

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

J.H., Appellant

and

**U.S. POSTAL SERVICE, MIAMI POST
OFFICE, Miami, OK, Employer**

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**Docket No. 19-1887
Issued: June 16, 2020**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 12, 2019 appellant filed a timely appeal from an August 7, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$96,844.07, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the August 7, 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 evidence for the first time on appeal. *Id.*

for the period March 1, 2010 through April 27, 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

On March 18, 2014 appellant, then a 70-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained left shoulder, bilateral elbow, and bilateral middle finger conditions due to repetitive factors of her federal employment, including picking up and sorting bulk mail and letters, pulling parcels, loading and driving her postal vehicle, and delivering to and extracting mail from mailboxes. She related that she first became aware of her conditions on September 4, 2012 and first realized their relationship to factors of her federal employment on March 6, 2013. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on February 25, 2014. OWCP assigned the claim as File No. xxxxxx617. It accepted appellant's claim for other affections of the left shoulder region not elsewhere classified and sprain of the left shoulder, upper arm, and rotator cuff. OWCP paid her disability compensation on the supplemental rolls, commencing February 26, 2014. It subsequently paid appellant disability compensation on the periodic rolls, commencing June 1, 2014.

Appellant previously filed a traumatic injury claim (Form CA-1) under OWCP File No. xxxxxx023 on September 14, 1989 alleging that, on that date, she injured her right shoulder when she reached her arm up while in the performance of duty. OWCP accepted her claim for a right shoulder strain and paid appellant intermittent wage-loss compensation benefits from 1990 through September 16, 2002. On October 21, 2011 she filed a claim for a schedule award (Form CA-7). Appellant indicated that since April 2010 she had been receiving annuities from SSA. By decision dated January 9, 2013, OWCP granted her a schedule award for permanent impairment of the right upper extremity which ran from June 11, 2012 to January 15, 2013. A December 20, 2012 OWCP schedule award payment indicated that appellant received compensation for the period June 11 to December 15, 2012. A June 3, 2013 OWCP direct payment indicated that she received additional compensation for the period June 11, 2012 through January 15, 2013 due to a previous error in the schedule award compensation rate calculation. By decision dated December 4, 2013, OWCP found that appellant was entitled to an additional schedule award for permanent impairment of the right upper extremity which ran from March 16 to April 6, 2013, for a total 17 permanent impairment of the right upper extremity.³ OWCP administratively combined OWCP File Nos. xxxxxx617 and xxxxxx023, with the latter designated as the master file.

In an EN1032 form dated March 23, 2015, appellant indicated that she received regular SSA checks due to her age in the amount of \$1,402.00. In an EN1032 form dated March 30, 2016, she indicated that she received SSA checks due to her age in the amount of \$1,108.00. In an EN1032 form dated April 17, 2017, appellant indicated that she received SSA benefits due to her age in the amount of \$1,108.00 per month. In an EN1032 form dated April 3, 2018, she indicated

³ The Board notes that under OWCP File No. xxxxxx205, OWCP accepted appellant's occupational disease claim for bilateral carpal tunnel syndrome. It ultimately granted appellant a schedule award for permanent impairment of the right upper extremity. OWCP has administratively combined this file with master File No. xxxxxx023.

that she received SSA benefits as part of an annuity for federal service in the amount of \$1,108.00 per month.

On January 16, 2019 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form. It listed appellant's FERS period as March 18, 2006 and continuing and listed the computation period as February 26, 2014 and continuing.

In an EN1032 form dated March 26, 2019, appellant indicated that she received SSA benefits as part of an annuity for federal service in the amount of \$1,108.00 per month.

On April 17, 2019 SSA completed the dual benefits calculation form, which indicated appellant's SSA benefit rates with a FERS offset and without a FERS offset from March 2010 through December 2018. Beginning March 2010, the SSA rate with FERS was \$951.50 and without FERS was \$249.90. Beginning December 2010, the SSA rate with FERS was \$951.50 and without FERS was \$249.90. Beginning January 2011, the SSA rate with FERS was \$990.90 and without FERS was \$249.90. Beginning December 2011, the SSA rate with FERS was \$1,026.50 and without FERS was \$258.30. Beginning January 2012, the SSA rate with FERS was \$1,065.00 and without FERS was \$258.30. Beginning December 2012, the SSA rate with FERS was \$1,083.10 and without FERS was \$262.60. Beginning January 2013, the SSA rate with FERS was \$1,130.10 and without FERS was \$262.60. Beginning December 2013, the SSA rate with FERS was \$1,147.00 and without FERS was \$266.50. Beginning January 2014, the SSA rate with FERS was \$1,184.70 and without FERS was \$266.50. Beginning December 2014, the SSA rate with FERS was \$1,204.80 and without FERS was \$271.00. Beginning January 2015, the SSA rate with FERS was \$1,213.20 and without FERS was \$271.00. Beginning December 2015, the SSA rate with FERS was \$1,213.20 and without FERS was \$271.00. Beginning December 2016, the SSA rate with FERS was \$1,216.80 and without FERS was \$271.80. Beginning December 2017, the SSA rate with FERS was \$1,241.10 and without FERS was \$277.20. Beginning December 2018, the SSA rate with FERS was \$1,275.80 and without FERS was \$284.90.

In a May 2, 2019 letter, OWCP indicated that it determined that appellant had been receiving both FECA and FERS/SSA benefits at the same time, resulting in a dual prohibited benefit. It explained that her FECA compensation effective pay period April 28 to May 25, 2019 would be calculated using an SSA offset.

