

FECA wage-loss benefits for the periods August 2 to 17, 2006, October 16, 2006 to July 7, 2007, and September 27, 2009 to November 10, 2018; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$997.34 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On August 3, 2006 appellant then a 66-year-old registered nurse, filed a traumatic injury claim (Form CA-1) alleging that on June 27, 2006 she injured her right knee when walking while in the performance of duty.

OWCP accepted the claim for sprain of the right knee, lateral collateral ligament, and tear of medial meniscus of knee, current, right. Appellant stopped work on July 25, 2006. She filed a claim for compensation (Form CA-7) for leave without pay for the period August 2 to 17, 2016. OWCP paid appellant wage-loss compensation benefits on the supplemental rolls for this claimed period. Appellant filed a second Form CA-7 for leave without pay commencing October 16, 2016. OWCP again paid her wage-loss compensation on the supplemental rolls on October 16, 2016 and then on the periodic rolls, effective December 24, 2016.

In a memorandum dated July 11, 2007, OWCP related that appellant had received SSA Federal Employees Retirement System (FERS) benefits. It explained that it was required to deduct from FECA benefits the amount of SSA retirement benefits attributable to federal service. OWCP advised that appellant was in receipt of \$1,636.10 per month from SSA and that she would be entitled to receive \$1,453.30 if her "[f]ederal service was not included." It noted that the difference between the two amounts was \$182.80, the amount that was attributable to her federal service, and that this was also the amount that would be deducted from appellant's FECA benefits.

By decision dated September 22, 2009, OWCP informed appellant that her wage-loss compensation benefits would be reduced effective, September 27, 2009, as the constructed position of Director, nursing services represented her wage-earning capacity. A wage-earning capacity form (CA Form 816) determined appellant's new compensation rate; however, the SSA offset was not included in the calculation.

In a form dated November 7, 2018, the SSA advised OWCP that appellant had concurrently received FECA benefits and SSA FERS retirement benefits for periods June 2006 to December 2017. It provided the amount that she received in retirement benefits, including the amount earned to FERS and the hypothetical amount that she would have received without FERS. Including FERS, the SSA indicated: appellant was entitled to a monthly payment of \$1,583.90, effective June 2006; \$1,636.10, effective December 2006; \$1,673.70, effective January 2007; \$1,712.20, effective December 2007; \$1,811.50, effective December 2008, January 2009, and December 2010; \$1,876.70, effective December 2011; \$1,908.50, effective December 2012; \$1,937.10, effective December 2013; \$1,970.00, effective December 2014 and December 2015; \$1,975.80, effective December 2016; and \$2,015.30 effective December 2017.

Without FERS, appellant was entitled to a monthly payment of \$1,386.40 effective June 2006, \$1,432.10 effective December 2006 and January 2007, \$1,465.00 effective December 2007, \$1,549.90 effective December 2008, \$1,552.60 effective January and December 2009, and December 2010, \$1,608.50 effective December 2011, \$1,635.80 effective

December 2012, \$1,660.30 effective December 2013, \$1,668.50 effective December 2014 and December 2015, \$1,693.50 effective December 2016, and \$1,727.30 effective December 2017.

In a preliminary determination dated December 4, 2018, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$31,966.52 because it had failed to reduce her wage-loss compensation benefits for the periods August 2 to 17, 2006, October 16, 2006 to July 7, 2007, and September 27, 2009 to November 10, 2018 to offset her SSA retirement benefits, which were a prohibited dual benefit. It calculated the overpayment amount by determining the difference between her SSA amount with and without FERS for each period and adding this amount to find a total overpayment of \$31,966.52.

OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment and requested that she complete an overpayment recovery questionnaire (Form OWCP-20). It informed her that for consideration of waiver of recovery of the overpayment and a reasonable method for recovery, she must provide a completed Form OWCP-20 and attach supporting financial documentation. Additionally, OWCP notified appellant 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 preresoupment hearing.

On December 18, 2018 appellant requested a decision based on the written evidence regarding waiver of recovery of the overpayment. She completed the Form OWCP-20. However, appellant did not submit supporting financial documentation. She requested waiver of recovery of the overpayment and indicated, "If there was an overpayment, and I saw none, I depend on OWCP to sent correct amount to my bank, or notify me of change." Appellant also indicated that she was "unable to pay anything back for something that she was not responsible for." She listed her income as: SSA benefits of \$1,854.00 and OWCP benefits of \$4,256.00. Appellant indicated that her expenses included: rent, \$3,860.00; food, \$3,860.00; clothing, \$100.00; utilities, \$200.00; and miscellaneous, \$50.00 to \$150.00. She indicated that her assets included: checking, \$581.24 and savings, \$50,787.77.

