



required repayment of the overpayment by deducting \$118.83 every 28 days from appellant's continuing compensation.

On appeal, appellant's representative, asserts that appellant did not understand the preliminary overpayment notification due to mental illness and failing health and, therefore, did not timely submit the requested information. She stated that appellant was not aware that she was being overpaid and lives on a very strict budget.

### **FACTUAL HISTORY**

On August 30, 1991 appellant, then a 50-year-old former clerk typist, filed an occupational disease claim alleging that work factors caused depression and anxiety. She had stopped work on May 24, 1991. An SF 50 form found in the record indicates that appellant's retirement plan was Federal Employees' Retirement System (FERS). On September 8, 1992 OWCP accepted that she sustained precipitation of an episode of bipolar disorder. Appellant received appropriate compensation and was placed on the periodic compensation rolls.

In February 1993 appellant was referred for vocational rehabilitation services. She began vocational training in May 1993, which she completed in October 1993. Appellant did not return to work and continued to receive wage-loss compensation. She moved from California to Texas in 2006.

Appellant signed OWCP 1032 forms from June 10, 2007 to June 18, 2014, on which she indicated that she was not receiving SSA benefits.

In a July 7, 2014 treatment note, Dr. Yee Yee Thein, an attending Board-certified psychiatrist, indicated that appellant stated she was doing well. He indicated that she reported financial stress and health concerns. Appellant was alert, with no mania or depression, and on examination Dr. Thein found her cooperative, with a fair mood and better affect. There was no abnormal thought content present, and her insight, judgment, attention, and language were intact. Dr. Thein's impression was that appellant's mood was stable but that she seemed to be physically deteriorating. He recommended supportive therapy, continued medication, and that she return in six months.<sup>3</sup>

In July 2014 OWCP began development of whether appellant was receiving dual benefits from FECA and SSA. On August 12, 2014 SSA provided information regarding her SSA rate with and without federal retirement (FERS) benefits, effective March 2007. On August 28, 2014 OWCP informed appellant that her FECA benefits were being reduced to reflect the contribution to her SSA benefits, effective August 24, 2014.

On September 2, 2014 OWCP issued a preliminary finding that an overpayment of compensation in the amount of \$35,867.28 had been created. It explained that the overpayment

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<sup>3</sup> The record did not contain a medical report between August 20, 2012 and July 7, 2014. In the August 20, 2012 report, Dr. Thein indicated that he began treating appellant on September 6, 2009 for bipolar disorder. He described her medication and indicated that she was compliant with treatment and needed ongoing treatment and medication management.

occurred because a portion of appellant's SSA benefits, received from March 1, 2007 through August 23, 2014, was based on credits earned while working in the Federal Government, and that this portion of her SSA benefit was a prohibited dual benefit. OWCP found appellant without fault in creating the overpayment. The preliminary decision provided an explanation of the calculation of the overpayment. Appellant was provided an overpayment action request and an overpayment questionnaire. She was informed of the actions she could take and was allotted 30 days to respond. An August 25, 2014 offset calculation worksheet indicated that the FERS offset for the period March 1, 2007 through August 23, 2014 totaled \$35,876.28.

On September 26, 2014 appellant's representative called OWCP. She stated that appellant was in the hospital. The daughter was informed that an authorization of representation was required.

Appellant did not respond to the preliminary overpayment letter. By decision dated October 3, 2014, OWCP finalized the preliminary overpayment decision, finding that she received an overpayment in compensation in the amount of \$35,876.28 and, while she was not at fault, she was not entitled to waiver of the overpayment because she failed to provide the requested information. Repayment in the amount of \$118.83 was to be deducted from her continuing compensation, per compensation period.

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

Section 8102 of FECA 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.<sup>4</sup> Section 8116 limits the right of an employee to receive compensation: While an employee is receiving compensation, he or she may not receive salary, pay or remuneration of any type from the United States.<sup>5</sup> Section 10.421 of the implementing regulations provide that an employee may not receive compensation for total disability concurrently with separation pay.<sup>6</sup> FECA Bulletin No. 97-9 states that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.<sup>7</sup> When OWCP discovers concurrent receipt of benefits, it must declare an overpayment in compensation and give the usual due process rights.<sup>8</sup>

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<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8116(a).

