

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$136,711.48 for the period September 1, 2006 through October 13, 2018, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$125.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On February 3, 2005 appellant, then a 61-year-old modified window clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 31, 2005 she developed post-traumatic stress disorder (PTSD) when she was robbed at gunpoint while in the performance of duty. OWCP accepted her claim for PTSD. Appellant stopped work on February 1, 2005 and returned to full-time modified-duty work on May 31, 2005. She stopped work again on May 11, 2006 and OWCP paid her wage-loss compensation on the periodic rolls, effective August 6, 2006.

On December 14, 2006 OWCP received a Request for Withdrawal of Application form from SSA dated November 30, 2006. Appellant explained that her reason for withdrawing her application was because her SSA benefits would be deducted from her workers' compensation benefits. She noted that she chose not to receive any benefits from SSA and would repay the benefits she had received for October to November 2006. Appellant submitted a receipt from SSA of a payment that she had made on November 30, 2006 in the amount of \$1,730.00.

In a Form CA-1032 dated December 4, 2006, appellant responded "Yes" indicating that she had received retirement benefits from SSA as part of an annuity for federal service.

By decision dated June 4, 2007, OWCP advised appellant that it was reducing her wage-loss compensation benefits pursuant to 5 U.S.C. § 8113(b) because she had failed, without good cause, to undergo vocational rehabilitation as directed. It noted that her compensation would be reduced to reflect what would have been her wage-earning capacity had she cooperated with the vocational rehabilitation efforts of OWCP.

In a letter dated August 9, 2007, C.M., an employing establishment injury compensation specialist, informed OWCP that appellant had been approved for retirement, effective August 31, 2007. She requested that OWCP provide appellant with an election form.

In a letter dated September 5, 2007, OWCP advised appellant that her Federal Employees Retirement System (FERS) benefits would be reduced by the amount of SSA benefits that she received based on her age that were attributable to her federal service. It provided her with an election form.

Appellant continued to complete CA-1032 forms dated November 25, 2007, January 7, 2008, December 3, 2009, December 11, 2010, January 9 and December 3, 2012, December 12, 2013, January 25 and November 30, 2015, December 20, 2016, and December 5, 2017. She

responded “Yes” indicating that she received retirement benefits from SSA as part of an annuity for federal service.

On October 18, 2018 an SSA representative provided OWCP with a FERS/SSA dual benefit calculation worksheet. The SSA representative provided corresponding monthly SSA benefits rates beginning September 2006 with and without appellant’s FERS contributions. The form indicated that beginning September 1, 2006, appellant’s SSA rate with FERS was \$865.50 and without FERS was \$63.00; that beginning December 1, 2006, her SSA rate with FERS was \$894.00 and without FERS was \$65.00; that beginning January 1, 2007, her SSA rate with FERS was \$905.50 and without FERS was \$65.00; that beginning December 1, 2007, her SSA rate with FERS was \$926.40 and without FERS was \$66.50; that beginning December 1, 2008, her SSA rate with FERS was \$980.00 and without FERS was \$70.30; that beginning December 1, 2011, her SSA rate with FERS \$1,015.30 and without FERS was \$72.70; that beginning December 1, 2012, her SSA rate with FERS \$1,032.50 and without FERS was \$73.90; that beginning December 1, 2013, her SSA rate with FERS \$1,048.00 and without FERS was \$75.00; that beginning December 1, 2014, her SSA rate with FERS was \$1,065.80 and without FERS was \$76.30; that beginning December 1, 2016, her SSA rate with FERS was \$1,068.90 and without FERS was \$76.40; and that beginning December 1, 2017, her SSA rate with FERS was \$1,090.30 and without FERS was \$77.90.

Effective October 14, 2018, OWCP paid appellant at the adjusted amount of \$257.14 to include the offset of her SSA age-related retirement benefits attributable to her federal service.

