

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

S.W., Appellant	)	
	)	
and	)	Docket No. 20-0544
	)	Issued: September 21, 2020
U.S. POSTAL SERVICE, POST OFFICE,	)	
San Diego, CA, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 15, 2020 appellant filed a timely appeal from a December 13, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$5,508.07 for the period September 1, 2018 through September 14, 2019 for which she was without fault because she concurrently received FECA wage-loss compensation and Social

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the December 13, 2019 decision, appellant submitted additional evidence to OWCP and with her appeal to the Board. 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 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 \$290.66 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On July 15, 2003 appellant, then a 49-year-old part-time letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed chronic cervical spine pain and headaches due to factors of her federal employment, including repetitive hand and shoulder motions. She indicated that she first became aware of her condition on March 12, 2003 and realized its relationship to her federal employment on July 14, 2003. On the reverse side of the claim form the employing establishment noted that appellant had been off work since May 27, 2003 for a prior injury.<sup>3</sup> OWCP accepted her claim for cervical strain. On February 2, 2004 appellant returned to part-time limited-duty work as a lobby director, working four hours per day. On August 7, 2008 she stopped work again because the employing establishment could no longer accommodate her work restrictions. OWCP paid appellant wage-loss compensation benefits and placed her on the periodic rolls, effective September 28, 2008.

In a Form EN1032 completed on August 14, 2019, appellant responded "Yes" indicating that she was receiving SSA age-related retirement benefits as part of an annuity for federal service.

On August 20, 2019 SSA provided OWCP with a Federal Employees Retirement System (FERS)/SSA dual benefit calculation worksheet. The SSA representative provided corresponding monthly SSA benefits rates beginning September 2018 that both included and excluded appellant's FERS contributions. The form indicated: beginning September 2018, her SSA rate with FERS was \$886.00 and without FERS was \$454.00; beginning December 2018, her SSA rate with FERS was \$911.00 and without FERS was \$467.00; beginning June 2019, her SSA rate with FERS was \$910.50 and without FERS was \$467.50.

In a memorandum of telephone call (Form CA-110) dated September 26, 2019, OWCP requested information from G.W., an injury compensation specialist at the employing establishment, regarding whether appellant had Civil Service Retirement System or FERS retirement coverage.

In a letter dated September 27, 2019, G.W. informed OWCP that it was attaching a copy of appellant's latest SF-50 which noted her retirement plan. She submitted a copy of an SF-50

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<sup>3</sup> Under OWCP File No. xxxxxx638, appellant filed a traumatic injury claim (Form CA-1) alleging that on December 19, 2001 she injured her upper back and neck when she lifted a parcel and experienced pain in her upper back through her neck while in the performance of duty. She stopped work on December 20, 2001 and returned to part-time, limited duty as a video coding technician working six hours per day on February 4, 2003. OWCP accepted her claim for cervical strain and degenerative cervical disc disease and paid wage-loss compensation benefits on the supplemental rolls, effective February 23, 2002. Appellant stopped work again on May 28, 2003. OWCP has administratively combined File No. xxxxxx638 and the current case file with the current case file serving as the master file.

form dated August 2010, which indicated that appellant's retirement plan was "A -- FERS frozen." It also noted that appellant had retired from federal service, effective June 14, 2010.

OWCP completed a FERS offset calculation worksheet on September 30, 2019. It calculated the overpayment amount by determining the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$5,508.07. The form indicated that from September 1 through November 30, 2018 appellant received an overpayment in the amount of \$1,296.00, from December 1, 2018 through May 31, 2019 she received an overpayment in the amount of \$2,664.00, and from June 1 through September 14, 2019 she received an overpayment in the amount of \$1,548.07.

Effective September 15, 2019, OWCP paid appellant at the adjusted amount of \$1,162.62 to include the offset of her SSA age-related retirement benefits attributable to her federal service.

In a letter dated October 24, 2019, 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 \$1,162.62 every 28 days.

In a preliminary determination dated October 24, 2019, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$5,508.07 because it had failed to reduce her wage-loss compensation benefits for the period September 1, 2018 through September 14, 2019 by the portion of her SSA age-related retirement 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. 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. No response was received.