<sup>6</sup> 20 C.F.R. § 10.421(d); *see L.J.*, 59 ECAB 264 (2007).

<sup>7</sup> FECA Bulletin No. 97-9 (issued February 3, 1997).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.17.d(4) (April 1996).

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

The record supports that appellant received FECA wage-loss compensation beginning in 1991 and that she received SSA benefits beginning on March 1, 2007. The portion of the SSA benefits she earned as a federal employee was part of her FERS retirement package, and the receipt of benefits under FECA and federal retirement benefits concurrently is a prohibited dual benefit.<sup>9</sup> Appellant's FECA compensation was not offset until August 24, 2014. The SSA notified OWCP of the applicable SSA rates for appellant and their effective dates. Based on these rates, OWCP was able to calculate the dual benefit that she received from March 1, 2007 through August 23, 2014 which yielded an overpayment of compensation in the amount of \$35,876.27. The record includes an overpayment worksheet explaining the overpayment calculation.<sup>10</sup>

The Board has reviewed OWCP's calculations of the dual benefits appellant received for the period March 1, 2007 through August 23, 2014 and finds that she received dual benefits totaling \$35,876.27 for this period, thus creating an overpayment in compensation in that amount.

### **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."<sup>11</sup> Section 10.438 of OWCP regulations provide that [t]he 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 on an overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>12</sup> Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>13</sup>

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<sup>9</sup> *Supra* note 7.

<sup>10</sup> The August 25, 2014 offset worksheet lists the overpaid amounts for particular periods. These sums total \$35,876.27. The Board notes that the worksheet contains a minor computation error. Computing the FERS offset for appropriate periods indicates that the total overpayment is \$35,876.27, not \$35,876.28.

<sup>11</sup> 5 U.S.C. § 8129.

<sup>12</sup> Recovery of an overpayment will defeat the purpose of 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 or 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. 20 C.F.R. § 10.436. 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. *Id.* at § 10.437.

<sup>13</sup> 20 C.F.R. § 10.438.

## **ANALYSIS -- ISSUE 2**

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.<sup>14</sup> Appellant, however, had the responsibility to provide financial information to OWCP,<sup>15</sup> and did not do so.

In its preliminary determination dated September 2, 2014, OWCP clearly explained the importance of providing the requested financial information and advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. Appellant did not submit a completed overpayment questionnaire or otherwise submit financial information supporting her income and expenses at any time. As a result, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

While appellant's representative asserts on appeal that appellant did not understand the preliminary determination due to mental illness and failing health, the most recent medical evidence of record, a report from Dr. Thein dated July 7, 2014, indicated that, although appellant reported financial stress and health concerns, she was alert, with no mania or depression. On examination Dr. Thein found her cooperative, with no abnormal thought content. He advised that appellant's insight, judgment, attention, and language were intact. There is no additional contemporaneous medical evidence regarding appellant's mental or physical condition.

Consequently, as appellant did not submit the financial information required under section 10.438 of OWCP regulations, which was necessary to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment in compensation in the amount of \$35,876.27.

## **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 of OWCP's regulations provide that when an overpayment 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.<sup>16</sup>

## **ANALYSIS -- ISSUE 3**

Although OWCP provided an overpayment recovery questionnaire with the September 2, 2014 preliminary finding, appellant did not submit a completed questionnaire or other financial

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<sup>14</sup> *Supra* note 12.

<sup>15</sup> *Supra* note 13.

<sup>16</sup> 20 C.F.R. § 10.441; *see Steven R. Cofrancesco*, 57 ECAB 662 (2006).

information that OWCP requested prior to the final October 3, 2014 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>17</sup> When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>18</sup> As appellant did not submit any financial information to OWCP as requested, the Board finds that there is no evidence in the record to show that OWCP erred in directing recovery at a rate of \$118.83 from her continuing compensation.

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$35,876.27, that OWCP properly denied waiver of the overpayment, and that OWCP properly required repayment from appellant's continuing compensation payments.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: April 9, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

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<sup>17</sup> *Id.* at §10.438.

<sup>18</sup> *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(2) (September 1994).