



## **FACTUAL HISTORY**

On March 23, 2005 appellant, then a 54-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she lost her balance and fell off the loading dock that day, a distance of approximately three feet, while in the performance of duty. OWCP initially accepted the claim for thoracic and abdominal/rib sprains/strains, and contusion of the face, scalp, and neck. It later expanded the acceptance of appellant's claim to include pectus excavatum, acquired chest and rib deformity, lumbar strain, lumbosacral degenerative disc disease, spinal stenosis, right shoulder/upper arm contusion, rotator cuff sprain/strain, right subacromial syndrome, brachial plexus lesion, right carpal tunnel syndrome, right radial nerve lesion, and right elbow lateral epicondylitis. Appellant underwent several surgical procedures involving her right wrist, right elbow, right shoulder, and lumbar spine. She received wage-loss compensation and has been on the periodic compensation rolls since October 2005.

On June 12, 2012 appellant turned the age of 62 and beginning July 2012 she was eligible to receive age-related retirement benefits from the Social Security Administration (SSA). The record indicates that in August 2012 appellant advised OWCP of her receipt of age-related SSA retirement benefits effective July 2012. She continued to receive FECA wage-loss compensation for temporary total disability.

In March 2015 OWCP requested information from SSA as to whether appellant was receiving SSA benefits.

On April 11, 2015 SSA advised OWCP that appellant was entitled to retirement benefits, which began in July 2012. It provided a breakdown of appellant's monthly SSA benefits that included contributions from her federal service (w/ Federal Employees Retirement System (FERS)), as well as a monthly benefit that excluded her federal service contributions (w/o FERS). Beginning July 2012 appellant's total monthly SSA benefit was \$1,064.90. The corresponding monthly amount excluding appellant's federal service contributions was \$441.70. SSA provided additional calculations for subsequent periods beginning December 2012 (\$1,083.00/\$449.20), December 2013 (\$1,099.20/\$455.90), and December 2014 (\$1,117.90/\$463.60).

Effective May 3, 2015 OWCP adjusted appellant's wage-loss compensation to offset her federal employment-related SSA benefits (FERS offset). It reduced appellant's 28-day periodic rolls disability payment by \$603.97 due to the FERS offset.

On May 14, 2015 OWCP issued a preliminary finding that appellant received an overpayment of compensation in the amount of \$21,810.95 for the period July 1, 2012 through May 2, 2015. It explained that a portion of appellant's SSA retirement benefits was based on her federal service, and that she was not entitled to concurrently receive both FECA wage-loss benefits and federal service retirement benefits. OWCP further noted that it appeared that appellant was "with fault" in the creation of the overpayment.

An overpayment worksheet indicated that appellant received an overpayment of compensation in the amount of \$3,143.39 for the period July 1 to November 30, 2012, \$7,626.49 for the period December 1, 2012 to November 30, 2013, \$7,740.81 for the period December 1,

2013 to November 30, 2014, and \$3,300.26 for the period December 1, 2014 to May 2, 2015, which totaled \$21,810.95.

On May 31, 2015 appellant requested a prerecoument hearing. She provided a completed overpayment recovery questionnaire (Form OWCP-20) in which she indicated that she had a monthly income of \$1,013.00 from social security, plus her FECA benefits.<sup>3</sup> Appellant also reported \$77.10 in year-to-date interest income. Her monthly household expenses included: \$443.00 for mortgage, plus \$50.00 for homeowner's fee; \$400.00 for food; \$100.00 for clothing; \$534.00 for utilities; and \$300.00 in other expenses, which totaled \$1,836.00. Additionally, appellant reported monthly installment debt of \$25.00 (Visa) and automobile insurance premiums of \$119.00. She reported total assets (cash, checking, savings, stocks/bonds, etc.) of \$29,961.21. Appellant submitted a letter arguing hardship, along with documentation of her mortgage, bank statements, social security statements, statements from the Office of Personnel management (OPM), and disability letters from her physician.

