

**United States Department of Labor  
Employees’ Compensation Appeals Board**

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G.D., Appellant	)	
	)	
and	)	<b>Docket No. 18-0510</b>
	)	<b>Issued: August 6, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
La Puente, CA, Employer	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 16, 2018 appellant filed a timely appeal from a December 8, 2017 merit decision of the Office of Workers’ Compensation Programs (OWCP). Pursuant to the Federal Employees’ Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$58,814.34 for the period April 1, 1999 through December 31, 2012; (2) whether OWCP properly found that she was at fault in the creation of the overpayment and therefore not subject to waiver of recovery of the overpayment; and (3) whether it properly required recovery of the overpayment by deducting \$264.00 every 28 days from appellant’s continuing compensation payments.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On February 1, 1996 appellant, then a 59-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained a right rotator cuff tear and tendinitis causally related to factors of her federal employment. She stopped work on January 3, 1996. OWCP accepted the claim for an aggravation of right shoulder bursitis and paid appellant wage-loss compensation for total disability beginning March 21, 1996.

An October 5, 1994 Standard Form 50 Notice of Personnel Action (SF-50) indicated that appellant was covered under the Federal Employees Retirement System (FERS).

OWCP, by letter dated July 24, 1997, advised appellant that she would receive wage-loss compensation on the periodic rolls beginning June 21, 1997. It informed her that she had to report any retirement or disability income from a federal agency, noting that a FECA recipient could not receive benefits concurrently with “certain other Federal programs, including the Civil Service retirement program.” OWCP provided appellant with an EN1049 to sign and return. On July 29, 1997 appellant returned the signed form acknowledging that she understood the conditions under which she received compensation.

On February 10, 1997 OWCP notified appellant that federal regulations required her to make an affidavit of any earnings and employment during the previous year and that an EN1032 form was enclosed for that purpose. It advised her that she had to completely answer all questions on the EN1032 form and return the statement within 30 days or her benefits would be suspended.

By letter dated August 13, 1998, appellant notified OWCP that she had received a notice from the Social Security Administration (SSA) that was fully favorable concerning her request for disability retirement benefits.<sup>2</sup>

Appellant, on March 2, 1999, noted on a Form EN1032 that she received disability benefits from SSA. On an EN1032 form signed March 3, 2000, she indicated that she did not receive an annuity from SSA for federal service but, in response to the question on the form regarding whether she received other federally-funded or assisted benefits, indicated that she received retirement benefits from SSA and provided the amount received and her claim number. In a March 20, 2001 EN1032 form, appellant advised that she received disability benefits from SSA. On April 13, 2003 and March 17, 2004 EN1032 forms, she again indicated that she did not receive SSA benefits as part of an annuity for federal service, but noted that she received SSA retirement benefits in response to the question of whether she received other federal benefits. On EN1032 forms dated 2005 through 2013, appellant indicated that she did not receive SSA benefits as part of an annuity for federal service, but noted on the form that she received SSA benefits in response to the question of whether she received other federal benefits.

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<sup>2</sup> By decision dated May 16, 2000, OWCP terminated appellant’s wage-loss and schedule award compensation as she refused an offer of suitable work under 5 U.S.C. § 8106(c)(2). In a decision dated September 5, 2000, an OWCP hearing representative reversed the May 16, 2000 decision, finding that the opinion of the impartial medical examiner was insufficient to support a finding that the offered position was medically suitable.

