

**United States Department of Labor
Employees' Compensation Appeals Board**

E.L., Appellant)	
)	
and)	Docket No. 20-0723
)	Issued: October 15, 2020
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, San Francisco, CA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 7, 2020 appellant filed a timely appeal from an August 13, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.¹

ISSUE

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$10,044.07 for the period April 1, 2018 through June 22, 2019 for which she was without fault, because she concurrently received FECA wage-loss compensation and Social

¹ The Board notes that, following the August 13, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

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 it properly required recovery of the overpayment by deducting \$446.00 from appellant's continuing compensation payments.

FACTUAL HISTORY

On March 12, 2003 appellant, then a 50-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 3, 2003 she experienced right shoulder pain and pulled a right trapezius muscle when she reached up and pulled a case of flat mail while in the performance of duty. She stopped work on March 3, 2003 and returned to full-duty work on March 30, 2003. OWCP accepted appellant's claim for right shoulder tendinitis and right shoulder strain. On July 9, 2003 appellant stopped work due to surgery. She returned to full-time, modified-duty work on August 13, 2003.

On June 10, 2010 OWCP granted appellant a schedule award for four percent permanent impairment of the left upper extremity. The award ran for 12.48 weeks from July 9 to October 4, 2004.

On July 8, 2010 appellant stopped work because the employing establishment was no longer able to accommodate her work. OWCP paid her wage-loss compensation benefits on the supplemental rolls, effective July 7, 2010 and on the periodic rolls, effective August 1, 2010.²

On February 18, 2014 appellant returned to part-time, modified-duty working six hours per day. OWCP adjusted her wage-loss compensation benefits based on her actual benefits as a part-time mail processing clerk.

In an April 2, 2014 letter, OWCP advised appellant that FECA requires that her continuing wage-loss compensation benefits be reduced if she began receiving SSA benefits based on her age and federal service. It informed her that, if she failed to report receipt of such retirement benefits, it could result in an overpayment of benefits.

In a subsequent letter dated April 28, 2014, OWCP noted that appellant requested a duplicate copy of a Form CA-1032 that was previously provided to her. It afforded her 30 days to submit the completed form.

In a Form CA-1032 dated June 21, 2018, appellant responded "yes" indicating that she received age-related retirement benefits from SSA as part of an annuity for federal service.

On December 11, 2018 OWCP requested information from SSA regarding appellant's dual benefits.

² Under OWCP File No. xxxxxx372, appellant filed an occupational disease claim (Form CA-2) on November 17, 2010 alleging that she developed carpal tunnel and tingling sensation in both fingers as a result of her repetitive employment duties. OWCP accepted her claim for bilateral carpal tunnel syndrome. It administratively combined that claim with the current claim under File No. xxxxxx117, with the latter serving as the master file.

Appellant retired from federal service, effective December 31, 2018.

On May 15, 2019 an SSA representative provided OWCP a Federal Employees Retirement System (FERS)/SSA dual benefit calculation worksheet. The SSA representative provided corresponding monthly SSA age-related retirement benefit rates beginning April 1, 2018 that both included and excluded appellant's FERS contributions. The form indicated that, beginning April 1, 2018, appellant's SSA rate with FERS was \$1,574.00 and without FERS was \$914.10; that, beginning December 1, 2018, her SSA rate with FERS was \$1,617.50 and without FERS was \$939.60; that, beginning January 1, 2019, her SSA rate with FERS was \$1,648.50 and without FERS was \$939.60.

Effective June 23, 2019, OWCP paid appellant at the adjusted amount of \$654.37 to include the offset of her SSA age-related retirement benefits attributable to her federal service.

OWCP completed a FERS offset calculation worksheet on June 27, 2019. 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 April 1, 2018 through June 22, 2019 for a total overpayment amount of \$10,044.07.

In a Form CA-1032 dated June 2, 2019, appellant responded "Yes" indicating that she received retirement benefits from SSA as part of an annuity for federal service.

In a preliminary overpayment determination dated July 9, 2019, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$10,044.07 because it had failed to reduce her wage-loss compensation benefits for the period April 1, 2018 through June 22, 2019 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 prerecoupment hearing.

On August 5, 2019 appellant completed an overpayment action request form. She indicated that she disagreed with the amount of the overpayment and requested a waiver of the overpayment. In an enclosed statement, appellant explained that she had acted on incorrect information when she spent funds in ways in which she otherwise would not have done. She contended that she would not have taken her SSA benefits in 2018 and would have waited until 2019. Appellant related that she had contacted her claims examiner before planning to retire to ask if her OWCP benefit would be affected and was told "No." She also reported that she notified OWCP that she was receiving SSA benefits when she filled out the CA-1032 forms.

