



## **ISSUES**

The issues are: (1) whether appellant received a \$22,992.48 overpayment of compensation for the period July 1, 2016 through April 28, 2018, for which she was found to be without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits; (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 every 28 days from appellant's continuing compensation payments.

## **FACTUAL HISTORY**

On June 24, 1998 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she sustained injuries to her neck, left shoulder and arm when she stumbled and twisted her foot and body when exiting her truck while in the performance of duty. She did not stop work. OWCP accepted the claim, assigned OWCP File No. xxxxxx770, for the condition of cervical and shoulder strain and paid medical expenses associated with this injury.

On January 30, 1999 appellant filed an occupational disease claim (Form CA-2) attributing soreness of her upper back and shoulder areas to carrying heavy mail volumes in satchels. She indicated that she first became aware of her condition and that it was caused or aggravated by factors of her federal employment on January 23, 1999. OWCP accepted that claim, assigned OWCP File No. xxxxxx772, for a cervical sprain.<sup>4</sup> Appellant stopped work on April 16, 2000 and has not returned. OWCP accepted her recurrence claim commencing April 16, 2000 and paid her wage-loss compensation on the daily rolls as of May 20, 2000 and on the periodic rolls as of January 27, 2001. On August 19, 2003 OWCP expanded the acceptance of appellant's claim to include fibromyalgia of the left paracervical and parascapular muscles and chronic pain syndrome.

In Form EN1032s dated July 19, 2016 and July 28, 2017, appellant, through counsel, informed OWCP that she was in receipt of Social Security Administration (SSA) age-related retirement benefits.

On May 21, 2018 OWCP received from SSA a May 16, 2018 Federal Employees Retirement System (FERS)/(SSA) dual benefits calculation form. The form indicated SSA benefit rates with a FERS offset and without a FERS offset. For July 2016, appellant's SSA rate with FERS was \$1,544.70 and without FERS was \$506.10; for December 2016, appellant's SSA rate with FERS was \$1,549.30 and without FERS was \$507.60; and for December 2017, appellant's SSA rate with FERS was \$1,580.20 and without FERS was \$517.70.<sup>5</sup>

On May 21, 2018 OWCP utilized SSA's figures and calculated a monthly FERS offset and a 28-day FERS offset. For July 1, 2016, it found that the monthly FERS offset was \$1,038.60 and the 28-day FERS offset was \$958.71. For December 1, 2016, the monthly FERS offset was

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<sup>4</sup> OWCP has administratively combined OWCP File Nos. xxxxxx770 and xxxxxx772, with OWCP File No. xxxxxx772 serving as the master file.

<sup>5</sup> The form also noted that appellant had been in receipt of disability benefits from October 2000 through June 2016.

\$1,041.70 and the 28-day FERS offset was \$961.57. For December 1, 2017, the monthly FERS offset was \$1,062.50 and the 28-day FERS offset was \$980.77.

In a May 21, 2018 worksheet, OWCP then calculated the overpayment of compensation by determining the difference between appellant's SSA amount with and without FERS for each period, and then multiplying that amount by the number of days in each period. The FERS offset calculation worksheet indicated that OWCP had utilized the 28-day FERS offset amount for the 153 days from July 1 through November 30, 2015 and found an overpayment of \$5,238.65; for the 365 days from December 1, 2016 through November 30, 2017 and found an overpayment of \$12,534.74; and for the 149 days from December 1, 2017 through April 28, 2018 and found an overpayment of \$5,219.09. Using these figures, OWCP calculated that the total overpayment amount was \$22,992.48.

On May 21, 2018 OWCP adjusted appellant's periodic compensation to reflect the FERS offset, effective April 29, 2018.

In a letter dated May 22, 2018, OWCP advised appellant that she had been receiving a prohibited dual benefit from SSA on account of age/retirement since July 1, 2016. It noted that the SSA had confirmed that a portion of her SSA benefits were attributed to her years of Federal service as an employee under the FERS retirement program and that portion required an offset of her FECA compensation benefits. OWCP indicated that the adjustment of appellant's FECA benefits to account for her SSA offset would begin with her payment dated May 26, 2018 and would reflect a new net compensation amount of \$1,688.91.

