

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

P.W., Appellant)	
)	
and)	Docket No. 19-1984
)	Issued: June 11, 2020
U.S. POSTAL SERVICE, CHICAGO CENTRAL)	
POST OFFICE, Chicago, IL, Employer)	
)	

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 30, 2019 appellant filed a timely appeal from an August 16, 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 OWCP properly determined that appellant received an overpayment of compensation in the amount of \$24,262.79, for which she was not at fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits while

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the August 16, 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.*

receiving FECA wage-loss compensation benefits for the period February 1, 2018 through April 27, 2019; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required repayment of the overpayment by deducting \$324.30 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 12, 1997 appellant, then a 44-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained muscle strain and groin pain from lifting mail trays while in the performance of duty. OWCP accepted the claim for a groin strain and displacement of lumbar intervertebral disc without myelopathy and herniated disc at L5-S1. The acceptance of the claim was subsequently expanded to include displacement of cervical intervertebral disc without myelopathy, right shoulder sprain and rotator cuff tear; left shoulder disorder of bursae and tendons, and sprain of other specified sites. OWCP initially paid appellant wage-loss compensation benefits on the supplemental rolls and then on the periodic rolls as of June 15, 2003. Appellant returned to limited-duty work on July 21, 2005. OWCP subsequently paid her wage-loss benefits for temporary total disability on the periodic rolls again as of May 8, 2011.

On EN1032 forms dated February 7, 2014, February 3, 2015, February 20, 2016, March 3, 2017, February 19, 2018, and February 18, 2019 appellant reported receipt of SSA benefits as part of an annuity for federal service. In her February 19, 2018 EN1032 form, she indicated that the SSA benefit increased as her benefit changed from disability to retirement.

On April 15, 2019 OWCP received an April 10, 2019 completed Federal Employees Retirement System (FERS)/SSA dual benefits calculation form, which indicated SSA benefit rates with a FERS offset and without a FERS offset from February through December 2018. The SSA representative noted that, effective February 2018, the SSA rate with FERS was \$1,680.80 and without FERS was \$63.80; and effective December 2018, the SSA rate with FERS was \$1,727.80 and without FERS was \$65.50.

A FERS offset calculation worksheet dated May 21, 2019 noted each period of overpayment and provided corresponding calculations, which resulted in a total overpayment of \$24,262.79 during the period February 1, 2018 through April 27, 2019. An overpayment in the amount of \$16,152.23 was noted for the period February 1 through November 30, 2018 and an overpayment of \$8,110.56 was noted for the period December 1, 2018 through April 27, 2019.

In a May 21, 2019 letter, OWCP advised appellant that she had been in receipt of prohibited dual benefits from FERS and the SSA. It notified her that FECA benefits must be adjusted based on the FERS portion of SSA benefits that were attributable to federal service and informed her of

³ Docket No. 09-2194 (issued September 23, 2010).

the new amount, which included health benefit deductions. The date of the adjustment was effective April 28, 2019.

In a preliminary determination dated July 17, 2019, OWCP informed appellant that she received an overpayment of compensation in the amount of \$24,262.79 because the SSA/FERS offset was not applied to payments for the period February 1, 2018 through April 27, 2019. It determined that she was without fault in the creation of the overpayment, because she was not aware, nor could she reasonably have been expected to know, that it had paid her compensation incorrectly. 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 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 precoupment hearing. No additional evidence was received.

By decision dated August 16, 2019, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$24,262.79 because the SSA/FERS offset was not applied to wage-loss compensation payments for the period February 1, 2018 through April 27, 2019. While appellant was without fault in the creation of the overpayment, OWCP denied waiver of recovery of the overpayment as no evidence was received in response to the preliminary determination and subsequent request for financial information. Beginning August 18, 2019, the sum of \$324.30 would be withheld from appellant's continuing compensation payments until the overpayment was recovered in full.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) 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 his or her federal employment.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 When an overpayment of compensation 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.⁶

Section 10.421(d) of FECA's implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-based benefits that are attributable to federal service of the employee.⁷ FECA Bulletin No. 97-09 provides that FECA benefits have to be

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ *Id.* at § 8129(a).