By decision dated August 13, 2019, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$10,044.07 for the period from April 1, 2018 through June 22, 2019 because she received SSA benefits in addition to her wage-loss compensation benefits under FECA without a proper offset. It also found that she 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 concluded, therefore, that "you provided no evidence to support your contention that you have financially suffered and spent funds in ways that you would otherwise would not have done so." It determined that recovery of the overpayment would require deducting \$446.00 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.³ 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.⁴

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.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$10,044.07 for the period April 1, 2018 through June 22, 2019 because she concurrently received SSA age-related retirement benefits while receiving FECA wage-loss compensation benefits without an appropriate offset.⁷

The evidence of record indicates that, while appellant was receiving compensation for wage-loss compensation benefits under FECA, she was also receiving SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period.⁸ The information provided by SSA established that appellant received SSA age-retirement benefits that were attributable to federal service during the period April 1, 2018 through June 22, 2019. Consequently, the fact of overpayment has been established.

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

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

⁶ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁷ *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

⁸ *Supra* note 6.

To determine the amount of the overpayment, the portion of SSA's 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 its rate with FERS and without FERS for specific periods from April 1, 2018 through June 22, 2019. OWCP provided its calculations for each relevant period based on SSA's worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period April 1, 2018 through June 22, 2019 and finds that an overpayment of compensation in the amount of \$10,044.07 was created.⁹

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.¹⁰ Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹¹

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹² 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 \$50.00.¹³

Section 10.437 of OWCP's implementing regulations provides that 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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁴ OWCP's procedures

⁹ See *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

¹⁰ 5 U.S.C. § 8129(a)-(b).

¹¹ *L.S.*, 59 ECAB 350 (2008).

¹² 20 C.F.R. § 10.436. OWCP's procedures provide that the 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2018).

¹³ *Id.* at Chapter 6.400.4(a)(3) (September 2018).

¹⁴ 20 C.F.R. § 10.437; see *E.H.*, Docket No. 18-1009 (issued January 29, 2019).

provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.¹⁵

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.¹⁶

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not completed the Form OWCP-20 recovery questionnaire and not provided any supporting financial information. OWCP, therefore, did not have the financial information necessary to determine if appellant needed substantially all of her current income to meet current ordinary and necessary living expenses and, also, if her assets exceeded a specified amount as determined by OWCP.¹⁷

The Board also finds that appellant did not establish that she was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience. In a statement received on August 12, 2019, appellant asserted that she had acted on incorrect information when she spent funds in ways in which she otherwise would not have done. She also contended that she would not have taken her SSA benefits in 2018 and would have waited until 2019. Appellant, however, did not provide any financial information to support her allegations. She, therefore, did not establish that recovery of the overpayment was against equity and good conscience.¹⁸

LEGAL PRECEDENT -- ISSUE 3

Section 10.441(a) of OWCP's regulations¹⁹ provides in pertinent part:

“When an overpayment 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 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

¹⁵ FECA Procedure Manual, *supra* note 12 at Chapter 6.400.4c(3) (September 2018).

¹⁶ 20 C.F.R. § 10.436.

¹⁷ *Supra* note 12.

¹⁸ *R.C.*, *supra* note 7; *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁹ 20 C.F.R. § 10.441(a).

circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”²⁰

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$446.00 from appellant’s continuing compensation every 28 days.

OWCP provided appellant a Form OWCP-20 with its July 9, 2019 preliminary determination. It afforded her the opportunity to provide appropriate financial information and documentation to OWCP.²¹ Appellant did not complete the overpayment recovery questionnaire or provide the necessary financial information to support her income and expenses prior to the final August 13, 2019 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²² When an individual fails to provide requested financial information, OWCP shall follow minimum collection guidelines designed to collect the debt promptly and in full.²³ As appellant did not submit supporting financial documentation to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in directing recovery of the \$10,044.07 overpayment at the rate of \$446.00 every 28 days from her continuing compensation payments.²⁴

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$10,044.07 for the period April 1, 2018 through June 22, 2019, for which she was not at fault, as she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$446.00 every 28 days from her continuing compensation payments.

²⁰ *Id.*; see *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²¹ *Id.* at § 10.438.

²² *Id.* at § 10.438(a); see *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²³ See *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, *supra* note 12 at Chapter 6.400.3 (September 2018).

²⁴ See *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 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