

was not at fault, because she concurrently received FECA wage-loss compensation benefits 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 \$300.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On November 2, 2000 appellant, then a 49-year-old food service worker filed an occupational disease claim (Form CA-2) alleging that she sustained left carpal tunnel and cubital tunnel syndrome due to factors of her federal employment. She noted that she first became aware of her claimed condition and realized its relation to her federal employment on July 12, 2000. OWCP assigned this claim File No. xxxxxx190.³

OWCP accepted the claim for left wrist enthesopathy; left lateral epicondylitis; bilateral carpal tunnel syndrome; left shoulder, upper arm and neck sprain/strain; and left shoulder disorder of the bursae and tendons. It paid appellant compensation on the periodic rolls as of June 16, 2002.

Appellant returned to part-time light-duty work on March 20, 2006 for four hours per day. On March 30, 2006 OWCP adjusted her periodic rolls payments to reflect four hours of lost wages per day.

On April 12, 2019 OWCP forwarded a Federal Employee Retirement System (FERS) dual benefits calculation form to SSA.

On April 18, 2019 SSA completed the dual benefits calculation transmittal form that provided appellant's SSA benefit rates with a FERS offset and without a FERS offset. Beginning February 2017, the SSA rate with FERS was \$1,164.00 and without FERS was \$329.70; beginning December 2017, the SSA rate with FERS was \$1,187.00 and without FERS was \$336.20; beginning December 2018, the SSA rate with FERS was \$1,220.50 and without FERS was \$345.60. SSA noted that appellant received disability benefits from July 2002 through January 2017.

On August 14, 2019 OWCP prepared a FERS offset calculation worksheet wherein it noted the calculation of appellant's SSA offset overpayment for the period February 1, 2017 through August 17, 2019. This worksheet reflected that from February 1 through November 30, 2017 appellant received an \$8,333.83 overpayment; from December 1, 2017 through November 30, 2018 appellant received a \$10,237.65 overpayment; and from December 1, 2018 through August 17, 2019 appellant received a \$7,499.14 overpayment. The total overpayment was determined to be \$26,070.62.

On August 22, 2019 OWCP issued a preliminary determination finding an overpayment of compensation in the amount of \$26,070.62, for the period February 1, 2017 through August 17,

³ The record reflects that appellant has a prior claim for an August 21, 1999 traumatic injury, which was accepted for right wrist sprain. On March 27, 2002 OWCP administratively combined the present claim with File No. xxxxxx172, with the latter serving as the master file.

2019, because appellant's FECA wage-loss compensation benefits were not offset by her SSA age-related retirement benefits and therefore appellant received a prohibited dual benefit. It found her not at fault in the creation of the overpayment because she was not aware, nor could she reasonably have been aware, that her compensation benefits had been paid incorrectly. OWCP forwarded an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). It requested that appellant provide supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records which supported the income and expenses listed. OWCP afforded appellant 30 days to respond.

On September 26, 2019 OWCP received appellant's request for a decision based on the written evidence regarding a possible waiver of recovery of the overpayment. Also received was a completed Form OWCP-20 dated September 11, 2019, on which appellant reported that she had monthly income of \$1,823.03, which included FECA compensation of \$841.93 and SSA benefits of \$981.10. Appellant reported expenses of \$1,390.75, which included \$468.75 for rent, \$300.00 for food, \$75.00 for clothing, \$175.00 for utilities, \$120.00 for other expenses, and monthly installment payments of \$27.00 and \$225.00 for credit card debt. She advised that she had no cash or savings on hand, however, she had \$540.84 in a checking account. Appellant did not list any other assets.

By decision dated October 31, 2019, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$26,070.62 for the period February 1, 2017 through August 17, 2019, for which she was not at fault, 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 noted that she listed her monthly income as \$1,823.03; however, appellant returned to work on May 20, 2006, in a light-duty, part-time capacity. OWCP found that appellant's total monthly income was \$2,937.52, and less her expenses of \$1,390.75, she had an excess of income over expenses of \$1,546.77 per month. It determined that her monthly income exceeded her living expenses by more than the accepted amount of \$50.00, and therefore appellant failed to demonstrate that she required all of her income for necessary living expenses. OWCP also noted that appellant listed total assets of \$550.84, which was less than the applicable resource base; however, appellant had not demonstrated that recovery would defeat the purpose of FECA. It denied waiver of recovery of the overpayment because the evidence of record was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$300.00 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 duty.⁴ Section 8116 limits the right of an employee to receive compensation.

⁴ 5 U.S.C. § 8102(a).