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

adjusted for the FERS portion of SSA benefits because the portion of the SSA benefits 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$24,262.79, for which she was not at fault, as she concurrently received SSA age-related retirement benefits while receiving FECA wage-loss compensation benefits for the period February 1, 2018 through April 27, 2019.

As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.⁹ The information provided by SSA accurately indicated that appellant had received SSA age-related retirement benefits that were attributable to her federal service from February 1, 2018. This continued through April 27, 2019, after which OWCP adjusted her compensation. Thus, the record establishes that appellant received an overpayment of FECA wage-loss compensation.¹⁰

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits that were attributable to federal service must be calculated. The Board finds that OWCP properly determined the amount of the overpayment. To determine the amount of the overpayment, the SSA provided appellant's SSA rate with FERS and without FERS during the applicable period. OWCP determined that the difference of the portion of SSA age-related retirement benefits attributed to appellant's federal service needed to be offset against her OWCP compensation benefits. This amount differed for each period beginning February 1 and December 1, 2018. OWCP calculated that the lack of offset from February 1, 2018 through April 27, 2019 resulted in an overpayment of compensation in the amount of \$24,262.79.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$24,262.79, thus creating an overpayment of compensation in that amount, for the period February 1, 2018 through April 24, 2019.

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 not at fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience."¹¹

⁸ FECA Bulletin No. 97-09 (February 3, 1997).

⁹ 20 C.F.R. § 10.421(d); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹⁰ *See R.R.*, Docket No. 19-0104 (issued March 9, 2020).

¹¹ 5 U.S.C. § 8129(b).

Section 10.437 of FECA's implementing regulations provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment of compensation would experience severe financial hardship attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹²

Section 10.438 of the implementing 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 on 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.¹³ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$24,262.79 overpayment of compensation.

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.¹⁵ Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.¹⁶

In its preliminary determination dated July 17, 2019, OWCP clearly explained the importance of providing the completed Form OWCP-20 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 of recovery if she failed to furnish the requested financial information within 30 days. However, prior to the August 16, 2019 decision, appellant did not complete a Form OWCP-20, nor did she submit any supporting financial documentation necessary for OWCP to determine if recovery of the

¹² 20 C.F.R. § 10.437.

¹³ *Id.* at § 10.438(a); see *T.B.*, *supra* note 7; *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

¹⁴ *Id.* at § 10.438.

¹⁵ *Id.* at § 10.436.

¹⁶ *Id.* at § 10.438.

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.¹⁷

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.¹⁸ Section 10.441(a) of the regulations 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.”¹⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$324.30 from appellant's continuing compensation payments every 28 days.

The record reflects that appellant continues to receive wage-loss compensation under FECA. Appellant, as noted, did not provide sufficient information necessary for OWCP to consider the amount to be withheld from her continuing compensation. OWCP found that beginning August 18, 2019 recovery of the overpayment would occur at the rate of \$324.30 every 28 days to recover the overpayment in full. It thus gave due regard to the relevant factors noted above.

The Board, therefore, finds that OWCP properly determined appellant's repayment schedule.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$24,262.79, for which she was not at fault, as she concurrently received SSA age-related retirement benefits while receiving FECA wage-loss benefits for the period February 1, 2018 through

¹⁷ See *R.R.*, *supra* note 10; *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

¹⁸ See *E.F.*, Docket No. 18-1320 (issued March 13, 2019); *C.H.*, Docket No. 18-0772 (issued November 14, 2018); *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

¹⁹ 20 C.F.R. § 10.441(a).

April 27, 2019. The Board also finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$324.30 every 28 days from appellant's continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the August 16, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 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