On June 16, 2017 OWCP requested that SSA complete a FERS/SSA Dual Benefit Calculation Form. In a June 30, 2017 response, SSA provided appellant's SSA rate with FERS and her SSA rate without FERS from April 1999 to December 2016. With FERS, her SSA rate was \$681.90 effective April 1999, \$698.20 effective December 1999, \$722.60 effective December 2000, \$723.30 effective July 2001, \$742.00 effective December 2001, \$922.10 effective March 2002, \$935.00 effective December 2002, \$954.60 effective December 2003, \$980.30 effective December 2004, \$1,020.40 effective December 2005, \$1,054.00 effective December 2006, \$1,078.20 effective December 2007, \$1,140.70 effective December 2008 through December 2010, \$1,181.70 effective December 2011, and \$1,201.70 effective December 2012. Without FERS, her SSA rate was \$521.10 effective April 1999, \$533.60 effective December 1999, \$552.20 effective December 2000, \$552.80 effective July 2001, \$567.10 effective December 2001 to March 2002, \$575.00 effective December 2002, \$587.00 effective December 2003, \$602.80 effective December 2004, \$627.50 effective December 2005, \$648.20 effective December 2006, \$663.10 effective December 2007, \$701.50 effective December 2008 through December 2010, \$726.70 effective December 2011, and \$739.00 effective December 2012. SSA advised that appellant received disability benefits that were not subject to offset from July 1996 through March 1999, retirement benefits from April 1999 through the present, and was entitled to dual disability and retirement benefits at the same rate from January 2013 to the present.

OWCP completed a FERS offset calculation form on July 26, 2017. It calculated the amount of compensation that appellant should have received from April 1, 1999 through December 31, 2012 with a FERS offset to find an overpayment of compensation in the amount of \$58,814.34.

On July 26, 2017 OWCP advised appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$58,814.34 for the period April 1, 1999 through December 31, 2012 because it failed to offset the portion of the SSA benefits that she received due to her federal service from her workers' compensation benefits. It further notified her of its preliminary determination that she was at fault in the creation of the overpayment as she accepted a payment that she knew or should have known was incorrect. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, it informed 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 precoupment hearing.

Appellant, on August 4, 2017, requested a decision on the written evidence. She maintained that she was without fault in creating the overpayment of compensation. Appellant explained that she did not know that she was accepting an inaccurate amount of compensation and advised that she had always informed OWCP of the amount of her SSA benefits on the EN1032 forms. She submitted an overpayment recovery questionnaire (Form OWCP-20) listing monthly income of \$3,956.53 and monthly expenses of \$2,186.87. Appellant indicated that she had assets of \$1,835.89.

OWCP, in an August 29, 2017 letter, requested that appellant submit financial information supporting waiver. In a September 4, 2017 response, appellant related that SSA and OWCP benefits were her only sources of income and that she had no savings. She submitted documentation of monthly expenses, including a water bill of \$20.00 to \$30.00, \$197.44 for an

internet and telephone package, a utility bill showing the last payment as \$143.48, and a bank statement showing internet payments and debit card purchases from July 20 to August 17, 2017 totaling \$4,178.73. The expenses included an online payment of a mortgage loan in the amount of \$986.87.

By decision dated December 8, 2017, OWCP found that appellant received an overpayment of compensation in the amount of \$58,814.34 for the period April 1, 1999 through December 31, 2012 because it paid her wage-loss compensation benefits that were not reduced by the portion of the SSA benefits that she earned based on her federal service. It determined that she was at fault in the creation of the overpayment of compensation and thus not subject to waiver as she knew or should have known that she was accepting inaccurate compensation. OWCP noted that appellant had not adequately provided financial documentation of her income, assets, and expenses. It required recovery of the overpayment by deducting \$264.00 every 28 days from appellant's continuing compensation payments.

On appeal appellant asserts that neither OWCP nor SSA told her that she was receiving inaccurate compensation and requests waiver.

### **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 his duty.<sup>3</sup> Section 8129(a) of FECA provides, in pertinent part: "When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled."<sup>4</sup>

Section 8116(d) of FECA requires that compensation benefits be reduced by the portion of SSA benefits based on age or death that are attributable to federal service.<sup>5</sup> If an employee receives SSA benefits based on federal service, his or her compensation benefits shall be reduced by the amount of SSA benefits attributable to his or her federal service.

OWCP procedures provide that, while SSA benefits are payable concurrently with FECA benefits, the following restrictions apply: in disability cases, FECA benefits will be reduced by SSA benefits paid on the basis of age and attributable to the employee's federal service.<sup>6</sup> The offset of FECA benefits by SSA benefits attributable to employment under FERS is calculated as follows: where a claimant has received SSA benefits, OWCP will obtain information from SSA

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8129(a).