A telephonic hearing was held before an OWCP hearing representative on February 4, 2016. Appellant testified that she did not intentionally accept payments to which she was not entitled. She stated three months before she reached age 62, she received a statement from SSA that she was entitled to regular SSA benefits at age 62 and thought that she was supposed to take those benefits. Appellant noted that she received almost the same amount of money when receiving disability benefits as the SSA benefits. She indicated that she did not report that she received SSA retirement benefits on CA-1032 forms because she did not know how to answer the question correctly. Appellant stated that she would place a question mark on the question and OWCP would call her. She explained that she thought the question had to do with retirement benefits and that she never received retirement benefits nor had she officially retired from the employing establishment. Appellant also testified that she had to sell her home and move into a smaller home that was one level because of her disability. She had to withdraw \$10,000.00 from her money market account as a down payment on the new home and also had to withdraw \$11,000.00 for repairs on the old home so she would be able to sell it. Appellant indicated that currently she receives \$400.00 monthly rent for the old home, as it is not yet ready for sale. At the time of the hearing, she indicated that she had \$1,863.61 in her savings account and \$3,425.00 in her checking account.

By decision dated April 15, 2016, the hearing representative affirmed that appellant was overpaid compensation in the amount of \$21,810.95 for the period July 1, 2012 through May 2, 2015 as she received dual benefits under FECA and SSA. However, he found appellant was without fault in the creation of the overpayment as the evidence reflected that she was not concealing the fact she received SSA benefits. The hearing representative denied waiver of recovery of the overpayment finding that appellant did not require substantially all of her income to meet her monthly living expenses,<sup>4</sup> and that she had over \$5,000.00 in her money market and checking accounts and detrimental reliance was not an issue. He set an overpayment recovery rate of \$450.00 each compensation period.

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<sup>3</sup> After adjustment for FERS offset, appellant's 28-day net FECA benefits were \$2,316.69 as of May 3, 2015.

<sup>4</sup> The hearing representative found that appellant's total monthly income was \$3,982.01, and her total monthly expenses were \$2,263.64, which left a monthly surplus of approximately \$1,700.00.

**LEGAL PRECEDENT -- ISSUE 1**

A FECA beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.<sup>5</sup> To avoid payment of a dual benefit, FECA wage-loss compensation benefits shall be reduced by the amount of Social Security Act benefits attributable to the employee's federal service.<sup>6</sup>

**ANALYSIS -- ISSUE 1**

The record indicates that appellant concurrently received FECA wage-loss compensation and SSA retirement benefits for the period July 1, 2012 through May 2, 2015. The portion of the SSA retirement benefits attributable to appellant's federal service is considered a prohibited dual benefit under FECA.<sup>7</sup> Therefore, her FECA wage-loss compensation must be offset by the amount of any SSA benefits attributable to appellant's federal service.<sup>8</sup> Based on information provided by the SSA, OWCP calculated a required offset of \$21,810.95 for the period July 1, 2012 to May 2, 2015, which it properly declared an overpayment.

SSA paid appellant 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 July 1 to November 30, 2012 (153 days) for an overpayment of \$3,143.39; December 1, 2012 to November 30, 2013 (365 days) for an overpayment of \$7,626.49; December 1, 2013 to November 30, 2014 (365 days) for an overpayment of \$7,740.81; and December 1, 2014 to May 2, 2015 (153 days) for an overpayment of \$3,300.26. The combined periods total an overpayment of \$21,810.95.

The Board has reviewed OWCP's calculations of the dual benefits appellant received for the period July 1, 2012 to May 2, 2015 and finds that OWCP properly determined that appellant received dual benefits totaling \$21,810.95 for that period, thus creating an overpayment of compensation in that amount. Accordingly, OWCP properly determined the fact and the amount of overpayment as no other probative evidence has been presented.<sup>9</sup>

**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>10</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

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

<sup>6</sup> 5 U.S.C. § 8116(d)(2); 20 C.F.R. § 10.421(d).

<sup>7</sup> *Supra* note 5.

<sup>8</sup> 20 C.F.R. § 10.421(d).

<sup>9</sup> *N.S.*, Docket No. 14-2081 (issued February 12, 2015).

<sup>10</sup> 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

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>11</sup> Additionally, 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 in attempting to repay the debt or when an 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>12</sup>

The individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>13</sup> This information is necessary for determining whether a waiver of recovery of the overpayment is warranted.<sup>14</sup> The information is also used to determine an appropriate repayment schedule, if necessary.<sup>15</sup> Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

OWCP found that appellant was not at fault in creating the overpayment of compensation and as such considered whether she was entitled to waiver of recovery of the overpayment. Waiver is only possible if recovery would defeat the purpose of FECA or would be against equity and good conscience. In order to establish that repayment of the overpayment would defeat the purpose of FECA, appellant must show that she requires substantially all of her income to meet current ordinary and necessary living expenses and that her assets do not exceed the established limit as determined by OWCP's procedures.<sup>17</sup>