On June 20, 2018 OWCP issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$22,992.48 because she had received FECA wage-loss compensation benefits concurrently with SSA age-related retirement benefits for the period July 1, 2016 through April 28, 2018. It explained how the overpayment of compensation was calculated and enclosed its FERS offset calculation worksheet which reflected the total overpayment of \$22,992.48. OWCP further advised appellant that she was with fault in the creation of the overpayment as she knowingly accepted compensation to which she was not entitled.<sup>6</sup> It requested that she complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, OWCP notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written record or request a prerecoupment hearing.

On July 20, 2018 appellant, through counsel, requested a prerecoupment hearing on the issues of fault and possible waiver with OWCP's Branch of Hearings and Review. He advised that appellant suffers from dementia and that she was unable to use telephone, drive, or communicate effectively. Counsel submitted an overpayment recovery questionnaire (Form OWCP-20), which indicated that she received \$1,446.00 from SSA<sup>7</sup> and that her checking account balance was \$25,649.95. He noted monthly expenses of \$4,525.00. This was comprised of

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<sup>6</sup> OWCP noted that appellant was aware that she was receiving incorrect compensation as she had noted the receipt of SSA benefits due to retirement on the EN1032 forms dated July 19, 2016 and July 28, 2017.

<sup>7</sup> Appellant's FECA compensation was not included.

rent/mortgage \$400.00; \$1,000.00 food; \$50.00 clothing; \$125.00 utilities; other expenses of \$1,950.00 for home health aide, and \$1,000.00 for credit card debt.

The prerecoupment hearing was held on November 8, 2018.<sup>8</sup> Counsel indicated that appellant has had dementia and Alzheimer's disease for many years. Appellant's living situation and finances were discussed. Subsequent to the hearing, counsel provided supporting documentation of her dementia. He advised that appellant has a home health aide who is paid \$536.00 per week for services three days a week, and that on two other days a week she attends adult day care at a cost of \$287.00 per month. Counsel indicated that her food cost included that of her home health aide and that an occasional cash disbursement was made for lunches outside her home. The most recent bank statement ending November 16, 2018 showed a balance of \$12,997.41.<sup>9</sup>

By decision dated December 10, 2018, an OWCP hearing representative finalized the preliminary determination that appellant received an overpayment of compensation in the amount of \$22,992.48 for the period July 1, 2016 through April 28, 2018 as she had received wage-loss compensation from OWCP without an appropriate offset for age-related SSA benefits attributable to FERS. OWCP's hearing representative reversed the finding of fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. The hearing representative found that appellant received \$1,829.65 every 28 days from OWCP in addition to her reported \$1,446.00 income from SSA benefits, for a total monthly income of \$3,275.65. OWCP's hearing representative indicated that appellant had monthly expenses of \$2,925.00, which included \$400.00 rent, \$400.00 food (which was reduced down from the listed \$1,000.00 as counsel failed to provide an explanation), \$50.00 clothing, \$125.00 utilities, and \$1,950.00 for home health aide. She excluded the \$1,000.00 monthly expense for credit card debt as the record was devoid of any explanation or documentation for the expense. The hearing representative noted that documentation from November 15, 2018 showed a checking account balance of \$12,997.41. OWCP's hearing representative concluded that as appellant continued to have assets in the bank, waiver could not be considered. The hearing representative directed recovery of the overpayment by deducting \$200.00 every 28 days from her continuing compensation payments until the debt was paid in full.

### **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.<sup>10</sup> Section 8116 limits the right of an employee to receive

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<sup>8</sup> During the hearing, a matter concerning an overpayment of \$30,573.00 from SSA was clarified as resulting from payment of disability benefits, not age-related retirement benefits.

<sup>9</sup> An accounting of appellant's checking activity for the period November 1 through 15, 2018 indicated: three checks of \$536.00 for "health aide;" \$286.83 for "day center;" \$50.00 for lawn care; \$103.00 for "National Grid;" \$58.44 for life insurance policy; and \$300.00 cash for "aide to use on lunches." Also noted was an external deposit from the Treasury Department of \$1,688.91. The ending balance was noted as \$12,997.41.

<sup>10</sup> 5 U.S.C. § 8102(a).

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>11</sup>

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 benefits that are attributable to the employee's federal service.<sup>12</sup> FECA Bulletin No. 97-09 states 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>13</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$22,992.48 for the period July 1, 2016 through April 28, 2018 because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits.

