

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$33,695.97 during the period September 1, 2016 through December 7, 2019, for which she was not at fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation 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 \$569.81 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On January 10, 2001 appellant, then a 48-year-old small package and bundle sorter clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a burning sensation in her back side, in her elbows, and across her shoulders when she was bumped off-balance and fell while in the performance of duty. OWCP initially accepted the claim for lumbar strain, and later expanded acceptance of the claim to include permanent aggravation of degenerative osteoarthritis of the lumbar spine. Appellant stopped work on January 10, 2001. OWCP paid her compensation on the periodic rolls effective June 17, 2001. By decision dated June 14, 2007, it reduced appellant's compensation based on her capacity to earn wages in the constructed position of cashier.

A January 29, 2006 Notification of Personnel Action (PS Form 50) listed appellant's retirement coverage as the Federal Employees Retirement System (FERS). On an EN1032 form dated August 15, 2016, appellant replied "No" as to whether she was in receipt of SSA benefits as a part of an annuity for federal service. On EN1032 forms dated August 23, 2017, August 16, 2018, and August 21, 2019, appellant replied "Yes," indicating that she had received SSA benefits as part of an annuity for federal service.

On October 8, 2018 OWCP requested information from SSA regarding appellant's dual benefits.

On November 25, 2019 OWCP received a completed FERS/SSA dual benefits calculation form from SSA dated November 5, 2019, wherein SSA calculated appellant's SSA age-related retirement benefit rates with and without a FERS offset. The form indicated that the SSA rate with FERS was \$1,368.00 effective September 2016, \$1,373.00 effective December 2016, \$1,373.00 effective July 2017, \$1,400.00 effective December 2017, and \$1,439.50 effective December 2018. The form further indicated that the SSA rate without FERS was \$532.00 effective September 2016, \$534.00 effective December 2016, \$534.00 effective July 2017, \$544.00 effective December 2017, and \$559.50 effective December 2018. The SSA representative noted that appellant began receiving age-related retirement benefits in September 2016.

In a letter dated December 18, 2019, OWCP notified appellant that, based on information provided by SSA regarding the amount of her SSA age-related retirement benefits attributable to federal service, her FECA wage-loss compensation had been adjusted.

OWCP completed a FERS offset calculation form on December 18, 2019. It determined the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$33,695.97. This form indicated that: from September 1 through November 30, 2016, appellant

received an overpayment of compensation in the amount of \$2,508.00; from December 1, 2016 through June 30, 2017, she received an overpayment of compensation in the amount of \$5,863.78; from July 1 through November 30, 2017, she received an overpayment of compensation in the amount of \$4,231.88; from December 1, 2017 through November 30, 2018, she received an overpayment of compensation in the amount of \$10,300.22; and from December 1, 2018 through December 7, 2019, she received an overpayment of compensation in the amount of \$10,792.09.

On December 19, 2019 OWCP notified appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$33,695.97 as she had received FECA wage-loss compensation benefits for the period September 1, 2016 through December 7, 2019 that had not been reduced by the portion of her SSA age-related retirement benefits attributable to her federal service, and that this portion of her SSA benefit was a prohibited dual benefit. It further advised her of its preliminary determination that she was not at fault in creating the overpayment. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. 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 precoupment hearing.

On January 5, 2020 appellant, through counsel, requested that OWCP render a decision based upon the written evidence regarding possible waiver of the overpayment. In an attached Form OWCP-20, appellant advised that her monthly income included \$3,091.54 in “comp” and \$1,304.00 in SSA benefits, for a total monthly income of \$4,395.54. She further advised that her monthly expenses included \$650.00 for housing, \$400.00 for food, \$100.00 for clothing, \$850.00 for utilities, and \$650.00 for other expenses, for a total of \$2,650.00 in monthly expenses. Appellant indicated that she had assets in checking and savings accounts of \$95,000.00 and \$67,000.00 in a Thrift Savings Plan (TSP) account. No documentation of her income, expenses, or assets was provided.

