

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

OWCP accepted that on December 21, 2003 appellant, then a 50-year-old mail handler, sustained a temporary aggravation of chronic lumbar strain and a left shoulder strain when she slipped and fell at work while in the performance of duty. She stopped work on the date of injury. In a March 18, 2004 report of termination of disability and/or payment (Form CA-3), appellant's supervisor indicated that appellant returned to work on February 17, 2004 with restrictions. Appellant was initially compensated on the supplemental rolls and was later placed on the periodic rolls by OWCP.³

In an April 9, 2019 letter, OWCP requested that appellant complete an attached Form CA-1032, which required the reporting of retirement income, disability income, and/or compensation benefits she received from any federal agency.

Appellant indicated in a Form CA-1032 signed on April 26, 2019 that she was receiving SSA benefits based upon her age.

On June 5, 2019 SSA forwarded a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form to OWCP. The form indicated that in April 2019 appellant's SSA rate with FERS was \$1,976.50 and without FERS was \$734.50.

In an August 29, 2019 letter, OWCP notified appellant that her compensation would be offset by the portion of her SSA age-related retirement benefits attributable to her federal service. It indicated that she would thereafter receive net compensation of \$815.54 every four weeks.

In a preliminary determination dated September 11, 2019, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$5,691.36 because her wage-loss compensation benefits had not been reduced for the period April 1 through August 17, 2019 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 the stated period and adding this amount to find a total overpayment of \$5,691.36.

² Docket No. 05-0070 (issued March 17, 2005).

³ On July 14, 2004 appellant filed a claim for compensation (Form CA-7) for leave without pay for disability from work during the period July 6 through 11, 2004. On the reverse side of the Form CA-7 and a July 13, 2004 Form CA-3, appellant's supervisor indicated that she returned to work on July 12, 2004 with permanent restrictions. By decision dated September 2, 2004, OWCP denied appellant's claim for compensation for disability from July 6 through 11, 2004 causally related to the December 21, 2003 accepted employment injury. On October 4, 2004 appellant appealed to the Board. By order dated March 17, 2005, the Board set aside the September 2, 2004 decision and remanded the case for OWCP to consider all the evidence in the record. On remand, by decision dated September 1, 2005, OWCP granted appellant's claim for compensation for July 11, 2004, but denied her claim for compensation for July 6, 7, and 10, 2004. By decision dated June 6, 2011, OWCP reduced appellant's wage-loss compensation, effective that day, finding that she had the capacity to earn wages of \$360.00 per week in the constructed position of full-time receptionist.

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 action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit supporting financial documentation. It allotted 30 days for her to respond.

On October 2, 2019 appellant requested a decision based on the written evidence regarding fact, amount, and waiver of recovery of the overpayment. She maintained that she was not aware of the overpayment. On a completed Form OWCP-20 also dated October 2, 2019, appellant listed her total monthly income of \$2,456.00 (\$1,641.00, SSA benefits; and \$815.00, FECA benefits) and total monthly expenses of \$3,448.00 (\$1,995.00,⁴ rent or mortgage; \$350.00, food; \$100.00, clothing; \$403.00, utilities (\$250.00 for electricity, \$100.00 for fuel, and \$53.00 for telephone); \$450.00, miscellaneous; and approximately \$150.00, dogs). She contended that her electric bill was high because her neighbor “pulled off” her electricity and the owner would not do anything about the situation. Appellant indicated that she had no assets. She submitted financial documentation in support of her claimed expenses, which included several receipts that documented payments of \$181.39 and \$131.02, and \$156.77 for groceries, \$53.00 for cellphone service, \$174.12, \$170.15, \$74.66, \$57.92, and \$24.26 for veterinary services, and money order images that documented payments of \$1,895.00 for rent.

