

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

M.G., Appellant

and

**U.S. POSTAL SERVICE, WEST CARRIER
ANNEX, Miami, FL, Employer**

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**Docket No. 20-1145
Issued: February 24, 2021**

Appearances:

Victor A. Walker, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On May 13, 2020 appellant, through her representative, filed a timely appeal from March 17 and April 7, 2020 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant received an overpayment of wage-loss compensation in the amount of \$33,948.89 from June 1, 2017 through August 17, 2019 for which she was without

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

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 it properly required recovery of the overpayment by deducting \$300.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On January 18, 2012 appellant, then a 60-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 14, 2012 she injured her lower back and both legs while in the performance of duty. She stopped work on January 14, 2012. OWCP accepted the claim for lumbar sprain and displacement of an intervertebral disc without myelopathy at L3-4 and L4-5. It paid appellant wage-loss compensation on the supplemental rolls effective February 29, 2012, and on the periodic rolls effective July 29, 2012.

In an EN1032 form signed June 13, 2018, appellant advised that she received benefits from SSA as part of an annuity for federal service in the monthly amount of \$1,886.00. In a June 21, 2019 EN1032, she indicated that she received \$2,986.82 monthly from SSA for age-related retirement benefits.

On July 31, 2019 SSA provided OWCP with a Federal Employees Retirement System FERS/SSA dual benefit calculation worksheet setting forth appellant's SSA rate with FERS and without FERS from June 2017 through December 2018. The form indicated that, with FERS, appellant was entitled to a monthly payment of \$1,981.30, effective June 2017, \$2,020.90, effective December 2017, and \$2,077.40, effective December 2018. Without her federal service contributions, she was entitled to a monthly payment rate of \$737.50, effective June 2017, \$752.20, effective December 2017, and \$773.20, effective December 2018.

OWCP completed a FERS offset calculation form on September 9, 2019. It calculated the amount that it should have offset from appellant's wage-loss compensation from June 1, 2017 through August 17, 2019. OWCP found that, effective June 1, 2017, the monthly offset was \$1,243.80 (\$1,981.30-\$737.50) or \$1,148.12 every 28 days, effective December 1, 2017, the monthly offset was \$1,268.70 (\$2,020.90-\$752.20), or \$1,171.11 every 28 days and, effective December 1, 2018, the monthly offset was \$1,304.20 (\$2,077.40 - \$773.20), or \$1,203.88 every 28 days. It divided the 28-day offset amount to find the daily amount, which it multiplied by the number of days in each period from June 1, 2017 through August 17, 2019 to find the amount that it had overpaid appellant for each period. OWCP added the amounts for each period and determined that it should have offset \$33,948.89 from her wage-loss compensation.

In a preliminary overpayment determination dated September 16, 2019, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$33,948.89 because it had failed to reduce her wage-loss compensation benefits for the period June 1, 2017 through August 17, 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 without fault in creating the overpayment of compensation. OWCP provided appellant with 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.

In a September 29, 2019 overpayment action request form, appellant requested a telephonic prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She requested waiver of recovery of the overpayment. In an accompanying OWCP-20 form, appellant provided her monthly income as \$5,837.90. She indicated that she and her spouse had a total of \$8,271.91 in cash, checking, and savings accounts. Appellant provided her monthly expenses as \$1,008.00 for housing, \$800.00 for food, \$300.00 for clothing, \$411.39 for utilities, and \$900.00 for other miscellaneous expenses.

Appellant submitted financial documentation verifying monthly expenses of \$1,008.90 for housing, \$221.39 for telephone, \$20.34 for water, \$180.41 for electricity, \$188.12 for cable, \$484.05 for a car loan, \$48.09 for satellite radio, \$70.99 for internet service, \$99.00 for pest control, and \$69.94 for automobile insurance. She provided documentation showing minimum monthly credit card expenses totaling \$1,475.50.

A telephonic prerecoupment hearing was held on February 11, 2020. Appellant's representative advised that she received a different monthly amount from SSA than the amount provided to OWCP and questioned whether the amount included the Medicare deduction. He indicated that he was resubmitting some supporting financial documentation and had itemized her monthly income and expenses. Appellant's representative asserted that appellant's monthly food expense was high because of dietary restrictions.

Appellant's representative submitted figures showing her total monthly income as \$5,830.44. He indicated that she had monthly expenses of \$1,008.95 for housing, \$210.00 for telephone, \$200.00 for electricity, \$120.00 for lawn care, \$25.00 for water and sewer, \$188.12 for cable, \$74.99 for internet, and \$33.00 for pest control, which he added to find housing expenses of \$1,860.06. Appellant also paid \$484.05 for one car payment, \$232.59 for vehicle insurance, \$7.50 for car registrations, \$228.00 for two extended car warranties, \$33.33 for maintenance, and \$48.09 for satellite radio, for total car expenses of \$1,033.56. She further listed monthly credit and loan expenses totaling \$1,394.66. Appellant provided monthly life insurance expenses of \$181.66 and food expenses of \$800.00. She further indicated that she paid \$286.32 for pet expenses, \$39.00 for medical expenses, \$60.00 for hair and nail expenses, and \$135.00 for clothing. Appellant totaled her monthly expenses as \$5,790.26 and subtracted this amount from her monthly income to find a difference of \$40.18 in income over expenses monthly.

Appellant submitted supporting financial documentation showing minimum monthly credit card expenses totaling \$160.87. She also submitted documentation supporting her expenses for auto insurance, mortgage, and water.

By decision dated March 17, 2020, OWCP's hearing representative finalized the finding that appellant had received a \$33,948.89 overpayment of compensation for the period June 1, 2017 through August 17, 2019 because she received wage-loss compensation and age-related SSA benefits without the appropriate offset. She found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as her monthly income exceeded her monthly expenses by more than the allotted amount. The hearing representative

required recovery of the overpayment by deducting \$300.00 every 28 days from appellant's continuing compensation benefits.