<sup>5</sup> *Id.* at § 8116(d); *see also N.R.*, Docket No. 12-1853 (issued June 10, 2013).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4(a) (January 1997); Chapter 2.1000.4(e)(2) (January 1997); Chapter 2.1000.11 (January 1997); OWCP does not require an election between FECA benefits and SSA benefits except when they are attributable to the employee's federal service. *See R.C.*, Docket No. 09-2131 (issued April 2, 2010).

on the amount of the claimant's benefits beginning with the date of eligibility to FECA benefits. SSA will provide the actual amount of SSA benefits received by the claimant/beneficiary. SSA will also provide a hypothetical SSA benefit computed without FERS covered earnings. OWCP will then deduct the hypothetical benefit from the actual benefit to determine the amount of benefits which are attributable to federal service and that amount will be deducted from FECA benefits to obtain the amount of the overpayment.<sup>7</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$58,814.34 for the period April 1, 1999 through December 31, 2012.

OWCP accepted that appellant sustained an aggravation of right shoulder bursitis causally related to factors of her federal employment. An October 5, 1994 SF-50 form indicated that she was enrolled in the FERS retirement plan.

OWCP paid appellant wage-loss compensation beginning June 21, 1996. Appellant also received age-related retirement benefits from SSA from April 1, 1999 through December 31, 2012. As noted, the portion of the SSA benefits she earned as part of her FERS retirement package received concurrently with FECA benefits constituted a prohibited dual benefit.<sup>8</sup> Appellant, consequently, received an overpayment of compensation.

SSA provided appellant's SSA rate with FERS and her hypothetical SSA rate without FERS. The difference between the amounts must be deducted from FECA benefits. Based on the information provided by SSA, OWCP determined that appellant received an overpayment of compensation in the amount of \$58,814.34. The Board has reviewed OWCP's calculations and finds that it properly determined that she received dual benefits totaling \$58,814.34, creating an overpayment of compensation in that amount.<sup>9</sup> Appellant, on appeal, does not contest the fact or amount of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 2**

Under OWCP's regulations, waiver of the recovery of an overpayment may be considered only if the individual to whom it was made was not at fault in the acceptance or creation of the overpayment.<sup>10</sup> The fact that the overpayment was the result of error by OWCP or another employing establishment does not by itself relieve the individual who received the overpayment of liability for repayment if the individual also was at fault for receiving the overpayment.<sup>11</sup> Each

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<sup>7</sup> See *L.B.*, Docket No. 11-2076 (issued August 29, 2012).

<sup>8</sup> See *H.H.*, Docket No. 16-1063 (issued September 15, 2016).

<sup>9</sup> See *L.M.*, Docket No. 16-1035 (issued November 27, 2017).

<sup>10</sup> 20 C.F.R. § 10.433(a).

<sup>11</sup> *Id.* at § 10.435(a).

recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she received from OWCP are proper. The recipient must show good faith and exercise a high degree of care in reporting events that may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault with respect to the creation of an overpayment: (1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) failed to provide information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have known to be incorrect (this provision applies only to the overpaid individual).<sup>12</sup>

### ANALYSIS -- ISSUE 2

OWCP determined that appellant was at fault in the creation of the overpayment as she accepted a payment that she knew or should have known was incorrect. It must thus establish that, at the time she received the compensation in question, she knew or should have known that the payment was inaccurate.<sup>13</sup>

