

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

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<b>J.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-1866</b>
	)	<b>Issued: June 2, 2020</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>TRANSPORTATION SECURITY</b>	)	
<b>ADMINISTRATION, Sacramento, CA, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 7, 2019 appellant filed a timely appeal from a March 12, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from March 12, 2019, the date of OWCP's last decision, was September 8, 2019. Because using September 12, 2019, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the FedEx postmark is September 7, 2019, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the March 12, 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.*

## **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$7,577.11, for which she was not at fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits while receiving FECA wage-loss compensation for the period November 1, 2013 through February 2, 2019; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments, every 28 days.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances as presented in the prior appeal are incorporated herein by reference. The relevant facts are set forth below.

On April 23, 2011 appellant, then a 63-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that she twisted her left knee when pushing a suitcase into an x-ray tunnel while in the performance of duty. OWCP initially accepted the claim for left knee tendinitis, and subsequently expanded acceptance of the claim to include left patellar tendinitis; permanent aggravations of tears of the medial and lateral meniscus of the left knee; and permanent aggravation of arthropathy of the left knee. It paid appellant compensation benefits on the supplemental rolls as of May 17, 2013 and on the periodic rolls as of August 25, 2013.

In EN1032 forms dated December 18, 2013 through November 20, 2018, appellant indicated that she did not receive SSA benefits as part of an annuity for federal service. She explained on forms dated November 28, 2017 and November 20, 2018 that she was in receipt of "regular Social Security."

On December 3, 2018 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form. On January 15, 2019 SSA submitted the completed form, which showed SSA benefit rates with a FERS offset and without a FERS offset from November 2013 through December 2018. Beginning November 2013, the SSA rate with FERS was \$1,011.00 and without FERS was \$902.90. Beginning December 2013, the SSA rate with FERS was \$1,027.00 and without FERS was \$916.40. Beginning December 2014, the SSA rate with FERS was \$1,053.00 and without FERS was \$931.90. Beginning December 2016, the SSA rate with FERS was \$1,056.00 and without FERS was \$934.60. Beginning December 2017, the SSA rate with FERS was \$1,077.00 and without FERS was \$953.20. Beginning December 2018, the SSA rate with FERS was \$1,107.00 and without FERS was \$979.80. The SSA noted that appellant received SSA disability benefits from September through October 2013.

A FERS offset calculation worksheet dated January 30, 2019 noted each period of overpayment and provided calculations, which resulted in a total overpayment of \$7,577.11 during the period November 1, 2013 through February 2, 2019.

In a preliminary determination dated February 1, 2019, OWCP informed appellant that she received an overpayment of compensation in the amount of \$7,577.11 because the SSA/FERS

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<sup>4</sup> Docket No. 17-0934 (issued September 1, 2017).

offset was not applied to payments for the period November 1, 2013 through February 2, 2019. It advised that she was without fault in the creation of the overpayment, because she had relied on misinformation provided to her in writing by OWCP and there was no evidence in the case file to substantiate that she knew or should have known the proper course of action to be followed. With the preliminary determination, OWCP included a copy of SSA's completed January 15, 2019 FERS/SSA dual benefits calculation form, as well as its January 30, 2019 FERS offset calculation worksheet. It advised appellant that she could request a waiver of recovery of the overpayment. OWCP requested that she submit a completed Overpayment Recovery Questionnaire (Form OWCP-20) and it requested financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. OWCP further notified 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 prereducement hearing, by completing the Overpayment Action Request Form.

On February 21, 2019 appellant contested the overpayment as to the fact and amount, and requested waiver of recovery. However, she did not exercise her appeal rights.

By decision dated March 12, 2019, OWCP finalized the preliminary overpayment determination. It found that appellant had received an overpayment of compensation in the amount of \$7,577.11 because the SSA/FERS offset was not applied to FECA wage-loss compensation payments for the period November 1, 2013 through February 2, 2019. OWCP further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, because she had not completed and returned OWCP's overpayment recovery questionnaire (Form OWCP-20) and had not submitted accompanying financial records.

### **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.<sup>5</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>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Id.* at § 8116.

<sup>7</sup> 20 C.F.R. § 10.421(d); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>8</sup> 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 \$7,577.11 as she concurrently received SSA age-related retirement benefits while receiving FECA wage-loss compensation benefits for the period November 1, 2013 through February 2, 2019.

As noted, a claimant cannot receive concurrent FECA wage-loss compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.<sup>9</sup> The information provided by SSA accurately indicated that appellant had received SSA age-related retirement benefits that were attributable to her federal service from November 1, 2013 through February 2, 2019. Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.<sup>10</sup>

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. The Board finds that OWCP properly determined the amount of the overpayment. The SSA provided appellant's SSA benefit rate with FERS and without FERS during the applicable period. OWCP determined that the difference of the portion of SSA benefits attributed to her federal service needed to be offset against her OWCP compensation benefits. This amount differed for each period beginning November 2013. OWCP calculated that the lack of offset from November 1, 2013 through February 2, 2019 resulted in an overpayment total of \$7,577.11.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$7,577.11, thus creating an overpayment of compensation in that amount, for the period November 1, 2013 through February 2, 2019.

### **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."<sup>11</sup> 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.<sup>12</sup>

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<sup>9</sup> *Supra* note 7. See also *N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>10</sup> *Id.*

<sup>11</sup> 5 U.S.C. § 8129.

<sup>12</sup> 20 C.F.R. § 10.438.

## **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.<sup>13</sup> Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.<sup>14</sup>

In its preliminary determination dated February 1, 2019, OWCP clearly explained the importance of providing the completed overpayment questionnaire and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. Appellant, however, did not submit a completed Form OWCP-20 or submit sufficient financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>15</sup>

## **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>16</sup> Section 10.441(a) of the regulations<sup>17</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>18</sup>

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<sup>13</sup> *Id.* at § 10.436.

<sup>14</sup> *Id.* at § 10.438.

<sup>15</sup> *See T.E.*, Docket No. 19-0348 (issued December 11, 2019).

<sup>16</sup> *See C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Albert Pineiro*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

<sup>17</sup> 20 C.F.R. § 10.441(a).

<sup>18</sup> *Id.*

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

OWCP provided appellant a Form OWCP-20 with the February 1, 2019 preliminary determination. Appellant did not complete the overpayment recovery questionnaire or provide the necessary financial information to support her income and expenses prior to the final March 12, 2019 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>19</sup> When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>20</sup> 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 \$7,577.11 overpayment at the rate of \$200.00 every 28 days from her continuing compensation payments.<sup>21</sup>

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$7,577.11 for the period November 1, 2013 through February 2, 2019, for which she was without fault, as she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment, and properly required recovery of the overpayment by deducting \$200.00 every 28 days from her continuing compensation payments.

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<sup>19</sup> *Supra* note 12.

<sup>20</sup> *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, *Final Overpayment Determinations*, Chapter 6.400.3 (September 2018).

<sup>21</sup> *See E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 12, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 2, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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