By decision dated April 7, 2020, OWCP finalized the finding that appellant had received a \$33,948.89 overpayment of compensation from June 1, 2017 through August 17, 2019 because she had received wage-loss compensation and SSA retirement benefits without the appropriate offset. It found that she was without fault in the creation of the overpayment, but was not entitled to waiver of recovery of the overpayment, noting that OWCP's hearing representative had found that she had documented monthly income of \$5,837.90 and monthly expenses of \$3,811.48. OWCP noted that, as found by OWCP's hearing representative, it would recover the overpayment by deducting \$300.00 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.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 OWCP to reduce the amount of compensation by the amount of any SSA age-related 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 a \$33,948.89 overpayment of compensation for the period June 1, 2017 through August 17, 2019 because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

OWCP paid appellant wage-loss compensation for total disability beginning February 29, 2012. Effective June 1, 2017, appellant received SSA age-related retirement benefits. In an EN1032 signed June 13, 2018, she advised that she received benefits from SSA as part of an annuity for federal service. As noted, a claimant cannot receive compensation for wage-

³ *Id.* at § 8102

⁴ *Id.* at § 8116.

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

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

loss compensation and SSA retirement benefits attributable to federal service for the same period.⁷ The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to her federal service. As OWCP neglected to offset her FECA benefits for the period June 1, 2017 through August 17, 2019, she received an overpayment of wage-loss compensation.⁸

Based on the rates provided by SSA, OWCP calculated the overpayment of compensation by determining the portion of SSA benefits that were attributable to appellant's federal service. SSA provided appellant's SSA rate with FERS and without FERS beginning June 1, 2017.⁹ OWCP provided its calculations of the amount that it should have offset for each relevant period based on the SSA worksheet. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$33,948.89, creating an overpayment of compensation in that amount.¹⁰

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."¹¹

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.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 Also, assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a

⁷ *Id.*; A.C., Docket No. 18-1550 (issued February 21, 2019).

⁸ *Id.*

⁹ SSA's worksheet provided applicable rates, effective the following dates: June 1 and December 1, 2017, and December 1, 2018.

¹⁰ A.S., Docket No. 19-0171 (issued June 12, 2019).

¹¹ 5 U.S.C. § 8129(b).

¹² 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).

¹³ *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).

spouse or dependent plus \$1,200.00 for each additional dependent.¹⁴ 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.¹⁵

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.¹⁶

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.¹⁷

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.¹⁸

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not shown that she needs substantially all of her current income to meet ordinary and necessary living expenses.

Appellant has monthly income of \$5,837.90. Subsequent to the hearing, she advised that her monthly expenses for housing, electricity, telephone, lawn care, water, cable, internet, and pest control totaled \$1,860.06. Appellant provided vehicle expenses of \$1,033.56, including \$48.09 for satellite radio. She listed monthly credit expenses of \$1,394.66, food expenses of \$800.00, life insurance expenses of \$181.66, medical expenses of \$39.00, hair and nail expenses of \$60.00, \$286.32 for pet expenses, and clothing expenses of \$135.00, for total monthly expenses of \$5,790.26. Excluding the monthly expenses of \$48.09 for satellite radio and \$286.32 for pet care, which are not considered ordinary and necessary expenses, yields \$382.05 in monthly income over expenses.¹⁹ As appellant's current income exceeds her current ordinary and necessary living

¹⁴ *Id.* at Chapter 6.400.4(a)(2).

¹⁵ *Id.* at Chapter 6.400.4(b)(3).

¹⁶ 20 C.F.R. § 10.437(a)(b).

¹⁷ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁸ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

¹⁹ *Supra* note 12 at Chapter 6.400.4(b)(2). *See G.W.*, Docket No. 12-1171 (issued October 25, 2012);

expenses by more than \$50.00, she has not shown that she needs substantially all of her current income to meet current ordinary and necessary living expenses.²⁰ Thus, she has not established that recovery of the overpayment would defeat the purpose of FECA.

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.²¹

On appeal appellant's representative contends that OWCP's hearing representative erred in failing to rely only on the financial information submitted after the hearing in considering waiver of recovery of the overpayment. As noted, however, as appellant's monthly income exceeds her monthly expenses by more than \$50.00, she is not entitled to waiver of recovery of the overpayment.

As appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, OWCP properly denied waiver of recovery of the \$33,948.89 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.²²

Section 10.441 of OWCP's regulations²³ 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.²⁴

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.

²⁰ See *J.B.*, Docket No. 19-1734 (issued November 5, 2020).

²¹ 20 C.F.R. § 10.437(a)(b). See *J.R.*, Docket No. 20-0436 (issued October 19, 2020).

²² *Id.* at § 10.441. See *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²³ *Id.* at § 10.441(a).

²⁴ *Id.*; see *L.G.*, Docket No. 19-1274 (issued July 10, 2020).

Appellant's monthly income exceeds her monthly expenses by more than \$300.00 per month. In setting the rate of recovery, OWCP gave due regard to the factors set forth in section 10.441. The Board, thus, finds that OWCP properly required recovery of the overpayment by deducting \$300.00 from appellant's compensation payments, every 28 days.²⁵

CONCLUSION

The Board finds that appellant received an overpayment of wage-loss compensation in the amount of \$33,948.89 from June 1, 2017 through August 17, 2019 for which she was without fault, because she concurrently received FECA wage-loss compensation 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 \$300.00 every 28 days from appellant's continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the April 7 and March 17, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 24, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁵ See *R.L.*, Docket No. 20-0186 (issued September 14, 2020); *J.B.* *supra* note 20.