

FACTUAL HISTORY

On July 15, 2002 appellant, then a 54-year-old rural carrier, filed a traumatic injury claim alleging that on July 11, 2002 she sustained pain in her head, neck and back following a motor vehicle accident. OWCP accepted the claim for lumbar, thoracic and cervical strain, bilateral shoulder strains, brachial neuritis, thoracic and lumbar neuritis, and rotator cuff syndrome. Appellant stopped work on July 1, 2002. On March 17, 2003 she accepted a modified position with the employing establishment.

By decision dated June 11, 2003, OWCP reduced appellant's compensation to zero based on its finding that her actual earnings as a modified rural carrier effective March 17, 2003 fairly and reasonably represented her wage-earning capacity and that her actual earnings met or exceeded the wages held in her date-of-injury position.²

On January 20, 2011 appellant filed a claim for compensation beginning January 1, 2011 after the employing establishment withdrew her modified position under the National Reassessment Program.

On March 1, 2011 OWCP modified its June 11, 2003 loss of wage-earning capacity decision after finding that its original determination was made in error. It requested that appellant submit claims for compensation for time lost from work, noting that she had received sick and annual leave for certain periods.

OWCP paid appellant compensation for total disability beginning February 26, 2011.

On September 30, 2013 SSA provided information to OWCP 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 January 2011, appellant's SSA rate with FERS was \$914.50 per month, and her SSA rate without FERS contributions was \$598.70; a difference of \$315.80 per month. Effective December 2011, her monthly SSA rate with FERS was \$947.30 and without FERS it was \$620.20; a difference of \$327.10. As of December 2012, the corresponding monthly SSA rates were \$963.40 with FERS and \$630.70 without FERS; a difference of \$332.70.³

Effective September 22, 2013, OWCP reduced appellant's 28-day compensation payment by \$307.11, the amount of her SSA retirement benefits attributable to her federal service.

² In a decision dated June 18, 2004, OWCP denied appellant's request for reconsideration after finding that she had not raised an argument or submitted evidence sufficient to warrant reopening her case for further merit review under 5 U.S.C. § 8128. In decisions dated June 18, 2004 and March 17, 2010, OWCP denied her claim for a schedule award as the medical evidence did not establish that she sustained a permanent impairment as a result of her employment injury.

³ The above-noted rate changes effective December 2011 and December 2012 were the result of automatic cost-of-living adjustments.

On October 8, 2013 OWCP noted that SSA benefits were paid on a monthly basis and FECA benefits were paid every 28 days. It converted the monthly differential to a 28-day FERS offset for the periods January 1 to November 30, 2011, December 1 to November 30, 2012, and December 1, 2012 to September 21, 2013. For the 334-day period January 1 to November 30, 2011, OWCP calculated the 28-day FERS offset as \$291.51, to find an overpayment of compensation in the amount of \$3,477.27. For the 366-day period December 1 to November 30, 2011, OWCP calculated the FERS offset as \$301.94, for an overpayment of \$3,946.77 and for the 295-day period December 1, 2012 to September 21, 2013, it calculated the FERS offset as \$307.11, for an overpayment of \$3,235.60. It added the amounts for each period to find a total overpayment of \$10,659.64.

On October 11, 2013 OWCP notified appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$10,659.64 because it paid her workers' compensation while she received SSA benefits without an offset for the portion attributable to her federal service. It further informed her of its preliminary determination that she was not at fault in the creation of the overpayment. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. It also notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoumment hearing.

On November 7, 2013 appellant requested a prerecoumment hearing. On March 10, 2014 she submitted financial information. On February 18, 2014 appellant's attorney requested a review of the written record in lieu of an oral hearing.

By decision dated April 22, 2014, following a review of the written record, an OWCP hearing representative found that appellant received an overpayment of compensation in the amount of \$10,659.64 for the period January 1, 2011 to September 21, 2013 because she concurrently received SSA benefits and workers' compensation with the appropriate FERS offset. She further found that appellant was without fault but not entitled to waiver both because her assets exceeded the resource base and her income exceeded her expenses by more than \$50.00. The hearing representative determined that the overpayment should be recovered by deducting \$300.00 per month from continuing compensation.

On appeal appellant contends that she did not receive dual benefits or an overpayment. She argues that she earned social security benefits based on her age and work history of 45 years, including at the employing establishment. Appellant related that she does not receive FERS retirement.

LEGAL PRECEDENT -- ISSUE 1

A FECA beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.⁴ To avoid payment of a dual benefit, FECA wage-loss

⁴ See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

compensation benefits shall be reduced by the amount of SSA benefits paid on the basis of age and attributable to the employee's federal service.⁵

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained lumbar, thoracic and cervical strain, bilateral shoulder strains, brachial neuritis, thoracic and lumbar neuritis, and rotator cuff syndrome due to a July 11, 2002 employment injury. She returned to modified work in 2003 but stopped work in January 2011 when the employing establishment withdrew her limited-duty position. OWCP paid appellant compensation for total disability beginning February 26, 2011. She also received SSA retirement annuity benefits beginning January 1, 2011 but OWCP did not offset her FECA benefits by the amount of her SSA benefits attributable to her federal service until September 22, 2013. As appellant was not entitled to receive both FECA benefits and that portion of her SSA benefits attributable to her federal employment, OWCP properly determined that she received an overpayment of compensation.⁶

The Board finds, however, that the case is not in posture regarding the period and amount of the overpayment. OWCP calculated that appellant received an overpayment of compensation from January 1, 2011 to September 21, 2013. It appears from the record, however, that it paid her compensation beginning February 26, 2011 rather than January 1, 2011. Therefore, the case will be remanded for OWCP to recalculate the period and the amount of the overpayment. Following this and any other action deemed necessary, it shall issue a *de novo* decision.⁷

On appeal appellant argues that she did not receive dual benefits. She maintains that she did not receive FERS retirement but rather age-related SSA benefits based on her work history. The issue, however, is whether appellant received workers' compensation benefits from OWCP that were not offset by the portion of age-related SSA benefits attributable to her federal service.⁸ The evidence from SSA supports that she received SSA retirement benefits based in part on her federal service during a period in which she also received workers' compensation from OWCP she received an overpayment of compensation.⁹

CONCLUSION

The Board finds that the case is not in posture regarding the period and the amount of the alleged overpayment, fault and waiver.

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

⁶ See *W.D.*, Docket No. 13-1974 (issued May 15, 2014).

⁷ As the case is not in posture for a decision regarding the amount of the overpayment, it is premature to address the issues of waiver and recovery.

⁸ See *supra* note 5.

⁹ See *R.L.*, Docket No. 12-1383 (issued December 28, 2012).

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 20, 2015
Washington, DC

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

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

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