

overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$100.00 every 28 days from appellant's continuing compensation benefits.

FACTUAL HISTORY

On June 7, 2007 appellant, then a 53-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she injured her arm and neck while at work. OWCP accepted employment-related spinal stenosis in the cervical region. On August 16, 2007 appellant underwent discectomy and fusion at C6-7. She received wage-loss compensation on the supplemental rolls beginning July 20, 2007, and OWCP placed her on the periodic compensation rolls on October 28, 2007. Appellant returned to part-time modified duty on February 20, 2008, and continued to receive partial disability compensation. On August 12, 2008 OWCP accepted that appellant sustained a recurrence of total disability on May 16, 2008 and placed her on the periodic compensation rolls in November 2008. Appellant has not returned to work.

Appellant signed EN1032 forms on January 22, 2016 and January 20, 2017. On the January 22, 2016 form she indicated that she was receiving \$228.00 monthly benefits from SSA as part of an annuity for federal service. On the January 20, 2017 form appellant indicated that she received monthly SSA benefits of \$1,059.00.

OWCP forwarded a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form to SSA on March 20, 2017. SSA returned the form on April 21, 2017, noting that appellant received SSA retirement benefits beginning in April 2016. It indicated that beginning in April 2016 appellant's SSA rate with FERS was \$1,181.00 and without FERS \$132.70, and beginning in December 2016, the SSA rate with FERS was \$1,184.50 and without FERS \$133.10.

By letter dated May 2, 2017, OWCP notified appellant that, based on information provided by SSA regarding the amount her SSA benefit attributable to her federal service, her FECA wage-loss compensation had been adjusted. The record contains a FERS offset calculation noting a total overpayment of \$13,631.71.

On June 7, 2017 OWCP issued a preliminary determination that an overpayment of compensation in the amount of \$13,631.71 had been created. It explained that the overpayment occurred because a portion of appellant's SSA benefit that she received from April 1, 2016 to April 27, 2017 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 her not at fault in the creation of the overpayment and provided an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). It informed appellant that, in order for it to consider the question of waiver of recovery of the overpayment or to determine a reasonable method for collection, she must provide a completed Form OWCP-20, and attach supporting financial documentation, including copies of income tax returns, bank statements, bills, canceled checks, pay slips, and any other record to support claimed income and expenses. OWCP notified her that failure to submit the requested information within 30 days would result in the denial of waiver.

Appellant did not submit a response (Form OWCP-20) to the preliminary overpayment determination.

By decision dated July 12, 2017, OWCP finalized the preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$13,631.71 had been created. It explained that the overpayment occurred because a portion of appellant's SSA benefits that she received from April 1, 2016 to April 29, 2017 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 her without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. It noted that appellant had not responded to the preliminary determination as requested and, therefore, had not contested the finding. OWCP set repayment at \$100.00, to be deducted every 28 days from her continuing compensation benefits.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) 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.³ 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.⁴

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA benefits that are attributable to federal service of the employee.⁵ FECA Bulletin No. 97-09 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.⁶

Section 404.310 of SSA regulations provides that entitlement to SSA benefits begins at 62 years.⁷ Section 404.409 of SSA regulations provides that for individuals born from 1943 to 1954, full retirement age is 66 years.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$13,631.71.

OWCP found a \$13,631.71 overpayment for the period April 1, 2016 to April 29, 2017. The overpayment was based on the evidence received from SSA with respect to benefits paid to appellant. The record indicates that while appellant was receiving compensation for total disability

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see L.J.*, 59 ECAB 264 (2007).

⁶ FECA Bulletin No. 97-09 (issued February 3, 1997).

⁷ 20 C.F.R. § 404.310.

⁸ *Id.* at § 404.409.

under FECA, she also received SSA age-based retirement benefits. A claimant cannot receive concurrent compensation for wage loss and SSA retirement benefits attributable to federal service for the same period.⁹ The information provided by SSA indicated that appellant received age-based SSA benefits that were attributable to federal service during the period April 1, 2016 to April 29, 2017.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received evidence from SSA with respect to the specific amount of age-based SSA retirement benefits that were attributable to federal service. The SSA provided the SSA rate with FERS, and without FERS for specific periods commencing in April 2016 through April 2017. OWCP provided its calculations for each relevant period based on the SSA worksheet. No contrary evidence was provided.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period April 1, 2016 to April 29, 2017 and finds that an overpayment of compensation in the amount of \$13,631.71 was created.¹⁰

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."¹¹ Section 10.438 of OWCP regulations provides 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 of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹²

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$13,631.71 overpayment.

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

⁹ *Supra* notes 5 and 6.

¹⁰ See *G.T.*, Docket No. 15-1314 (issued September 9, 2016).

¹¹ 5 U.S.C. § 8129.

¹² 20 C.F.R. § 10.438.

would defeat the purpose of FECA or be against equity and good conscience.¹³ Appellant, however, had the responsibility to provide financial information to OWCP,¹⁴ and did not do so.

In its preliminary determination dated June 7, 2017, OWCP clearly explained the importance of providing the completed overpayment recovery questionnaire (Form OWCP-20) and financial information. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant did not submit a completed overpayment recovery questionnaire or otherwise submit financial information supporting her income and expenses within the defined period. 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.

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 of compensation in the amount of \$13,631.71.¹⁵

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides 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.¹⁶

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly set recovery of the overpayment of compensation at \$100.00 every 28 days from continuing compensation payments.

Although OWCP provided appellant an overpayment recovery questionnaire with the June 7, 2017 preliminary determination, as noted, she did not submit a completed overpayment recovery questionnaire or other financial information that OWCP requested prior to the final July 12, 2017 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁷ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines

¹³ *Supra* note 11.

¹⁴ 20 C.F.R. § 10.438.

¹⁵ *See S.B.*, Docket No. 16-1795 (issued March 2, 2017).

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

¹⁷ *Id.* at § 10.438.

designed to collect the debt promptly and in full.¹⁸ 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 of the \$13,631.71 overpayment at the rate of \$100.00 every 28 days.¹⁹

As to appellant's general assertion on appeal that the overpayment was in error, as explained above OWCP correctly found that an overpayment of compensation had been created, that appellant was not at fault in its creation, properly denied waiver of recovery of the overpayment, and set a reasonable recovery rate.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$13,631.71, that OWCP properly denied waiver of recovery of the overpayment, and that it properly required recovery at the rate of \$100.00 every 28 days from appellant's continuing compensation payments.

¹⁸ *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(2) (May 2004).

¹⁹ See *S.B.*, *supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2018
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