By letter dated October 24, 2018, OWCP advised appellant that it was adjusting her compensation to offset the portion of her SSA age-related retirement benefits attributable to her federal service. It informed her that she would receive net compensation of \$257.14 every 28 days.

OWCP completed a FERS offset calculation worksheet on October 24, 2018. It calculated the overpayment amount by determining the daily FERS offset amount and multiplying that amount by the number of days in each period from September 1, 2006 through October 31, 2018 for a total overpayment amount of \$136,711.48.

In a preliminary overpayment determination dated November 2, 2018, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$136,711.48 because it had failed to reduce her wage-loss compensation benefits for the period September 1, 2006 through October 13, 2018 by the portion of her SSA benefits that were attributable to federal service. It further advised her of its preliminary determination that she was not at fault in the creation of the overpayment because she could not have reasonably known that an improper payment had occurred. OWCP provided appellant an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). Additionally, it 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 response was received.

By decision dated December 14, 2018, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$136,711.48 for the period September 1, 2006 through October 13, 2018 because she received SSA benefits in addition to her wage-loss compensation benefits under FECA without an

appropriate offset. It also found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because she had not completed and returned OWCP's Form OWCP-20. OWCP determined that recovery of the overpayment would require deducting \$125.00 every 28 days from appellant's 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 that OWCP 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 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation because she concurrently received FECA benefits and SSA age-related retirement benefits without an appropriate offset, and accordingly, fact of overpayment has been established. Appellant completed CA-1032 forms dated December 4, 2006 to December 5, 2017 and responded "Yes" indicating that she had received retirement benefits from SSA as part of an annuity for federal service. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service.⁸ The evidence of record has established that appellant received SSA age-related retirement benefits that were attributable to her own federal service during a period of time that she received FECA wage-loss compensation. The Board finds that fact of overpayment, therefore, is established.

The Board further finds, however, that this case is not in posture for decision regarding the amount of the overpayment.

The evidence of record does not contain evidence to support a finding that appellant was in receipt of SSA benefits beginning September 1, 2006. According to the November 2, 2018

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

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

⁸ *Id.* *See also A.C.*, Docket No. 18-1550 (issued February 21, 2019).

preliminary overpayment determination, OWCP premised its finding of an overpayment on the October 18, 2018 letter that it had received from the SSA regarding appellant's age-related retirement benefits for the period September 1, 2006 through October 13, 2018. The Board finds, however, that the October 18, 2018 letter alone does not establish that appellant was in receipt of SSA/FERS benefits, effective September 1, 2006.⁹ OWCP received a Request for Withdrawal of Application form from SSA dated November 30, 2006, which noted that appellant was withdrawing her application for SSA. Appellant submitted a receipt from SSA of a payment that she had made on November 30, 2006 in the amount of \$1,730.00, purportedly covering the period October to November 2006. She also completed CA-1032 forms dated December 3, 2006 to December 5, 2017 and indicated that she was in receipt of SSA retirement benefits. The evidence of record further includes a letter dated August 9, 2007 from the employing establishment, which informed OWCP that appellant had been approved for retirement, effective August 31, 2007. Given the conflicting information of record regarding when appellant began to receive SSA age-related retirement benefits, the case must be remanded to OWCP for further development of the factual evidence.

On remand OWCP shall consult with OPM and SSA in order to determine the exact amount of the overpayment of compensation and the correct dates during which the overpayment occurred.¹⁰ It shall 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, it shall issue a *de novo* decision.¹¹

CONCLUSION

The Board finds that, although fact of the overpayment for which appellant was not at fault has been established, the case is not in posture for decision regarding the amount and period(s) of the overpayment.

⁹ See *J.M.*, Docket No. 15-1604 (issued May 23, 2016).

¹⁰ See *J.H.*, Docket No. 19-1887 (issued June 16, 2020).

¹¹ In light of the Board's disposition of issue 1, the issues of waiver and recovery of the overpayment are rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. This case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 20, 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