In a November 1, 2019 memorandum of a telephone conversation (Form CA-110), appellant reported gross SSA benefits of \$1,976.50 per month. OWCP noted that she received FECA compensation of \$883.50 per month. It added this amount to the amount of appellant’s monthly SSA benefits to find monthly income of \$2,860.00. Appellant reiterated her explanation that her electricity bill was high due to her neighbor’s unauthorized use of her electricity. OWCP noted that she did not submit bills or documents in support of her claimed utilities and other expenses. Appellant reported that she only had a checking account. She reported that she had a little money left over every month, but not much. OWCP indicated that appellant reluctantly agreed to allow a deduction of \$50.00 from her continuing compensation every 28 days to recover the overpayment commencing November 10, 2019.

By decision dated November 1, 2019, OWCP finalized the preliminary determination that appellant had received an overpayment of compensation in the amount of \$5,691.36 for the period April 1 through August 17, 2019, for which she was without fault, because her FECA compensation payments were not offset by the portion of her SSA age-related retirement benefits attributable to her federal service. It determined that she was without fault in the creation of the overpayment, but that waiver of recovery of the overpayment was denied. OWCP explained that appellant’s total monthly expenses of \$3,448.00⁵ were excessive without justification and that some of these expenses were not supported by financial documentation. It further explained that, while she indicated that she only had a checking account, she reported that she had spare funds

⁴ Appellant noted that her current monthly rent was \$1,895.00 and that it was going to increase to \$1,995.00 effective November 1, 2019.

⁵ The Board notes that it appears that OWCP inadvertently calculated \$2,648.00 rather than \$3,448.00 in total monthly expenses. The Board indicated that appellant’s monthly expense for rent was \$1,195.00 as of November 1, 2019 rather than \$1,995.00 as she reported in her October 2, 2019 Form OWCP-20, which resulted in \$3,448.00 total monthly expenses.

although the amount was unspecified and she had agreed to the deduction of \$50.00 per month from her continuing compensation to repay the overpayment. Thus, OWCP required recovery of the overpayment by deducting \$50.00 every 28 days from appellant's continuing compensation payments until the debt was paid in full.

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.⁶ However, section 8116 also 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.⁷ When an overpayment has been made to an individual 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 the individual is entitled.⁸

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.⁹ 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$5,691.36, for which she was without fault, because she concurrently received FECA benefits and SSA age-related retirement benefits without an appropriate offset for the period April 1 to August 17, 2019.

In its November 1, 2019 decision, OWCP found that an overpayment of compensation was created for the period April 1 through August 17, 2019. The overpayment was based on the evidence received from SSA with respect to retirement benefits paid to appellant. As noted, a claimant cannot receive both compensation for wage loss and SSA age-related retirement benefits

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8116.

⁸ *Id.* at § 8129(a).

⁹ 20 C.F.R. § 10.421(d); *see R.R.*, Docket No. 19-0104 (issued March 9, 2020); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *L.J.*, 59 ECAB 264 (2007).

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

attributable to federal service for the same period.¹¹ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service beginning April 1, 2019. OWCP, however, neglected to offset her FECA benefits until August 17, 2019. Accordingly, the Board finds that it properly determined that appellant received an overpayment of wage-loss compensation for the period April 1 through August 17, 2019.

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 SSA age-related retirement benefits that were attributable to federal service. The SSA provided appellant's SSA rate with FERS and without FERS for the period commencing April 1, 2019. OWCP provided its calculations of the amount that it should have offset during the relevant period based on the SSA worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period April 1 through August 17, 2019 and finds that an overpayment of compensation in the amount of \$5,691.36 was created.¹²

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of FECA provides: "Adjustment or recovery [of an overpayment] by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience."¹³

Recovery of an overpayment will defeat the purpose of FECA when such recovery would cause hardship to a currently or formerly entitled 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.¹⁴ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁵ Also, assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a

¹¹ 5 U.S.C. § 8116(d)(2); *see L.G.*, Docket No. 19-1274 (issued July 10, 2020); *R.D.*, Docket No. 19-1598 (issued April 17, 2020); *C.M.*, Docket No. 19-1451 (issued March 4, 2020); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

¹² *L.G.*, *id.*; *C.M.*, *id.*; *R.D.*, *id.*; *L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹³ 5 U.S.C. § 8129(b).