In its December 10, 2018 decision, OWCP found that an overpayment of compensation was created for the period July 1, 2016 through April 28, 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 benefits attributable to federal service for the same period.<sup>14</sup> The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service during the period July 1, 2016 through April 28, 2018.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of age-based SSA retirement benefits that were attributable to federal service. The SSA provided the SSA rate with FERS, and without FERS for specific periods commencing July 1, 2016 through April 28, 2018. OWCP provided its calculations for each relevant period based on a FERS offset calculation worksheet and in its June 20, 2018 preliminary overpayment determination. No contrary evidence was provided.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period July 1, 2016 through April 28, 2018 and finds that an overpayment of compensation in the amount of \$22,992.48 was created.<sup>15</sup>

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<sup>11</sup> *Id.* at § 8116.

<sup>12</sup> 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).

<sup>13</sup> FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>14</sup> 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).

<sup>15</sup> *See L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

## 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.<sup>16</sup> 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.<sup>17</sup>

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 not exceed a specified amount as determined by OWCP. 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.<sup>18</sup> An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>19</sup>

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.<sup>20</sup>

OWCP's 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.<sup>21</sup> Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.<sup>22</sup>

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<sup>16</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>17</sup> *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>18</sup> 20 C.F.R. § 10.436(a)(b). Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(2) (September 2018).

<sup>19</sup> *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *id.* at Chapter 6.400.4.(a)(3).

<sup>20</sup> 20 C.F.R. § 10.437(a)(b).

<sup>21</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>22</sup> *Id.* at § 10.438(b).

## **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 of recovery of the overpayment 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>23</sup> It considered her financial information, as indicated in counsel's statements and financial evidence submitted, to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not shown both that she needs substantially all of her current income to meet ordinary and necessary living expenses, and, that her assets do not exceed the allowable resource base. OWCP's hearing representative noted that she had monthly income which exceeded monthly expenses and concluded that waiver could not be considered as she continued to have assets in the bank. Evidence of record reveals that appellant had \$12,997.41 in a checking/savings account, a figure above the allowable resource base of \$6,200.00 for an individual.<sup>24</sup> Because her assets exceed the allowable resource base, she has not met the second prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA.<sup>25</sup>

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because she has not shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt or that she relinquished a valuable right or changed her position for the worse in reliance on the payment which created the overpayment.<sup>26</sup>

On appeal counsel argues that recovery of the overpayment would defeat the purpose of FECA and be against equity and good conscience by causing severe financial hardship in attempting to repay the debt. While he indicated that appellant's resources are being rapidly depleted in order to allow her to remain at home with home health care, the Board has explained that given the current evidence of record, recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.

For the foregoing reasons, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

## **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

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<sup>23</sup> *Id* at § 10.436. *See also G.L.*, Docket No. 19-0297 (issued October 23, 2019).

<sup>24</sup> *See supra* note 18.

<sup>25</sup> *See id.*; *E.B.*, Docket No. 19-1443 (issued December 12, 2019).

<sup>26</sup> *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

amount of the overpayment as the error is discovered his 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.<sup>27</sup>

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

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

The record supports that, in requiring repayment of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days, OWCP took into consideration the financial information she submitted as well as the factors set forth in section 10.441 and found that this method of recovery would minimize any resulting hardship on appellant.<sup>28</sup> OWCP's hearing representative found that appellant had sufficient financial resources for more than ordinary needs.<sup>29</sup> She related that appellant received \$1,829.65 every 28 days from OWCP, as well as \$1,446.00 per month from SSA for a total monthly income of \$3,275.65, while appellant's monthly expenses totaled \$2,925.00. The hearing representative also noted that appellant's most recent bank statement of November 15, 2018 reflected a checking account balance of \$12,997.41. Thus, OWCP's hearing representative did not abuse her discretion in setting the rate of recovery.<sup>30</sup> The Board finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$200.00 every 28 days.

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$22,992.48 for the period July 1, 2016 through April 28, 2018, for which she was without fault, because she concurrently received SSA age-related retirement benefits while receiving FECA benefits. 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 appellant's continuing compensation payments.

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<sup>27</sup> 20 C.F.R. § 10.441(a); *see A.F.*, *supra* note 16; *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>28</sup> *See id.*

<sup>29</sup> *See D.S.*, Docket No. 18-1447 (issued July 22, 2019).

<sup>30</sup> *See T.G.*, Docket No. 17-1989 (issued June 5, 2018); *M.D.*, Docket No. 11-1751 (issued May 7, 2012).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 10, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 2020  
Washington, DC

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

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

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