

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

_____)	
B.B., Appellant)	
)	
and)	Docket No. 19-0822
)	Issued: February 18, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Jersey City, NJ, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 7, 2019 appellant filed a timely appeal from a January 11, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.¹

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$53,510.67 for the period February 1, 2014 through March 31, 2018, for which she was without fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits while receiving FECA wage-loss compensation benefits; (2) whether OWCP

¹ The Board notes that following the January 11, 2019 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.*

properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$407.41, every 28 days, from appellant's continuing compensation benefits.

FACTUAL HISTORY

On September 20, 2000 appellant, then a 52-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a lower lumbar strain when lifting parcels and sorting mail while in the performance of duty. OWCP accepted the claim for lumbosacral sprain. It paid appellant wage-loss compensation on the periodic rolls as of June 16, 2002.

In a letter dated January 22, 2002, OWCP informed appellant that she was being placed on the periodic rolls and of her obligations regarding completing an EN1032 form, which required the reporting of retirement income, disability income, and compensation benefits she received from any federal agency.

In EN1032 forms dated February 20, 2015, February 10, 2016, March 4, 2017, and February 22, 2018, appellant indicated that she was not receiving benefits from SSA as part of an annuity for her federal service, but that she was in receipt of social security disability benefits.

In a form dated March 26, 2018, SSA advised OWCP that appellant had concurrently received FECA benefits and age-related benefits through the Federal Employees Retirement System (FERS) for the period February 1, 2014 to date. It provided the amount that appellant received in retirement benefits, including the amount earned through FERS and the hypothetical amount that she would have received without FERS. With FERS SSA indicated that appellant received \$1,678.20 effective February 2014; \$1,706.70 effective December 2014; \$1,711.80 effective December 2016; and \$1,746.00 effective December 2017. Without FERS, SSA indicated that appellant was entitled to a monthly entitlement of \$627.40 effective February 2014; \$638.00 effective December 2014 and December 2015; \$639.90 effective December 2016; and \$652.60 effective December 2017.

In a letter dated April 17, 2018, 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 receive net compensation of \$1,628.21, every 28 days, effective April 28, 2018.

In a preliminary determination dated May 21, 2018, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$53,510.67, because her compensation benefits had not been reduced for the period February 1, 2014 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. OWCP then multiplied the daily offset amount by the number of days in each period to find a total overpayment of \$53,510.67. It further made a preliminary determination that appellant was without fault in the creation of the overpayment because she was not aware and could not have reasonably been expected to know that she accepted compensation to which she was not entitled. OWCP requested that she complete an enclosed overpayment recovery

questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, it 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 prerecoupment hearing.

Appellant submitted a June 11, 2018 Form OWCP-20 which listed monthly income of \$4,518.00. She also listed expenses of \$1,995.37, which included \$1,500.00 for rent, \$100.00 for food, \$40.00 for clothing, \$100.00 for utilities, \$65.37 and \$30.00 for dental and vision insurance, respectively, \$80.00 for health care, and \$80.00 for credit card expenses, and other household expenses. Appellant noted that she had assets of \$505.36. She also submitted financial documentation in support of her claim. Appellant claimed that she was never informed that she was not entitled to the benefits she received.

By decision dated January 11, 2019, OWCP finalized its preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$53,510.67 for the period February 1, 2014 through March 31, 2018, because it failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to her federal service. It determined that she was without fault in the creation of the overpayment, however, OWCP denied waiver of recovery of the overpayment of compensation based on the financial information provided. OWCP determined the overpayment would be recovered by deducting \$407.41, every 28 days, from appellant's continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² 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.³

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA benefits that are attributable to federal service of the employee.⁴ 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.⁵

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116.

⁴ 20 C.F.R. § 10.421(d); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

⁵ FECA Bulletin No. 97-09 (February 3, 1997).

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$53,510.67 for the period February 1, 2014 through March 31, 2018, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits.