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 it reduce the amount of compensation by the amount of SSA benefits that are attributable to the federal service of the 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 OWCP properly determined that appellant received an overpayment of compensation in the amount of \$26,070.62 for the period February 1, 2017 through August 17, 2019, for which she was not at fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset.

The record indicates that, during the period at issue, appellant was receiving wage-loss compensation under FECA while concurrently receiving SSA age-related retirement benefits. A claimant cannot receive both compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.⁸ Consequently, the fact of the overpayment has been established.

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 SSA age-related retirement benefits that were attributable to federal service. SSA provided OWCP with the SSA rates with FERS and without FERS for specific periods commencing February 1, 2017 through August 17, 2019. OWCP provided its calculations for each relevant period based on the SSA worksheet and in its August 22, 2019 preliminary overpayment determination. No contrary evidence was provided.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period February 1, 2017 through August 17, 2019, and finds that an overpayment of compensation in the amount of \$26,070.62 was created.⁹

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see B.B.*, Docket No. 19-0822 (issued February 18, 2020); *B.F.*, Docket No. 18-1345 (issued February 6, 2019).

⁷ FECA Bulletin No. 97-09 (February 3, 1997); *see also M.D.*, Docket No. 19-1500 (issued February 24, 2020); *G.K.*, Docket No. 18-0243 (issued August 17, 2018).

⁸ *See C.B.*, Docket No. 20-0031 (issued July 27, 2020); *see D.C.*, Docket No. 19-0118 (issued January 15, 2020).

⁹ *See L.W.*, Docket No. 19-0787 (issued October 23, 2019); *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(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 without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.”¹⁰

Recovery of an overpayment will defeat the purpose of FECA when 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.¹¹ 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 \$50.00.¹² Also, assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.¹³ An individual’s liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.¹⁴

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.¹⁵

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.¹⁶

¹⁰ 5 U.S.C. § 8129(b).

¹¹ 20 C.F.R. § 10.436(a)(b).

¹² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(2) (September 2018).

¹³ *Id.* at Chapter 6.400.4(a)(2).

¹⁴ *Id.* at Chapter 6.400.4(b)(3).

¹⁵ 20 C.F.R. § 10.437(a)(b).

¹⁶ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

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 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.¹⁷ It considered her financial information to determine if recovery of the overpayment would defeat the purpose of FECA. In a Form OWCP-20 dated September 26, 2019, appellant listed income in the amount of \$1,823.03 and expenses in the amount of \$1,390.75, as well as a summary of her liquid assets. OWCP noted that she also received monthly income for her 20-hour-per week part-time light-duty position. It found that appellant had total monthly income of \$2,937.52, which exceeded her monthly expenses of \$1,390.75 by more than the accepted criteria of \$50.00.¹⁸ OWCP explained that it was not necessary to consider whether the evidence of record established that her assets exceeded the base asset amount of \$6,200.00 for an individual.¹⁹

Appellant also has not established that recovery of the overpayment would be against equity and good conscience. She has not submitted evidence to substantiate that she would experience severe financial hardship in attempting to repay the debt, or that in reliance on the overpayment she gave up a valuable right, or changed her position for the worse. Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.²⁰

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.²¹

Section 10.441 of OWCP's regulations provides that, when an overpayment of compensation 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 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

¹⁷ See *J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

¹⁸ *Id.* The Board notes that appellant's reported monthly income of \$1,823.03 also exceeded her expenses of \$1,390.75 by more than \$50.00.

¹⁹ See *supra* note 14.

²⁰ 20 C.F.R. § 10.437(a)(b).

²¹ *Id.* at § 10.441; see *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

compensation, the financial circumstances of the individual, and any other relevant factors so as to minimize hardship.²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$300.00 every 28 days from appellant's continuing compensation payments.

In setting the recovery rate at \$300.00 every 28 days, OWCP explained that the factors set forth at 20 C.F.R. § 10.441(a) had been considered to minimize hardship, while liquidating the debt, as appellant had financial resources sufficient for more than ordinary needs.²³ As noted, appellant submitted a Form OWCP-20 on September 26, 2019 showing that she had income in the amount of \$1,823.03 and expenses in the amount of \$1,390.75. OWCP also noted that she had additional monthly income due to her part-time light-duty position. Thus, it did not abuse its discretion in setting the rate of recovery.²⁴ The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$300.00 every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$26,070.62 for the period February 1, 2017 through August 17, 2019, for which she was not at fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset. The Board also finds that OWCP properly denied waiver of recovery of the overpayment, and properly required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments every 28 days.

²² *Id.*

²³ *See R.D.*, Docket No. 19-0159 (issued April 17, 2020); *D.S.*, Docket No. 18-1447 (issued July 22, 2019).

²⁴ *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 October 31, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 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