

for the period January 1, 2017 through May 25, 2019 without an appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On January 5, 2017 appellant, then a 65-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she injured her left shoulder due to factors of her federal employment, including lifting packages and cased mail, casing mail, and constantly moving mail. She noted that she first became aware of her conditions and first realized their relationship to factors of her federal employment on November 17, 2016. On the reverse side of the claim form the employing establishment indicated that appellant stopped work on December 20, 2016. Appellant's retirement coverage was noted as Federal Employees Retirement System (FERS). OWCP accepted her claim for a non-traumatic tear of the left supraspinatus tendon and an aggravation of primary osteoarthritis of the left shoulder. It paid appellant intermittent wage-loss compensation on the supplemental rolls commencing August 5, 2017. OWCP subsequently paid her wage-loss compensation on the periodic rolls from February 3 until June 22, 2019, and intermittently on the supplemental rolls again through August 2, 2019.

An April 23, 2019 letter from the employing establishment indicated that appellant had FERS coverage and was entitled to receive SSA age-related retirement benefits. (Is "It" the employing establishment)? It requested that OWCP determine if her SSA benefits qualified for the FERS offset and subsequent reduction of FECA benefits.

On April 24, 2019 OWCP provided SSA with a FERS/SSA dual benefits calculation form. It listed the computation period as November 2016 to April 2019.

On May 1, 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 January 2017 to January 2019. Beginning January 2017, the SSA rate with FERS was \$1,209.30 and without FERS was \$839.70. Beginning December 2017, the SSA rate with FERS was \$1,233.40 and without FERS was \$856.40. Beginning January 2018, the SSA rate with FERS was \$1,248.00 and without FERS was \$856.40. Beginning December 2018, the SSA rate with FERS was \$1,282.90 and without FERS was \$880.30. Beginning January 2019, the SSA rate with FERS was \$1,289.30 and without FERS was \$880.30.

In a May 23, 2019 letter, OWCP indicated that it had determined that appellant had been receiving both FECA wage-loss compensation and SSA age-related retirement benefits at the same time, resulting in a dual prohibited benefit. It explained that her FECA compensation would be reduced using SSA offset to \$2,223.98 every 28 days.

In a June 4, 2019 letter, appellant indicated that she has received SSA benefits since May 2018 and had reported receiving those benefits. She indicated that she did not understand what OWCP meant by an SSA offset and requested clarification.

By preliminary determination dated June 12, 2019, OWCP informed appellant that she received an overpayment of compensation in the amount of \$10,878.23 because the SSA/FERS offset was not applied to wage-loss compensation payments for the period January 1, 2017 through

May 25, 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 explained its calculation of the overpayment, 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 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 prerecoupment hearing.

A June 21, 2019 letter from the employing establishment indicated that, while OWCP's June 12, 2019 preliminary determination found that appellant was overpaid FECA benefits from January 1, 2017 through May 25, 2019, records showed that she had not started receiving FECA wage-loss compensation until August 5, 2017. It requested clarification from OWCP regarding FECA benefits appellant allegedly received from January 1 until August 4, 2017.

By decision dated July 12, 2019, OWCP finalized the June 12, 2019 preliminary determination that appellant had received an overpayment of compensation in the amount of \$10,878.32³ for the period January 1, 2017 through May 25, 2019 because it had failed to offset her compensation payments by the portion of her SSA age-related retirement 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 requested that appellant repay the overpayment in full within 30 days.

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

³ The Board notes that the preliminary overpayment determination had calculated an overpayment in the amount of \$10,878.23, not \$10,878.32.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

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 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.⁷

ANALYSIS

The Board finds that fact of overpayment has been established.

Beginning August 5, 2017, OWCP paid appellant FECA wage-loss compensation benefits while she also received age-related retirement benefits from SSA. 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.⁸ The fact of overpayment is therefore established.

The Board further finds, however, that OWCP improperly calculated appellant's overpayment for the period January 1, 2017 through May 25, 2019. The record establishes that OWCP paid her FECA wage-loss compensation benefits commencing August 5, 2017, not January 1, 2017. Consequently, the SSA age-related retirement benefits appellant received prior to August 5, 2017 were not dual benefits and should not have been included in the overpayment calculation. Further, as appellant was paid only intermittent wage-loss compensation on the supplemental rolls, the overpayment calculations must be based on actual payment amounts and only for those dates on which wage-loss compensation was paid as set forth in the supplemental rolls payment records.

On remand OWCP shall determine the exact amount of the overpayment of compensation as of August 5, 2017. It should then issue a new preliminary overpayment determination with a Form OWCP-20, 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.⁹

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.

⁶ 20 C.F.R. § 10.421(d); *J.R.*, Docket No. 17-0181 (issued August 12, 2020); *see T.B.*, Docket No. 18-1449 (issued March 19, 2019).

⁷ FECA Bulletin No. 97-09 (February 3, 1997); *see also S.M.*, Docket No. 20-0152 (issued August 10, 2020); *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

⁸ *Id.*

⁹ *L.B.*, Docket No. 19-1322 (issued January 27, 2020). Given the disposition of issue 1, issue 2 regarding waiver is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 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: November 12, 2020
Washington, DC

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

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

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