

FACTUAL HISTORY

Appellant, a 73-year-old office automation clerk, has an accepted claim for major depressive disorder -- single episode, which arose on or about November 2, 1998.² She has received wage-loss compensation for temporary total disability dating back to April 13, 2000.³ Appellant reached full retirement age in September 2010 and was eligible to receive age-related retirement benefits from the Social Security Administration (SSA).

On May 4, 2015 an SSA representative provided OWCP a breakdown of appellant's monthly SSA retirement benefits dating back to September 2010. The figures showed monthly SSA benefit rates that both included and excluded these portions attributable to her federal service. Based on the information provided, OWCP calculated that appellant received an overpayment of compensation in the amount of \$16,511.37 for the period September 1, 2010 through September 19, 2015.⁴

On September 24, 2015 OWCP notified appellant of its preliminary determination that she was overpaid compensation for the period September 1, 2010 to September 19, 2015 in the amount of \$16,511.37 as she had been receiving benefits for regular retirement under social security and also receiving benefits as an injured worker under FECA. Appellant was advised that a portion of these benefits was a prohibited dual benefit. OWCP found that she was without fault in creating the overpayment. It informed appellant of her right to challenge the amount of the overpayment or request a waiver of the overpayment by one of three methods including a request for a telephone conference, a request for a written review of the record, or a request for a precoupment hearing. If she wished a waiver of the overpayment, she was specifically directed to submit financial information by completing an overpayment recovery questionnaire (Form OWCP-20). Appellant was allotted 30 days to submit the requested information.

Appellant requested a precoupment hearing, which was held on June 16, 2016. She submitted documentation regarding her income, assets, and expenses following the hearing. Appellant's monthly income totaled \$2,706.00 (\$1,331.00 SSA benefits and \$1,375.00 FECA benefits). She reported monthly household expenses totaling \$1,400.00, which included taxes (\$30.00), food (\$400.00), clothing (\$40.00), utilities (\$218.00), cellular/landline telephone service (\$83.00), homeowner's insurance (\$88.00); grooming/hair (\$15.00), prescription drugs (\$160.00), automobile insurance/fuel/maintenance (\$286.00); and lawn care (\$80.00). Appellant also had monthly installment debt of \$730.00, which included her car payment (\$474.00) and one other loan (One Main -- \$256.00).

² Appellant previously worked as a psychiatric nursing assistant. On January 3, 1998 she sustained a work-related lumbar condition which OWCP accepted for left L5-S1 disc herniation (OWCP File No. xxxxxx856). In November 1998, appellant began working as an office automation clerk. She filed the current occupational disease claim (Form CA-2) on August 14, 2000.

³ By decision dated October 8, 2002, OWCP terminated compensations benefits pursuant to 5 U.S.C. § 8106(c). However, on February 4, 2003, the Branch of Hearings and Review reversed the termination of benefits and reinstated appellant to the periodic rolls retroactive to October 9, 2002.

⁴ Effective September 20, 2015, OWCP adjusted appellant's 28-day periodic rolls payment to offset the portion of her SSA age-related retirement benefits that were attributable to her federal service.

By decision dated July 27, 2016, an OWCP hearing representative finalized the overpayment in the amount of \$16,511.37 for the period September 1, 2010 to September 19, 2015, for which appellant was without fault, determined that she was not entitled to waiver of recovery of the overpayment because she had a monthly income surplus of \$576.00, and found that she could repay \$125.00 every 28 days, which would be withheld from her continuing FECA wage-loss compensation.

LEGAL PRECEDENT -- ISSUE 1

A FECA beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.⁵ 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.⁶ However, an offset is not required where the employee beneficiary is covered under the Civil Service Retirement System and/or her SSA age-related benefits are attributable to private sector employment.⁷

ANALYSIS -- ISSUE 1

The evidence of record establishes that appellant received FECA wage-loss compensation as well as SSA benefits from September 1, 2010 to September 15, 2015. The portion of appellant's SSA age-related retirement benefits attributable to her federal service is a prohibited dual benefit under FECA.⁸ SSA notified OWCP of the applicable SSA rates and their effective date as they pertained to appellant. Based on these rates, OWCP was able to calculate the dual benefit appellant had received from September 1, 2010 to September 15, 2015, which resulted in an overpayment of compensation in the amount of \$16,511.37. The record includes an overpayment worksheet explaining the overpayment calculation and she does not contest the amount of overpayment. The Board has reviewed OWCP's calculations of the dual benefit appellant received for the period September 1, 2010 to September 15, 2015 and finds that OWCP properly determined that she received a dual benefit totaling \$16,511.37 for that period, thus creating an overpayment in compensation in that amount. Fact of overpayment is therefore established and undisputed.

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.⁹ Recovery of an overpayment will

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

⁶ *Id.* at § 8116(d)(2); *id.* at § 10.421(d).

⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Claims*, Chapter 2.812.9c (May 2012); *id.* Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4e(2) (January 1997).

⁸ See *supra* notes 5 and 6.

⁹ 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

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.¹⁰ 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.¹¹

The individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP.¹² This information is necessary for determining whether a waiver of recovery of the overpayment is warranted.¹³ The information is also used to determine an appropriate repayment schedule, if necessary.¹⁴ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁵

ANALYSIS -- ISSUE 2

OWCP found that appellant was not at fault in creating the overpayment of compensation, and thus, properly 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.¹⁶

Based on the financial information submitted, the hearing representative properly calculated that appellant's monthly income totaled \$2,706.00 and that her average usual household expenses of \$1,400.00 plus a monthly installment debt of \$730.00, totaled expenses of \$2,130.00. The hearing representative found that the monthly income of \$2,706.00 minus the monthly expenses of \$2,130.00 represented a monthly surplus of \$576.00. As appellant's monthly income exceeded her monthly expenses by more than \$50.00, the Board finds that

¹⁰ 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).

¹¹ *Id.* at § 10.437(a), (b).

¹² 20 C.F.R. § 10.438(a).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at § 10.438(b).

¹⁶ *Id.* at § 10.436.

OWCP properly determined that recovery of the overpayment would not defeat the purpose of FECA.¹⁷

The evidence of record also demonstrates that repayment of the overpayment would not 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. 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 failed to show that OWCP abused its discretion by refusing to waive the \$16,511.37 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.¹⁸

ANALYSIS -- ISSUE 3

OWCP reduced appellant's future compensation benefits by \$125.00 every 28 days. If a claimant is being paid compensation or is due accrued benefits, the debt should be recovered as quickly as possible.¹⁹ The Board finds that OWCP did not abuse its discretion in this matter. OWCP took into consideration the financial information submitted by appellant, which resulted in a monthly surplus of \$576.00, as well as the factors set forth 20 C.F.R. § 10.441(a) and found that this method of recovery would minimize any resulting hardship on her. Therefore, it properly required repayment of the overpayment by deducting \$125.00 from her compensation payments every four weeks.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$16,511.37 for the period September 1, 2010 through September 19, 2015, for which she was not at fault. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly withheld \$125.00 from her continuing compensation payments.

¹⁷ An individual is deemed to need substantially all of her income to meet current ordinary and necessary living expenses if her monthly income does not exceed monthly expenses by more than \$50.00. *Desiderio Martinez*, 55 ECAB 245, 250 (2004).

¹⁸ 20 C.F.R. § 10.441(a).

¹⁹ See *Frederick Arters*, 53 ECAB 397 (2002).

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 4, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board