A May 2, 2019 FERS offset calculation worksheet noted each alleged period of overpayment and provided calculations which resulted in a total overpayment to appellant of \$96,844.07 during the period March 1, 2010 through April 27, 2019.

In a preliminary determination dated May 22, 2019, OWCP informed appellant that she received an overpayment of compensation in the amount of \$96,844.07 because the SSA/FERS offset was not applied to payments for the period March 1, 2010 through April 27, 2019. It determined that she was without fault in the creation of the overpayment because she relied on improper information given in writing by OWCP or by another government agency which she had reason to believe was connected with the administration of benefits. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a fair repayment method and advised her that she could request a waiver of recovery of the overpayment. 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. OWCP advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. It further 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.

A June 4, 2019 OWCP payment history inquiry report indicated that it paid appellant disability benefits from February 26, 2014 to May 25, 2019.

On June 20, 2019 appellant, through her then representative, requested that OWCP make a decision based on the written evidence regarding possible waiver of recovery of her overpayment. She indicated that she contested the overpayment because she disagreed with the amount of the overpayment. Appellant additionally requested a waiver because she was found to be without fault in the creation of the overpayment.

In a June 17, 2019 Form OWCP-20, appellant indicated that her total monthly income included \$2,681.51 from OWCP and \$1,140 in SSA benefits. She listed her husband as a dependent and indicated that her total monthly expenses included \$880.13 for a car loan, \$1,066.50 for rent or mortgage, including property tax, \$400.00 for food, \$150.00 for clothing, \$350.00 for utilities, \$1,250.00 for other expenses, including \$185.62 for life insurance, dental insurance, and vision insurance, \$100.00 for a medical bill, and \$100.00 to a credit card company. Appellant indicated that her funds included \$225.00 cash on hand, a balance of \$952.42 in a checking account, and a balance of \$3,020.96 in a savings account.

In a June 20, 2019 letter, appellant's then representative indicated that appellant would suffer severe financial hardship if she was required to repay the overpayment. He noted that she could not afford any deductions from her check and stated that her husband had ongoing serious health issues that were causing continuous financial drain. The then representative also noted while appellant began receiving FECA benefits on "February 24, 2014," OWCP found that that SSA offset was not applied to her FECA payments starting on March 1, 2010. In an undated letter received by OWCP on June 21, 2019, appellant indicated that her husband had been hospitalized three times since December and had to see a doctor often, which was an added expense.

By decision dated August 7, 2019, OWCP finalized the May 22, 2019 preliminary determination that appellant had received an overpayment of compensation in the amount of \$96,844.07 for the period March 1, 2010 through April 27, 2019 because it had failed to offset her compensation payments by the portion of her SSA benefits that were attributable to federal service. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP found that it would recover the overpayment by deducting \$200.00 every 28 days from her 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 his or her duty.⁴ 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.⁵

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.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

ANALYSIS

The Board finds that fact of overpayment has been established.

Appellant received FECA schedule award payments from OWCP for the periods June 11, 2012 to January 15, 2013 and March 16 to April 6, 2013 while she continued to receive age-related retirement benefits from SSA, under OWCP File No. xxxxxx023. However, OWCP regulations provide that retirement benefits paid by the Office of Personnel Management (OPM) or SSA can be paid concurrently with schedule award compensation under FECA without a deduction from FECA benefits.⁸ Beginning February 26, 2014⁹ appellant received FECA wage-loss compensation while she continued to receive age-related retirement benefits from SSA, under OWCP File No. xxxxxx617. As noted, a claimant cannot receive concurrent compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.¹⁰ The fact of overpayment is therefore established.

The Board further finds, however, that OWCP improperly calculated appellant's overpayment for the period March 1, 2010 through April 27, 2019. Appellant received schedule award payments for the periods June 11, 2012 to January 15, 2013 and March 16 to April 6, 2013, however, as explained previously OWCP regulations provide that retirement benefits paid by OPM or SSA can be paid concurrently with schedule award compensation under FECA without a

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁷ FECA Bulletin No. 97-09 (February 3, 1997); *see also E.M.*, Docket No. 19-0857 (issued December 31, 2019); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁸ *See K.C.*, Docket No. 19-1838 (issued May 1, 2020).

⁹ Appellant also received FECA intermittent wage-loss compensation from 1990 to 2002, however SSA reported appellant's retirement benefits commencing March 1, 2013 and OWCP alleged an overpayment beginning on March 1, 2010.

¹⁰ 5 U.S.C. § 8116(d)(2); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

deduction from FECA benefits.¹¹ Appellant began receiving FECA wage-loss benefits on February 26, 2014.¹² Consequently, the SSA benefits appellant received prior to February 26, 2014 were not dual benefits and should not have been included in the overpayment calculation.

On remand OWCP shall determine the exact amount of the overpayment of compensation and the correct dates during which the overpayment occurred. It should then issue a new preliminary overpayment determination with an overpayment action request form, an overpayment recovery questionnaire, and instructions for appellant to provide supporting financial information. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹³

CONCLUSION

The Board finds that fact of overpayment has been established. The Board further finds that this case is not in posture for decision regarding the amount of the overpayment.

¹¹ *Supra* note 7.

¹² *Supra* note 8.

¹³ *L.B.*, Docket No. 19-1322 (issued January 27, 2020). Given the disposition of issue 1, the issues of waiver and recovery of overpayment are not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the August 7, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 16, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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