During the prerecoupment hearing, appellant testified that she had to buy another home because of her disability, and withdrew \$10,000.00 from her money market as down payment for the new home and withdraw \$11,000.00 for repairs on her old home, which she currently rents out at \$400.00 a month. She indicated that she had \$1,863.61 in savings and \$3,425.00 in her checking account. Appellant also reported social security income of \$1,013.00 per month plus her FECA benefits of \$2,569.01 monthly. Her expenses were reported as \$43.00 house payment for her old home; \$278.64 house payment for her new home; \$59.00 homeowner expenses; \$400.00 food, \$100.00 clothing, \$534.00 utilities; \$300.00 miscellaneous expenses, \$25.00 Visa and \$124.00 for car insurance, for a total \$2,263.64. Based on the May 31, 2015 overpayment

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<sup>11</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>12</sup> *Id.* at § 10.437(a), (b).

<sup>13</sup> *Id.* at § 10.438(a).

<sup>14</sup> *Id.*

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

<sup>16</sup> *Id.* at § 10.438(b).

<sup>17</sup> *Id.* at § 10.436(a), (b).

recovery questionnaire and appellant's testimony, OWCP's hearing representative found that appellant's monthly income totaled \$3,982.01, which included \$1,013.00 social security income, \$2,569.01 workers' compensation benefits, and \$400.00 monthly rental income.<sup>18</sup> The hearing representative noted that appellant's total monthly expenses were \$2,263.64. As such, appellant's monthly income exceeded her monthly expenses by more than \$1,700.00. An individual is deemed to need substantially all of 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> Because appellant's income exceeds her expenses by more than \$50.00 per month, the Board finds that OWCP properly determined that recovery of the overpayment would not defeat the purpose of FECA.

The evidence also does not demonstrate that repayment of the overpayment would be against equity and good conscience. Appellant submitted no evidence that she had relied upon the incorrect payments to her detriment or that she would experience severe financial hardship attempting to repay the debt. There is no evidence that she relied upon the income from both SSA and FERS benefits in making the financial decision to buy another home. Consequently, OWCP properly denied waiver of recovery of the overpayment.

Because appellant has failed to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that she has failed to show that OWCP abused its discretion by refusing to waive the recovery of the \$21,810.95 overpayment.

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

When an overpayment has been made to an individual who is entitled to further payments, 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>20</sup>

### **ANALYSIS -- ISSUE 3**

OWCP reduced appellant's future compensation benefits by \$450.00 every 28 days. The Board finds that OWCP did not abuse its discretion in this regard. OWCP took into consideration the financial information submitted by appellant, which revealed a monthly surplus in excess of \$1,700.00, as well as the factors set forth in section 10.441(a) of its regulations and found that this method of recovery would minimize any resulting hardship on her. Therefore, it properly required repayment by deducting \$450.00 every four weeks from appellant's FECA wage-loss compensation.

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<sup>18</sup> The hearing representative noted that as appellant currently receives \$2,371.40 every 28 days, or 13 payments a year, \$2,371.40 x 13 payments a year equaled \$30,828.20, which when divided by 12 months, converted to a monthly amount of \$2,569.01.

<sup>19</sup> Federal (FECA) Procedure Manual, *supra* note 11.

<sup>20</sup> 20 C.F.R. § 10.441(a).

On appeal, appellant contends that the hearing representative failed to take into account taxes and homeowner's insurance that she pays on both her new and old homes. She also indicates that she cannot take care of herself and that her son moved in to take care of her as she cannot afford home health care, but that she pays her son weekly. As previously indicated, it is appellant's burden of proof to submit evidence to show that recovery of the overpayment would cause the degree of financial hardship sufficient to justify waiver and OWCP did not abuse its discretion by refusing to waive recovery of the overpayment of compensation.<sup>21</sup> Additionally, OWCP took into consideration the financial information submitted by appellant, as well as the factors set forth in section 10.441(a) of its regulations in determining that the \$450.00 deduction from her 28-day compensation payments would minimize any hardship.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$21,810.95 for the period July 1, 2012 through May 2, 2015. Although appellant was not at fault in creating the overpayment, OWCP properly denied waiver of recovery, and also properly deducted \$450.00 every 28 days from her continuing compensation payments.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 15, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2017  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>21</sup> See *P.B.*, Docket No. 15-1462 (issued February 5, 2016).