

concurrently received Social Security Administration (SSA) age-related retirement benefits while receiving FECA wage-loss compensation benefits for the period January 1, 2006 through March 30, 2019; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$218.80 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On January 5, 1993 appellant, then a 49-year-old commodity grader, filed a traumatic injury claim (Form CA-1) alleging that on January 4, 1993 she injured her neck, shoulders, and right arm when lifting cases of eggs while in the performance of duty. OWCP accepted the claim for cervical strain and bilateral shoulder strain. Appellant stopped work on January 5, 1993. She did not return to work and resigned from employment on January 31, 2006. The record reflects that OWCP paid appellant wage-loss compensation on the periodic rolls based upon her loss of wage-earning capacity as of June 16, 2002. By decision dated December 4, 2007, it granted her a schedule award which ran from November 25, 2007 through February 10, 2010.³ OWCP then resumed paying wage-loss compensation on the periodic rolls as of March 14, 2010.

On January 28, 2019 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form. On March 7, 2019 SSA submitted the completed form, which showed SSA benefit rates with a FERS offset and without a FERS offset from January 2006 through December 2018. Beginning January 2006, the SSA rate with FERS was \$934.00 and without FERS was \$648.10. Beginning December 2006, the SSA rate with FERS was \$964.80 and without FERS was \$669.50. Beginning December 2007, the SSA rate with FERS was \$987.00 and without FERS was \$684.80. Beginning December 2008 through November 2011, the SSA rate with FERS was \$1,044.20 and without FERS was \$724.50. Beginning December 2011, the SSA rate with FERS was \$1,081.70 and without FERS was \$750.60. Beginning December 2012, the SSA rate with FERS was \$1,100.00 and without FERS was \$763.30. Beginning December 2013, the SSA rate with FERS was \$1,116.50 and without FERS was \$774.80. Beginning December 2014 through November 2016, the SSA rate with FERS was \$1,135.50 and without FERS was \$787.90. Beginning December 2016, the SSA rate with FERS was \$1,138.80 and without FERS was \$790.20. Beginning December 2017, the SSA rate with FERS was \$1,161.60 and without FERS was \$806.00. Beginning December 2018, the SSA rate with FERS was \$1,194.00 and without FERS was \$828.50.

A FERS offset calculation worksheet dated March 28, 2019 noted each period of overpayment and provided calculations, which resulted in a total overpayment of \$52,343.04 during the period January 1, 2006 through March 30, 2019.

By letter dated April 1, 2019, OWCP informed appellant that it would begin deducting the portion of SSA benefits attributable to her federal service from her periodic disability compensation beginning March 31, 2019.

³ The December 4, 2007 schedule award was for 20 percent permanent impairment of the right upper extremity and 17 percent permanent impairment of the left upper extremity.

In a preliminary notice dated April 3, 2019, OWCP informed appellant that she had received an overpayment of compensation in the amount of \$52,343.04 because the SSA/FERS offset was not applied to FECA benefits for the period January 1, 2006 through March 30, 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 further requested that she provide supporting financial documentation, 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 preresumption hearing.

Appellant completed the Form OWCP-20 overpayment recovery questionnaire on April 16, 2019, and submitted supporting financial documentation. She requested that OWCP make a decision regarding possible waiver of recovery of the overpayment based on the written evidence.

By decision dated July 30, 2019, OWCP determined that appellant had received an overpayment of compensation in the amount of \$52,343.04 because the SSA/FERS offset was not applied to payments for the period January 1, 2006 through March 30, 2019. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP explained that, while appellant had provided some financial documentation for her expenses, she did not provide financial documentation for others, and that the claimed expenses not supported by financial documentation would not be considered in calculation of her monthly expenses for the purpose of waiver. It noted that as the period necessary to repay the debt would exceed her life expectancy, the principal would be compromised by \$25,743.04 due to hardship with regard to her life expectancy, while an additional \$5,638.96 would be compromised, for a total of \$31,382.00 compromised. The remaining debt amount to be repaid was \$26,600.00, which would be repaid by deducting \$218.80 from appellant's continuing compensation every 28 days.

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.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 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

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

employee.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 -- ISSUE 1

The Board finds that the case is not in posture for decision.

By decision dated July 30, 2019, OWCP determined that appellant had received an overpayment of compensation in the amount of \$52,343.04 because the SSA/FERS offset was not applied to payments for the period January 1, 2006 through March 30, 2019. However, by decision dated December 4, 2007, OWCP had granted appellant a schedule award which ran from November 25, 2007 through February 10, 2010. Furthermore, the record indicates that OWCP did not resume paying wage-loss compensation on the periodic rolls until March 14, 2010.

The Board has held in overpayment cases that it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated.⁸ With respect to the fact and amount of the overpayment, the Board finds that OWCP has not provided adequate findings of fact which would allow appellant to understand the precise defect of her claim and the kind of evidence which would tend to overcome it.⁹ OWCP has not adequately explained how the fact and amount of the overpayment was determined in light of appellant's receipt of schedule award compensation for a portion of the period of the overpayment. Its regulations provide that retirement benefits paid by the Office of Personnel Management or SSA can be paid concurrently with schedule award compensation under FECA without a deduction from FECA benefits.¹⁰ The record also reflects that at the expiration of appellant's schedule award, OWCP did not resume paying appellant wage-loss compensation on the periodic rolls until March 14, 2010. The Board therefore finds that the July 30, 2019 decision must be set aside and the case remanded for further consideration followed by a *de novo* decision.¹¹

CONCLUSION

The Board finds that the case is not in posture for decision.

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

⁷ FECA Bulletin No. 97-09 (February 3, 1997).

⁸ *See Teresa A. Ripley*, 56 ECAB 528 (2005).

⁹ 20 C.F.R. § 10.126; *H.H.*, Docket No. 18-0356 (issued October 24, 2018); *P.G.*, Docket No. 14-0430 (issued August 1, 2014).

¹⁰ *Supra* note 7; *see also J.M.*, Docket No. 18-1505 (issued June 21, 2019); *K.H.*, Docket No. 18-0171 (issued August 2, 2018); *A.S.*, Docket No. 17-1459 (issued December 22, 2017).

¹¹ As the first issue regarding fact and amount of overpayment is set aside, issues 2 and 3 are moot.

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2019 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision.

Issued: May 1, 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