an overpayment of compensation of \$16,381.56, for which she was found without fault. The hearing representative denied waiver of recovery of the overpayment as appellant did not submit financial information. The hearing representative noted that appellant repaid the overpaid compensation in full.

¹ The Office calculated that it overpaid appellant \$4,079.07 from April 1 to November 30, 2005, \$6,352.17 from December 1, 2005 to November 30, 2006 and \$5,950.32 from December 1, 2006 to October 27, 2007. These amounts total \$16,381.56. Effective December 28, 2007, the Office began reducing appellant's compensation by the FERS offset amount of \$503.35 every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of the Federal Employees' Compensation Act² 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.³ Section 8116 of the Act limits the right to receive compensation:

“Notwithstanding the other provisions of this section, an individual receiving benefits for disability or death under this subchapter who is also receiving benefits under subchapter III of chapter 84 of the title or benefits under title II of the Social Security Act shall be entitled to all such benefits, except that”

* * *

“[I]n the case of benefits received on account of age or death under title II of the Social Security Act, compensation payable under this subchapter based on the federal service of an employee shall be reduced by the amount of any such social security benefits payable that are attributable to [f]ederal service of that employee covered by chapter 84 of this title.”⁴

ANALYSIS -- ISSUE 1

The record supports that appellant received wage-loss compensation benefits concurrent with full SSA benefits from April 1, 2005 to December 27, 2007. The portion of the SSA benefits earned as a federal employee is part of the FERS retirement package and the receipt of such benefits under the Act and federal retirement benefits concurrently is a prohibited dual benefit.⁵ The SSA notified the Office of the applicable SSA rates for appellant and their effective dates and, based on that information, it was able to calculate the dual benefits she received from April 1, 2005 to December 27, 2007. The Office determined that the total FERS offset for the period at issue was \$16,381.56. The Board finds its calculations were accurate. The Board notes that appellant did not contest the amount of the overpayment. Accordingly, the Office properly determined that appellant received an overpayment in the amount of \$16,381.56.

LEGAL PRECEDENT -- ISSUE 2

The Office may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.⁶ If it finds that the recipient of an overpayment was not at fault, repayment will still be required unless: (1) adjustment or

² 5 U.S.C. §§ 8101-8193.

³ *Id.* at § 8102(a).

⁴ *Id.* at § 8116(d)(2); *see also* 20 C.F.R. § 10.421(d); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.11(a)(b) (February 1995).

⁵ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4e (February 1995).

⁶ 20 C.F.R. § 10.433(a).

recovery of the overpayment would defeat the purpose of the Act; or (2) adjustment or recovery of the overpayment would be against equity and good conscience.⁷ This information will also be used to determine the repayment schedule, if necessary.⁸ 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.⁹

ANALYSIS -- ISSUE 2

The Office properly found that appellant was not at fault in creating the overpayment. Nevertheless, appellant bears the responsibility for providing the financial information necessary to support waiver of the overpayment. She did not submit any financial information. Because appellant failed to submit the requested documentation, the Office properly denied waiver of recovery of the overpayment.

The Board notes that appellant requested a prerecoupment hearing, indicating some objection to recovery of the overpayment. But she repaid the \$16,381.56 overpayment in full prior to the proceeding. In a January 7, 2008 letter, appellant acknowledged the overpayment and her desire to repay the debt in its entirety. Counsel stated at the hearing that, as appellant repaid the overpayment in full, the waiver “issue was no longer in contention.” Under these circumstances, the Board finds the Office’s denial of waiver of recovery was appropriate.

CONCLUSION

The Board finds that the Office properly found that appellant received an overpayment of compensation in the amount of \$16,381.56. The Board further finds that the Office properly denied waiver of recovery of the overpayment.

⁷ *Id.* at § 10.434.

⁸ *Id.* at § 10.438(a).

⁹ *Id.* at § 10.438(b).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 22, 2008 is affirmed.

Issued: June 5, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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