By decision dated January 10, 2019, OWCP found that appellant had received an overpayment of compensation in the amount of \$31,966.52 for the periods August 2 to 17, 2006, October 16, 2006 to July 7, 2007, and September 27, 2009 to November 10, 2018, because her compensation payments were not offset by the portion of her SSA age-related benefits that were attributable to her federal service. It determined that she was without fault in the creation of the overpayment and denied waiver of recovery of the overpayment. OWCP explained that appellant did not submit any financial documentation to support her reported income, expenses, and resources. It found that it would recover the overpayment by deducting \$997.34 every 28 days from appellant's continuing wage-loss compensation payments.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA³ 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 or her duty.⁴ Section 8116 limits the right of an employee to receive

³ *Id.*

⁴ 5 U.S.C. § 8102(a).

compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁵

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related benefits that are attributable to federal service of the employee.⁶ FECA Bulletin No. 97-09 provides 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.⁷

Section 404.310 of SSA regulations provides that entitlement to SSA compensation begins at 62 years.⁸ Section 404.409 of SSA regulations provides that, for individuals born from 1943 to 1954, full retirement age is 66 years.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment in the amount of \$31,966.52 as she concurrently received SSA age-related benefits while receiving FECA wage-loss benefits for the period August 2 to 17, 2006, October 16, 2006 to July 7, 2007, and September 27, 2009 to November 10, 2018.

As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA retirement benefits attributable to federal service for the same period.¹⁰ The information provided by SSA accurately indicated that appellant had received age-related SSA benefits that were attributable to her federal service from August 2, 2006 and continuing. Thus, the record establishes that appellant received an overpayment of FECA wage-loss compensation.¹¹

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of age-based SSA retirement benefits that were attributable to federal service. The Board also finds that OWCP properly determined the amount of the overpayment. OWCP received documentation from SSA with respect to the specific amount of age-related SSA retirement benefits that were attributable to federal service. OWCP properly explained that no deduction for SSA age-based benefits had been recorded for the periods appellant received FECA wage-loss benefits: August 2 to 17, 2006; October 16, 2006 to July 7, 2007; and September 27, 2009 to November 10, 2018. Therefore an overpayment was created during these

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁷ FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁸ 20 C.F.R. § 404.310.

⁹ *Id.* at § 404.409.

¹⁰ FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹¹ *Id.*

periods. However, OWCP had offset appellant's SSA benefits during the period July 8, 2007 to September 26, 2009. It provided its calculations of the amount that it should have offset for each relevant period based on the SSA worksheet. No contrary evidence was provided.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$31,966.52, thus creating an overpayment of compensation in that amount, for the periods August 2 to 17, 2006, October 16, 2006 to July 7, 2007, and September 27, 2009 to November 10, 2018.¹²

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."¹³ Section 10.438 of OWCP's regulations provides that the 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.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$31,966.52 overpayment.

The fact that OWCP may have been negligent in the creation of the overpayment does not entitle appellant to waiver of the overpayment.¹⁵ As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁶ Appellant, however, did not provide the requisite financial documentation to OWCP.¹⁷

In its preliminary determination dated December 4, 2018, OWCP clearly explained the importance of providing the completed overpayment recovery questionnaire (Form OWCP-20) and supporting financial documentation. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. While appellant submitted a completed overpayment recovery questionnaire, she did not provide any financial documentation supporting her income and expenses. As a result, OWCP did not have the

¹² See *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

¹³ 5 U.S.C. § 8129.

¹⁴ 20 C.F.R. § 10.438.

¹⁵ *R.B.*, Docket No. 15-0808 (issued October 26, 2015).

¹⁶ 5 U.S.C. § 8129.

¹⁷ 20 C.F.R. § 10.438.

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. OWCP was, therefore, required to deny waiver of the overpayment.¹⁸

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides in pertinent part: 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 any hardship.¹⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$997.34 every 28 days from appellant's continuing compensation payments.

OWCP provided appellant an overpayment recovery questionnaire (Form OWCP-20) with the December 4, 2018 preliminary determination. Appellant completed the overpayment recovery questionnaire, but did not provide any financial information to support her income and expenses prior to the final January 10, 2019 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²⁰ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²¹ As appellant did not submit the financial documentation to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in directing recovery of the \$31,966.52 overpayment at the rate of \$997.34 every 28 days.²²

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$31,966.52, for which she was without fault, as she concurrently received SSA age-related benefits while receiving FECA benefits, for the periods August 2 to 17, 2006, October 16, 2006 to July 7, 2007, and September 27, 2009 to November 10, 2018, that OWCP properly denied waiver of recovery of the overpayment, and that it properly required

¹⁸ *Supra* note 14.

¹⁹ 20 C.F.R. § 10.441(a); *see A.S.*, Docket No. 19-0171 (issued June 12, 2019); *see Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

²⁰ 20 C.F.R. § 10.438.

²¹ *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.2 (September 2018).

²² *See E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

recovery by deducting \$997.34 every 28 days from appellant's continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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