

(SSA) age-related retirement benefits for the period June 1, 2016 to June 22, 2019 without an appropriate offset; (2) whether it properly denied waiver of recovery of the overpayment; (3) whether OWCP properly required recovery of the overpayment by deducting \$707.74 from appellant's continuing compensation payments every 28 days; and (4) whether it properly denied appellant's September 8, 2019 request for a prerecoupment hearing as untimely filed.

FACTUAL HISTORY

On January 14, 2000 appellant, then a 49-year-old property management specialist, filed a traumatic injury claim (Form CA-1) alleging that on January 5, 2000 she suffered an injury when lifting heavy boxes and files to clean out an office, while in the performance of duty. She initially stopped work on January 11, 2000.

On February 23, 2000 OWCP accepted the claim for sprain of the lumbar region. It paid appellant wage-loss compensation benefits on the daily rolls from February 25, 2000 to August 10, 2002 and on the periodic rolls commencing August 11, 2002. Appellant was notified that "You may not receive Federal retirement benefits and compensation for wage loss for the same periods of time."

In an EN1032 form dated July 19, 2017, appellant indicated that she received SSA age-related retirement benefits in the amount of \$892.00 monthly. In an EN1032 form dated June 22, 2018, she indicated that she received SSA age-related retirement benefits in the amount of \$1,008.00 monthly.

On June 11, 2019 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form.

On June 20, 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 June 2016 through December 2018. Beginning June 2016, the SSA rate with FERS was \$1,167.40 and without FERS was \$175.00. Beginning December 2016, the SSA rate with FERS was \$1,170.90 and without FERS was \$175.50. Beginning December 2017, the SSA rate with FERS was \$1,194.30 and without FERS was \$179.00. Beginning December 2018, the SSA rate with FERS was \$1,227.70 and without FERS was \$184.00.

On July 3, 2019 OWCP prepared a FERS offset calculation worksheet wherein it noted the calculation of appellant's SSA offset overpayment from June 1, 2016 through June 22, 2019. The total overpayment was determined to be \$37,200.97. OWCP found that appellant received an overpayment in the amount of \$5,987.12 for the period June 1 through November 30, 2016, an overpayment in the amount of \$11,977.62 for the period December 1, 2016 through November 30, 2017, an overpayment in the amount of \$12,217.07 for the period December 1, 2017 through November 30, 2018, and an overpayment in the amount of \$7,019.17 for the period December 1, 2018 through June 22, 2019.

In a letter dated July 3, 2019, OWCP notified appellant that, based on information provided by SSA regarding the amount of her age-related retirement benefits, which were attributable to Federal service, her FECA wage-loss compensation had been adjusted.

On July 19, 2019 OWCP issued a preliminary determination finding that an overpayment of compensation in the amount of \$37,200.97 had been created. It explained that the overpayment occurred because appellant's SSA age-related retirement benefits that she received from June 1, 2016 through June 22, 2019 were partially based on credits earned while working for the federal government, and that this portion of her SSA benefit constituted a prohibited dual benefit. OWCP found appellant not at fault in the creation of the overpayment and forwarded an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). It requested that she provide supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support her reported income and expenses. OWCP afforded appellant 30 days to respond.

OWCP subsequently received an EN1032 form dated July 1, 2019 in which appellant indicated that she received SSA age-related retirement benefits in the amount of \$1,020.00 monthly. No other evidence was received.

By decision dated August 19, 2019, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$37,200.97, for the period June 1, 2016 through June 22, 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 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 \$707.74 every 28 days from appellant's continuing compensation payments.

On September 8, 2019 appellant requested a precoupment hearing. She requested a waiver of overpayment and asserted that she would suffer severe financial hardship in attempting to repay the debt. Appellant submitted a Form OWCP-20, dated September 17, 2019, which indicated that she had a monthly income of \$1,102.00 and monthly expenses of \$3,155.82.

By decision dated October 10, 2019, OWCP's Branch of Hearings and Review denied appellant's request for a precoupment hearing, finding that she had not timely requested a hearing on the preliminary overpayment determination, and that the final overpayment determination was not subject to a hearing pursuant to 5 U.S.C. § 8124(b).

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

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

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 attributable to the employee's federal service.⁵ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA age-related retirement 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 \$37,200.97, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period June 1, 2016 to June 22, 2019 without an appropriate offset.

The record indicates that, while appellant was receiving FECA wage-loss compensation benefits, she was also receiving SSA age-related retirement benefits attributable to federal service. As noted, a claimant cannot receive both compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁷ 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. The SSA provided the SSA rate with FERS and without FERS for specific periods commencing June 1, 2016 through June 22, 2019. OWCP provided its overpayment calculations for each relevant period based on the SSA worksheet and in its July 19, 2020 preliminary overpayment determination. No contrary evidence was provided.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period June 1, 2016 through June 22, 2019, and finds that an overpayment of compensation in the amount of \$37,200.97 was created.⁸

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

⁵ 20 C.F.R. § 10.421(d); *see J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.W.*, Docket No. 19-0787 (issued October 23, 2019).