By decision dated December 13, 2019, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$5,508.07 for the period September 1, 2018 through September 14, 2019 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without 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 \$290.66 from appellant's continuing compensation payments every 28 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.<sup>4</sup> Section 8116 limits the right of an employee to receive

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<sup>4</sup> 5 U.S.C. § 8102(a).

compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.<sup>5</sup>

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.<sup>6</sup> FECA Bulletin No. 97-09 states 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.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant received an overpayment of compensation in the amount of \$5,508.07 for the period September 1, 2018 through September 14, 2019 for which she was not at fault, because she concurrently received FECA benefits and SSA age-related retirement benefits without appropriate offset.

As noted, a claimant cannot receive both FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>8</sup> According to evidence received from SSA, appellant had received SSA age-related retirement benefits that were attributable to her own federal service from September 1, 2018 through September 14, 2019. Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.<sup>9</sup>

In determining the amount of the overpayment, OWCP relied on evidence received 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 benefit rates with FERS, and without FERS, for specific periods commencing September 1, 2018 through September 14, 2019. OWCP calculated the overpayment by determining the 28-day offset amount and then multiplying that amount by the number of days in each period. It provided its calculations for each relevant period based on the SSA worksheet and no contrary evidence was provided. The Board has reviewed OWCP's calculation of benefits received by appellant for the period September 1, 2018 through September 14, 2019 and finds that an overpayment of compensation in the amount of \$5,508.07 was created.<sup>10</sup>

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<sup>5</sup> *Id.* at § 8116.

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

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

<sup>8</sup> *Supra* note 5.

<sup>9</sup> *See R.M.*, Docket No. 19-1570 (issued June 1, 2020).

<sup>10</sup> *See R.W.*, Docket No. 19-0334 (issued August 7, 2020); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

## 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.<sup>11</sup> Section 10.438 of OWCP's regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. Failure to submit the requested information within 30 days of the request shall result in denial of waiver of recovery of the overpayment.<sup>12</sup> The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA, or would be against equity and good conscience, are set forth in sections 10.434 to 10.437 of OWCP's regulations.<sup>13</sup>

The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.<sup>14</sup>

## 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.<sup>15</sup>

In its preliminary determination dated October 24, 2019, OWCP clearly explained the importance of providing the completed Form OWCP-20 recovery questionnaire and supporting financial documentation. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant, however, did not submit a completed Form OWCP-20 recovery questionnaire or otherwise submit financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.<sup>16</sup>

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438, which was necessary to determine her eligibility of waiver, OWCP properly denied waiver of recovery of the overpayment of compensation in the amount of \$5,508.07.<sup>17</sup>

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<sup>11</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437.

<sup>12</sup> 20 C.F.R. § 10.438.

<sup>13</sup> *Id.* at §§ 10.434-10.437.

<sup>14</sup> *See Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>15</sup> 20 C.F.R. § 10.436.

<sup>16</sup> *See S.M.*, *supra* note 6.

<sup>17</sup> *See J.A.*, Docket No. 19-1946 (issued July 13, 2020); *see also T.E.*, Docket No. 19-0348 (issued December 11, 2019).

On appeal appellant alleges that she would suffer severe financial hardship in trying to repay the debt. As explained above, it was appellant's responsibility to provide a completed Form OWCP-20 with supporting financial information within 30 days, which was explained in the preliminary overpayment determination that she received. Since she failed to provide the requested information to OWCP within 30 days, OWCP properly denied waiver of recovery of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 of OWCP's regulations<sup>18</sup> 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 the error is discovered or his 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.”<sup>19</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$290.66 from appellant's continuing compensation every 28 days.

OWCP provided appellant a Form OWCP-20 with its October 24, 2019 preliminary determination and advised her to submit supporting financial documentation with her completed form.<sup>20</sup> Appellant did not complete the Form OWCP-20 or provide the necessary financial information to support her income and expenses prior to the final December 13, 2019 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>21</sup> When an individual fails to provide requested financial information, OWCP shall follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>22</sup> 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

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<sup>18</sup> 20 C.F.R. § 10.441(a).

<sup>19</sup> *Id.*; see *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

<sup>20</sup> *Id.* at § 10.438.

<sup>21</sup> *Id.* at § 10.438(a); see *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>22</sup> See *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.3 (September 2018).

erred in directing recovery of the \$5,508.07 overpayment at the rate of \$290.66 every 28 days from her continuing compensation payments.<sup>23</sup>

**CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$5,508.07 for the period September 1, 2018 through September 14, 2019 for which she was not at fault, as she concurrently received FECA benefits and SSA age-related retirement benefits without 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 \$290.66 every 28 days from her continuing compensation payments.

**ORDER**

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

Issued: September 21, 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

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<sup>23</sup> See *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).