¹⁴ 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(2) (September 2018).

¹⁵ *Id.* at Chapter 6.400.4.a(3); *R.D.*, *supra* note 11; *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

spouse or dependent plus \$1,200.00 for each additional dependent.¹⁶ An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.¹⁷

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, gives up a valuable right or changes his or her position for the worse.¹⁸ OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.¹⁹

OWCP's regulations provide 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. The information is also used to determine the repayment schedule, if necessary.²⁰

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the 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 would defeat the purpose of FECA or be against equity and good conscience.²¹

Appellant did not provide sufficient financial information within the appropriate time period to show that she was entitled to waiver of recovery of the overpayment. She asserted that her monthly expenses exceeded her monthly income. Appellant contended that her electricity bill was high because her neighbor engaged in unauthorized use of her electricity. The Board finds that OWCP properly determined that she had not provided proof for all of her reported monthly expenses. While several receipts documented payments for groceries and telephone and veterinary services, and money order images documented payments for rent, appellant failed to submit any documentation in support of her other reported monthly expenses. In her October 2, 2019 Form OWCP-20, she claimed monthly expenses for utilities which included \$250.00 for electricity and \$100.00 for fuel, and other expenses of \$450.00. The Board notes, however, that appellant did not

¹⁶ *Id.* at Chapter 6.400.4.a(2) (September 2018).

¹⁷ *Id.* at Chapter 6.400.4.b(3).

¹⁸ *Supra* note 14 at § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁹ *Supra* note 14 at Chapter 6.400.4c(3) (September 2018).

²⁰ *Supra* note 14 at § 10.436; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²¹ *Id.* at § 10.436.

provide supporting documentation to clearly establish such expenses. As noted, it is appellant's responsibility to provide information about income, expenses, and assets as specified by OWCP.²²

For these reasons, appellant did not submit sufficient financial information to establish that recovery of the overpayment would defeat the purpose of FECA. She has not shown both that she needs substantially all of her current income to meet ordinary and necessary living expenses and that her assets do not exceed the allowable resource base. As appellant has not shown that her current ordinary and necessary living expenses exceed her monthly income by more than \$50.00 she has not shown that she needs substantially all of her current income to meet current ordinary and necessary living expenses.²³ Because she has not met the first prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider the second prong of the test, *i.e.*, whether her assets do not exceed the allowable resource base.²⁴

Appellant also has not established that recovery of the overpayment would be against equity and good conscience. She had not submitted evidence to substantiate that she would experience severe financial hardship in attempting to repay the debt. The November 1, 2019 Form CA-110 note indicated that appellant agreed to a deduction of \$50.00 from her continuing benefits. Moreover, there is no evidence to support that she gave up a valuable right or changed her position for the worse, in reliance on her FECA compensation. Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.²⁵

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 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.²⁶

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$50.00 from appellant's continuing compensation payments every 28 days.

²² *Id.*

²³ *See supra* note 15.

²⁴ *P.J.*, Docket No. 18-0248 (issued August 14, 2018); *L.M.*, Docket No. 16-1305 (issued November 27, 2017).

²⁵ *See R.D.*, *supra* note 11; *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *M.A.*, *supra* note 15; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

²⁶ *Supra* note 14 at § 10.441(a); *R.C.*, *id.*; *C.M.*, *supra* note 11; *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

The record supports that, in requiring repayment of the overpayment by deducting \$50.00 from appellant's compensation payments every 28 days, OWCP took into consideration the financial information submitted by her as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize resulting hardship on her. Moreover, as noted, on November 1, 2019 appellant agreed to a deduction of \$50.00 from continuing benefits.²⁷ For these reasons, the Board finds that OWCP properly determined recovery of the overpayment in this case.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$5,691.36, for which she was without fault, because she concurrently received FECA benefits and SSA age-related retirement benefits without an appropriate offset for the period April 1 to August 17, 2019. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$50.00 from her continuing compensation payments every 28 days.

²⁷ *J.H.*, Docket No. 16-1390 (issued August 1, 2017).

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2020
Washington, DC

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

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

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