By decision dated January 21, 2020, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$33,695.97 because the SSA/FERS offset was not applied to FECA payments for the period September 1, 2016 through December 7, 2019. It further found that she was not at fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, because she had assets over \$6,200.00 and because she had not shown she needed substantially all of her current net income to meet current ordinary and necessary living expenses. OWCP required repayment of the overpayment by deducting \$569.81 from appellant’s continuing compensation benefits beginning March 1, 2020.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability 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. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁵

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related retirement benefits that are attributable to 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 appellant received an overpayment of compensation in the amount of \$33,695.97 because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period September 1, 2016 through December 7, 2019 without appropriate offset.

The record indicates that, while appellant was receiving wage-loss compensation under FECA, she also received SSA age-related retirement benefits attributable to her federal service during the relevant period. 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 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 from September 1, 2016 through December 7, 2019. OWCP provided its calculations of the amount that should have been offset during the relevant period based on information provided by SSA for the period September 1, 2016 through December 7, 2019 in its December 19, 2019 preliminary overpayment determination. No contrary evidence was provided.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period September 1, 2016 through December 7, 2019 and finds that an overpayment of compensation in the amount of \$33,695.97 was created.⁹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁰ Section 10.438 of OWCP's regulations provides that the individual who received

⁶ 20 C.F.R. § 10.421(d); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

⁸ *See D.M.*, Docket No. 19-1369 (issued June 30, 2020).

⁹ *See L.W. supra* note 6; *L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹⁰ 5 U.S.C. § 8129.

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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹¹

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.¹² Section 10.436 provides that recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her income (including compensation benefits) to meet current ordinary and necessary living expense, 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.¹³ For waiver of recovery of the overpayment under the defeat the purpose of FECA standard, appellant must show that he or she needs substantially all of his or her current income to meet current ordinary and necessary living expenses, and that assets do not exceed the resource base.¹⁴ 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 \$50.00.¹⁵

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 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 It considered appellant's financial information to determine if recovery of the overpayment would defeat the purpose of FECA.

The Board finds that OWCP properly determined that appellant's assets exceeded the relevant resource base. OWCP found that, after its review of the documents of record, appellant's assets exceeded the resource base of \$6,200.00 for an individual as provided in OWCP's procedures.¹⁷ It was therefore unnecessary for OWCP to consider whether her monthly income

¹¹ 20 C.F.R. § 10.438.

¹² *Id.* at §§ 10.434-10.437.

¹³ *Id.* at § 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).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at § 10.436.

¹⁷ *See supra* note 14 at Chapter 6.400.4.a(2) (September 2018).

exceeds her monthly ordinary and necessary expenses by more than \$50.00.¹⁸ Appellant did not establish that she was entitled to waiver on the basis of defeating the purpose of FECA.¹⁹ There is also no evidence to support that appellant gave up a valuable right or changed her position for the worse, in reliance on her FECA compensation. Appellant, therefore, did not establish that recovery of the overpayment was against equity and good conscience.²⁰

As appellant failed to establish that recovery of the overpayment of compensation would either defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP did not abuse its discretion in denying waiver of recovery.²¹

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 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 compensation, the financial circumstances of the individual, and any other relevant factors so as to minimize hardship.²³

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$569.81 from appellant's continuing compensation every 28 days.

The record supports that, in requiring repayment of the overpayment by deducting \$569.81 from appellant's compensation payments every 28 days, OWCP took into consideration the financial information she submitted as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize resulting hardship. Therefore, OWCP properly required recovery of the overpayment by deducting \$569.81 from appellant's continuing compensation every 28 days.²⁴

¹⁸ *Id.* at Chapter 6.400.4.a(3); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁹ *See R.D.*, Docket No. 19-1598 (issued April 17, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020).

²⁰ *Id.*

²¹ *Id.*

²² 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²³ *Id.*

²⁴ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.G.*, Docket No. 19-1274 (issued July 10, 2020).

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$33,695.97 for the period September 1, 2016 through December 7, 2019, for which she was not at fault, because 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 \$569.81 from her continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 26, 2021
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