In its January 11, 2019 decision, OWCP found that an overpayment of compensation was created for the period February 1, 2014 through March 31, 2018. The overpayment was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant. A claimant cannot receive both FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁶ The information provided by SSA indicated that appellant received age-related SSA retirement benefits that were attributable to federal service during the period February 1, 2014 through March 31, 2018.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. The SSA provided the rate with FERS, and without FERS, for specific periods in question commencing February 1, 2014 through March 31, 2018. OWCP provided its calculations for each relevant period based on an SSA Dual Benefit worksheet and in its May 21, 2018 preliminary overpayment determination. It calculated the amount of overpayment by determining the difference between the SSA amount with and without FERS for each period and multiplying the daily offset amount by the number of days in each period, to find a total overpayment of \$53,510.67. No contrary evidence was provided, and appellant has not contested that an overpayment occurred.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period February 1, 2014 through March 31, 2018 and finds that OWCP properly found that an overpayment of compensation in the amount of \$53,510.67 was created.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience. The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.⁷

Recovery of an overpayment will defeat the purpose of FECA if 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

⁶ 5 U.S.C. § 8116(d)(2); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

⁷ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

not exceed a specified amount as determined by OWCP.⁸ Additionally, 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.⁹

OWCP 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.¹⁰

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

OWCP properly determined that appellant did not require substantially all of her income to meet ordinary living expenses. Based upon appellant's June 11, 2018 overpayment recovery form and the record, it found that she had monthly income of \$4,518.00. Appellant listed monthly expenses of \$1,995.37, which included \$1,500.00 for rent, \$100.00 for food, \$40.00 for clothing, \$100.00 for utilities, \$65.37 and \$30.00 for dental and vision insurance, respectively, \$80.00 for health care, and \$80.00 for credit card expenses, and other household expenses. As appellant's monthly income exceeded her ordinary and necessary living expenses by more than \$50.00, she did not need substantially all of her income for ordinary and necessary living expenses.¹¹

Additionally, the evidence of record does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant did not submit any evidence that she had relied upon the incorrect payments to her detriment or that she would experience severe financial hardship attempting to repay the debt.¹² Consequently, OWCP properly denied waiver of recovery of the overpayment.

⁸ 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).

⁹ *Id.* at § 10.437(a)(b).

¹⁰ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹¹ *J.C.*, Docket No.19-0122 (issued June 11, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see also M.P.*, Docket No. 18-0902 (issued October 16, 2018).

¹² 20 C.F.R. § 10.437.

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 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.¹³

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$407.41, every 28 days, from appellant's continuing compensation payments.

OWCP provided appellant a Form OWCP-20 with its May 21, 2018 preliminary determination. Appellant completed the overpayment recovery questionnaire and submitted financial documentation. It revealed that she had income of \$4,518.00 and expenses of \$1,995.37, with excess monthly income of \$2,522.63.

The Board finds that OWCP gave due regard to the financial information appellant submitted as well as the factors set forth in section 10.441 in setting the amount of the repayment from continuing compensation benefits to minimize hardship, while liquidating the debt, as appellant had financial resources sufficient for more than ordinary needs.¹⁴ OWCP did not abuse its discretion in requiring recovery by deducting \$407.41 every 28 days from each of appellant's continuing compensation payments.

CONCLUSION

The Board finds that an overpayment of compensation was created in the amount of \$53,510.67 for the period February 1, 2014 through March 31, 2018, for which she was without fault, as she concurrently received SSA age-related retirement benefits while receiving FECA wage-loss compensation benefits. The Board further finds that OWCP properly denied waiver of recovery of the overpayment, and properly required recovery by deducting \$407.41, every 28 days, from appellant's continuing compensation payments.

¹³ *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

¹⁴ *See N.J.*, Docket No. 19-1170 (issued January 10, 2020).

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 18, 2020
Washington, DC

Patricia H. Fitzgerald, Deputy 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