⁶ FECA Bulletin No. 97-09 (February 3, 1997); *see also S.M.*, Docket No. 20-0152 (issued August 10, 2020).

⁷ *See I.U.*, Docket No. 20-0129 (issued July 31, 2020).

⁸ *Id.*

without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.”⁹

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.¹⁰ 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 \$50.00.¹¹ 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.¹² 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.¹³

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.¹⁴

OWCP 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.¹⁵

⁹ 5 U.S.C. § 8129(b).

¹⁰ 20 C.F.R. § 10.436. OWCP’s procedures provide that a claimant is deemed to need substantially all of his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Determinations*, Chapter 6.400.4a(3) (September 2018). OWCP’s procedures further provide that 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. *Id.* at Chapter 6.400.4a(2).

¹¹ *Id.* at Chapter 6.400.4(a)(3); *C.B.*, Docket No. 20-0031 (issued July 27, 2020); *N.J.*, Docket No. 19-1170 (issued January 10, 2020).

¹² *See supra* note 10 at Chapter 6.400.4(a)(2) (September 2018).

¹³ *Id.* at Chapter 6.400.4(b)(3).

¹⁴ 20 C.F.R. § 10.437(a)(b).

¹⁵ *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 not at 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.¹⁶ However, appellant had the responsibility to provide financial information to OWCP,¹⁷ but failed to do so.

In its preliminary determination, dated July 19, 2019, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support income and expenses. It advised her that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant did not provide the requested Form OWCP-20 or submit any financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

Accordingly, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.

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.¹⁸

Section 10.441 of OWCP's regulations¹⁹ provides that, 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 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 compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.²⁰

¹⁶ *Id.* at § 10.436.

¹⁷ *Id.* at § 10.438; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

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

¹⁹ *Id.* at § 10.441(a).

²⁰ *Id.*; *see L.G.*, Docket No. 19-1274 (issued July 10, 2020).

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$707.74 every 28 days from appellant's continuing compensation payments.

OWCP provided appellant a Form OWCP-20 with its July 19, 2019 preliminary determination. It afforded her the opportunity to provide appropriate financial information and documentation to OWCP. Appellant did not complete the Form OWCP-20 or provide the necessary financial information to support her income and expenses prior to the final August 19, 2019 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²¹ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²² 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 \$37,200.97 overpayment at the rate of \$707.74 every 28 days from appellant's continuing compensation payments.²³

LEGAL PRECEDENT -- ISSUE 4

OWCP's regulations provide that a claimant may request a prerecoumment hearing with respect to an overpayment.²⁴ Failure to request the prerecoumment hearing within 30 days shall constitute a waiver of the right to a hearing.²⁵ The only right to a review of a final overpayment decision is with the Board.²⁶ The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.²⁷

ANALYSIS -- ISSUE 4

The Board finds that OWCP properly denied appellant's September 8, 2019 request for a prerecoumment hearing as untimely filed.

OWCP's July 19, 2019 preliminary determination of overpayment provided appellant with a right to request a prerecoumment hearing within 30 days. The record indicates that OWCP properly mailed its preliminary determination to appellant's last known address of record.

²¹ *Id.* at § 10.438(a).

²² *See J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, *supra* note 10 at Chapter 6.500.2 (September 2018).

²³ *See J.A.*, *id.*; *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

²⁴ 20 C.F.R. § 10.432. *See E.M.*, Docket No. 19-0857 (issued December 31, 2019); *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

²⁵ *Id.*

²⁶ *Id.* at § 10.440(b).

²⁷ 5 U.S.C. § 8124(b). *See G.L.*, Docket No. 19-0297 (issued October 23, 2019).

Appellant did not request a prerecoupment hearing within 30 days of July 19, 2019. Consequently, by decision dated August 19, 2019, OWCP properly finalized its preliminary overpayment determination.

On September 26, 2019 OWCP received an overpayment action request form, dated September 8, 2019. Appellant requested waiver of recovery of the overpayment because she was found to be without fault in the creation of the overpayment and addressed her request to OWCP's Branch of Hearings and Review. She submitted a partially completed Form OWCP-20 along with her request.

The Board finds that as appellant's request form was mailed to OWCP's Branch of Hearings and Review, it was properly treated as a request for a hearing. OWCP's regulations, however, provide that when a final overpayment decision is issued, there is no right to a hearing or a review of the written record, and OWCP does not have discretion to grant such a request. The only right to appeal is with the Board.²⁸ As appellant's September 8, 2019 request for a prerecoupment hearing was made after the final overpayment determination, the Board finds that OWCP properly denied appellant's request for a hearing as untimely filed.²⁹

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$37,200.97, for which she was not at fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without appropriate offset for the period June 1, 2016 to June 22, 2019. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$707.74 from her continuing compensation payments every 28 days. Additionally, OWCP properly denied appellant's September 8, 2019 request for a prerecoupment hearing as untimely filed.

²⁸ *Id.*

²⁹ *See E.M., supra* note 24.

ORDER

IT IS HEREBY ORDERED THAT the October 10 and August 19, 10 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 28, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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