

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

P.H., Appellant	)	
	)	
and	)	<b>Docket No. 18-1806</b>
	)	<b>Issued: October 10, 2019</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
North Brookfield, MA, 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 September 27, 2018 appellant filed a timely appeal from a June 29, 2018 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.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has received an overpayment of compensation in the amount of \$106,475.38 because she concurrently received Social Security Administration (SSA) age-based benefits while also receiving FECA benefits for the period December 1, 2005 through

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

<sup>2</sup> The Board notes that, following the June 29, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

March 31, 2018; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether it properly required recovery of the overpayment by deducting \$1,000.00 every 28 days from appellant's continuing compensation payments.

### **FACTUAL HISTORY**

On April 17, 1991 appellant, then a 54-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained numbness in her hands and arms due to factors of her federal employment. She noted that she first became aware of her condition on January 22, 1988 and related it to her federal employment on January 22, 1990. OWCP accepted the claim for bilateral carpal tunnel syndrome, traumatic left thumb arthritis, and bilateral trigger finger. It paid appellant wage-loss compensation on the periodic rolls based upon her loss of wage-earning capacity as of February 14, 1996. Appellant retired from the employing establishment on December 31, 2006.

An OWCP telephone memorandum (Form CA-110) dated July 28, 2006 noted that appellant called OWCP to discuss her FECA payments as she had received a lump-sum payment from SSA in the amount of \$7,942.00 for benefits due from December 2005 until July 2006. Appellant further noted that she would receive \$1,143.00 in SSA benefits each month, and questioned whether her FECA compensation would be affected. OWCP requested that she forward the SSA documentation.

On August 11, 2006 appellant forwarded to OWCP a July 23, 2006 letter from SSA that advised her that she was entitled to monthly age-related benefits beginning December 2005.

In a form dated September 6, 2007, SSA advised OWCP that appellant had concurrently received FECA and SSA retirement benefits based upon the Federal Employees Retirement System (FERS) contributions as of December 2005. It provided the amounts that she had received in retirement benefits, including the amount earned through FERS and the hypothetical amount that she would have received without FERS. With FERS, effective December 1, 2005, appellant was entitled to a monthly SSA rate of \$1,084.80, without FERS \$584.30; effective January 1, 2006 with FERS \$1,143.60, without FERS \$584.30; effective December 1, 2006 with FERS \$1,181.30, without FERS \$603.50.

In a form dated March 23, 2018, SSA advised OWCP that appellant had concurrently received FECA benefits and SSA age-based benefits beginning December 1, 2005. It provided the amount that she had received in retirement benefits, including the amount earned through FERS contributions and the hypothetical amount that she would have received without FERS. Including FERS, appellant was entitled to a monthly SSA rate of \$1,084.80, effective December 1, 2005; \$1,143.60, effective January 1, 2006; \$1,181.30, effective December 1, 2006; \$1,189.90, effective January 1, 2017; \$1,217.30, effective December 1, 2007; \$1,287.80, effective December 1, 2008; \$1,287.80, effective December 1, 2009; \$1,287.80, effective December 1, 2010; \$1,334.10, effective December 1, 2011; \$1,356.70, effective December 1, 2012; \$1,377.10, effective December 1, 2013; \$1,400.40 effective December 1, 2014; \$1,400.40 effective December 1, 2015; \$1,404.50, effective December 1, 2016; and \$1,432.50, effective December 1, 2017.

SSA further advised that, without FERS, appellant would have been entitled to a monthly SSA rate of \$521.20, effective December 1, 2005; \$521.20, effective January 1, 2006; \$538.30, effective December 1, 2006; \$538.30, effective January 1, 2017; \$550.60, effective December 1, 2007; \$582.50, effective December 1, 2008; \$582.50, effective December 1, 2009; \$582.50, effective December 1, 2010; \$603.40, effective December 1, 2011; \$613.60, effective December 1, 2012; \$622.80, effective December 1, 2013; \$633.30, effective December 1, 2014; \$633.30, effective December 1, 2015; \$635.10, effective December 1, 2016; and \$647.80, effective December 1, 2017.

OWCP completed an SSA offset calculation form on April 3, 2018. It determined the 28-day FERS SSA offset amount for the days in each period December 1, 2005 through March 31, 2018, which totaled \$106,475.38.

OWCP, in an April 11, 2018 letter, adjusted appellant's compensation benefits to offset the portion of her SSA retirement benefits attributable to her federal service on account of age. It informed her that she would receive net compensation of \$1,749.34 every 28 days beginning April 28, 2018.<sup>3</sup>

In a preliminary determination dated May 2, 2018, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$106,475.38 because it had failed to reduce her wage-loss compensation benefits for the period December 1, 2005 through March 31, 2018 by the portion of her SSA benefits that were attributable to her federal service. It calculated the overpayment amount by determining the difference between her SSA amount with and without FERS for each period and adding these amounts to find a total overpayment of \$106,475.38. OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. It requested that she complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, OWCP notified appellant that, within 30 days of the date of the letter, she could request a telephonic hearing, a final decision based on the written evidence, or a precoupment hearing.