The Board finds that appellant was at fault in the creation of the \$58,814.34 overpayment of compensation. On July 24, 1997 OWCP provided her with a Form CA-1049 which advised her that it was placing her on the periodic rolls and that she had to report any retirement or disability income from a federal agency. It notified appellant that a recipient of compensation under FECA was not permitted to receive benefits under some other programs, including Civil Service retirement.<sup>14</sup> On July 29, 1997 appellant certified that she had read and understood the terms and conditions under which she could receive compensation. Moreover, EN1032 forms dated March 2, 1999 through 2013 asked her whether she received SSA retirement benefits as part of an annuity under FERS. Appellant indicated on forms dated March 2, 1999 through April 14, 2012 that she did not received an annuity from SSA for federal service. On March 3, 2000, April 13, 2003, and March 17, 2004 EN1032 forms, in response to the question of whether she received other federally-funded benefits, she indicated that she received retirement benefits from SSA. In a March 20, 2001 EN1032 form, appellant specified that she received disability benefits from SSA and in 2005 through 2013 EN1032 forms, she advised that she did not receive SSA benefits as part of an annuity for federal service, but that she received SSA benefits in responding to the question of whether she received other federal benefits. By signing the forms, she certified that all statements made in response to the questions on the form were true, complete, and correct to the best of her knowledge and belief.

Despite being given notice that receipt of SSA benefits would reduce her entitlement to FECA compensation, appellant continued to accept full wage-loss compensation from OWCP

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<sup>12</sup> *Id.* at § 433(a); see *Kenneth E. Rush*, 51 ECAB 116 (1999).

<sup>13</sup> See *A.L.*, Docket No. 09-1529 (issued January 13, 2010); *Robin O. Porter*, 40 ECAB 421 (1989).

<sup>14</sup> See *B.R.*, Docket No. 16-0567 (issued December 9, 2016) (finding that a Form CA-1049 informing a claimant that a recipient of FECA compensation was not permitted to receive benefits under other federal programs, including the Civil Service retirement program, together with other evidence, supported a finding of fault when she accepted SSA benefits and FECA compensation without an appropriate offset).

without an appropriate offset from April 1, 1999 through December 31, 2012.<sup>15</sup> The Board thus finds appellant at fault under the third standard, as she accepted compensation payments which she knew or should have known she was not entitled to receive. Consequently, recovery of the overpayment of compensation in the amount of \$58,814.34 may not be waived.<sup>16</sup>

On appeal appellant requests waiver of recovery of the overpayment, maintaining that she was unaware that she received inaccurate compensation. As discussed above, however, OWCP notified her that she was not entitled to receive federal retirement benefits simultaneously with FECA benefits without it affecting her compensation. The Board, therefore, concludes that OWCP properly determined that appellant was at fault in the creation of the overpayment and that waiver of recovery of the overpayment is therefore precluded.

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

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.<sup>17</sup> Section 10.441(a) of the regulations<sup>18</sup> provides:

“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 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 any hardship.”<sup>19</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$264.00 every 28 days from appellant's continuing compensation payments. On the Form OWCP-20 overpayment recovery questionnaire, appellant provided her monthly income as \$3,956.53 and her monthly expenses as \$2,186.87. OWCP requested supporting financial evidence, and she submitted some documentation of expenses, though many of the purchases noted on her bank statement are not adequately described. It determined that appellant had failed to provide sufficient documentation of expenses.<sup>20</sup> OWCP further found that recovery of the overpayment in the

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<sup>15</sup> See *J.G.*, Docket No. 17-0400 (issued January 12, 2018).

<sup>16</sup> See *J.C.*, Docket No. 16-1889 (issued May 17, 2017).

<sup>17</sup> *Albert Pineiro*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

<sup>18</sup> 20 C.F.R. § 10.441(a).

<sup>19</sup> *Id.*

<sup>20</sup> The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP. *Id.* at § 10.438; see also *W.A.*, Docket No. 18-0070 (issued May 14, 2018).

amount of \$264.00 every 28 days from her continuing compensation would minimize hardship. The Board finds that OWCP properly set the rate of recovery of the overpayment.

**CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$58,814.34 for the period April 1, 1999 through December 31, 2012. The Board further finds that OWCP properly found appellant at fault in the creation of the overpayment and therefore not subject to waiver of recovery of the overpayment, and that OWCP properly required recovery of the overpayment by deducting \$264.00 every 28 days from her continuing compensation payments.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 8, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2018  
Washington, DC

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

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

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