Appellant, on May 29, 2018, requested that OWCP make a decision based on the written record and requested waiver of recovery of the overpayment. In an accompanying overpayment recovery questionnaire (Form OWCP-20), she advised that she had monthly income of \$3,047.00 and monthly expenses of \$1,851.00. Appellant also related that she had assets of \$48,500.00. No evidence documenting her expenses was provided. Appellant indicated that she was 81 years old with many medical issues and that she was living off of her social security and FECA compensation with no other income. She further noted that she was in no position to repay this compensation error which had occurred through no fault of her own.

By decision dated June 29, 2018, OWCP finalized its preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$106,475.38 for the period December 1, 2005 through March 31, 2018, because it failed to offset her compensation payments 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, but denied waiver of recovery of the overpayment of compensation based on the

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<sup>3</sup> This covered the compensation period of April 1 through 28, 2018.

financial information provided. OWCP found that it would recover the overpayment by deducting \$1,000.00, every 28 days, from appellant's continuing compensation payments.

### **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.<sup>4</sup> 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.<sup>5</sup>

Section 10.421(d) of OWCP's implementing regulations requires that it reduce the amount of compensation by the amount of any SSA benefits that are attributable to the federal service of the employee.<sup>6</sup> 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.<sup>7</sup>

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

OWCP's procedures provide that, once an overpayment is identified, it is responsible for determining whether the claimant was with fault or without fault, issuing a preliminary finding, and unless a hearing is requested, OWCP is responsible for issuing a final decision.<sup>10</sup> These procedures note that, if the claimant is determined to be without fault, a Form CA-2202 (preliminary finding notice) must be released (along with a Form OWCP-20) within 30 days of the date the overpayment is identified. Both, the reason that the overpayment occurred and the reason for the finding of without fault must be clearly stated. A Form CA-2202 informs the claimant of the right to submit evidence and the right to a prerecoupmment hearing on the issue of: (a) fact and amount of overpayment; and (b) waiver. Along with the Form CA-2202, OWCP should provide a clearly written statement explaining how the overpayment was created.

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<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8116.

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

<sup>7</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also A.C.*, Docket No. 18-1550 (issued February 21, 2019); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>8</sup> 20 C.F.R. § 404.310.

<sup>9</sup> *Id.* at § 404.409.

<sup>10</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(a)(2) (May 2004).

## ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$106,475.38 for the period December 1, 2005 through March 31, 2018.

Beginning December 1, 2005, appellant received age-related retirement benefits from SSA, while she continued to receive FECA wage-loss compensation. As noted, a claimant cannot receive concurrent compensation for wage loss and SSA retirement benefits attributable to federal service for the same period.<sup>11</sup>

The Board finds however that OWCP failed to follow its procedures in issuing the June 29, 2018 overpayment decision.<sup>12</sup> As noted, OWCP procedures provide that a Form CA-2202 (preliminary finding notice) must be released along with an OWCP-20 within 30 days of the date the overpayment is identified.<sup>13</sup>

In this case, OWCP was first formally placed on notice that appellant was receiving SSA age-based benefits by form dated September 6, 2007. Therein SSA advised OWCP that she had concurrently received FECA and SSA age-based benefits based on FERS contributions as of December 2005. It again identified the overpayment of compensation for OWCP on March 23, 2018, by advising OWCP that appellant had concurrently received FECA benefits and SSA benefits based on her FERS contributions as of December 1, 2005. However, OWCP did not issue a preliminary notice regarding the overpayment until May 2, 2018. This preliminary notice was therefore not issued within 30 days after the overpayment was identified.

Timely, issuance of a preliminary overpayment notice was necessary because, as the facts of this case demonstrate, payment of improper FECA compensation benefits continued for an extended period of time because OWCP took no action and appellant accrued a large sum of overpayment. Once OWCP learned of the commencement date of SSA age-based benefits which ran concurrently with FECA compensation benefits, it should have proceeded to issue a preliminary notice of overpayment. In this case, OWCP's continued payment of improper amounts of wage-loss compensation, after notice by SSA that appellant was receiving SSA age-based benefits, led to an overpayment exceeding \$100,000.00.

The Board thus finds that OWCP failed to follow its established procedures in determining that appellant received an overpayment of compensation in the amount of \$106,475.38 during the period December 1, 2005 through March 23, 2018.<sup>14</sup>

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<sup>11</sup> See *supra* note 7; *D.M.*, Docket No. 17-0983 (issued August 3, 2018).

<sup>12</sup> *P.H.*, Docket No. 18-1539 (issued August 2, 2019).

<sup>13</sup> *Supra* note 10.

<sup>14</sup> Based on the Board's disposition of whether an overpayment of compensation was created, the issues of waiver and recovery are moot. See *C.C.*, Docket No. 16-1190 (issued May 12, 2017).

**CONCLUSION**

The Board finds that OWCP failed to follow its established procedures in determining that appellant received an overpayment of compensation in the amount of \$106,475.38 for the period December 1, 2005 through March 23, 2018.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 29, 2018 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 10, 2019  
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