

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

_____)	
R.M., Appellant)	
)	
and)	Docket No. 20-0834
)	Issued: January 13, 2021
U.S. POSTAL SERVICE, SOUTHERN)	
FLORIDA PROCESSING & DISTRIBUTION)	
CENTER, Pembroke Pines, FL, Employer)	
_____)	

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
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 March 4, 2020 appellant, through counsel, filed a timely appeal from a January 31, 2020 merit decision 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.³

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.*

³ The Board notes that, following the January 31, 2020 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 evidence for the first time on appeal. *Id.*

ISSUE

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$160,148.00 for the period May 1, 2010 to March 30, 2019 for which she was not at fault, because she concurrently received FECA wage-loss compensation benefits 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 \$500.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On April 5, 2000 appellant, then a 54-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment, including keying numbers into a machine, moving mail, and picking up trays, packages, and boxes. On August 31, 2000 OWCP accepted the claim for bilateral carpal tunnel syndrome.⁴ Appellant stopped work and OWCP placed her on the supplemental rolls on November 7, 2009 and on the periodic rolls on April 11, 2010.

A notification of personnel action (PS Form 50) dated April 29, 1993 noted appellant's retirement plan as Federal Employee Retirement System (FERS).

On July 23, 2018 OWCP sent a FERS/SSA dual benefits calculation form to SSA.

In an August 22, 2018 letter, the employing establishment requested that OWCP determine whether appellant received an overpayment due to receiving both FECA and SSA age-related retirement benefits. The employing establishment noted that appellant was 73 years of age. It also noted that she had retired due to disability at age 65 and that her SSA benefits should have converted to age-related retirement benefits.

On September 14, 2018 OWCP resent a FERS/SSA dual benefits calculation form to SSA. In a September 14, 2018 letter to the employing establishment, OWCP indicated that it resent a FERS/SSA dual benefits calculation form to SSA.

On February 7, 2019 the employing establishment again requested that OWCP determine whether appellant received an overpayment due to receiving both FECA and SSA age-related retirement benefits. On March 7, 2019 OWCP resent a FERS/SSA dual benefits calculation form to SSA.

On March 19, 2019 SSA completed a FERS/SSA dual benefits calculation form. The form indicated that appellant received SSA age-related retirement benefits as of May 2010. It related that: as of May 2010 her rate with FERS was \$1,358.80 and without FERS was \$59.20; as of July 2011 her SSA rate with FERS was \$1,473.48 and without FERS was \$59.20; as of December 2011 her SSA rate with FERS was \$1,526.40 and without FERS was \$61.30; as of December 2012 her SSA rate with FERS was \$1,552.30 and without FERS was \$62.30; as of December 2013 her SSA rate with FERS was \$1,575.50 and without FERS was \$63.20; as of

⁴ OWCP granted appellant a schedule award for eight percent permanent impairment of her left arm and eight percent impairment of her right arm. The period of the award was from August 15, 2002 to July 30, 2003.

December 2014 her SSA rate with FERS was \$1,602.20 and without FERS was \$64.20; as of December 2016 her SSA rate with FERS was \$1,607.00 and without FERS was \$64.40; as of December 2017 her SSA rate with FERS was \$1,639.10 and without FERS was \$65.60; and as of December 2018 her SSA rate with FERS was \$1,684.90 and without FERS was \$67.40.

In a FERS offset calculation form dated April 2, 2019, OWCP documented its calculation of the total overpayment in the amount of \$160,148.00 for the period May 1, 2010 until March 30, 2019. It related that: from May 1, 2010 to June 30, 2011 the amount of the overpayment was \$18,251.53; from July 1, 2011 to November 30, 2011 the amount of the overpayment was \$7,133.16; from December 1, 2011 to November 30, 2012 the overpayment \$17,677.80; from December 1, 2012 to November 30, 2013 the amount of the overpayment was \$17,929.12; from December 1, 2013 to November 30, 2014 the amount of the overpayment was \$18,197.46; from December 1, 2014 to November 30, 2016 the amount of the overpayment was \$37,064.11; from December 1, 2016 until November 30, 2017 the amount of the overpayment was \$18,562.05; from December 1, 2017 until November 30, 2018 the amount of the overpayment was \$18,933.87; from December 1, 2018 until March 30, 2019 the amount of the overpayment was \$6,398.90.

In an April 2, 2019 letter, OWCP explained to appellant that her FECA compensation would be offset by her FERS/SSA benefits. It noted that she had received SSA age-related retirement benefits attributable to her federal service under FERS since May 10, 2010. OWCP informed her that as of March 31, 2019 that it would begin to offset her FERS/SSA benefits.

On June 25, 2019 OWCP issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$160,148.00 because it paid her compensation benefits for the period May 1, 2010 through March 30, 2019 that had not been reduced by the portion of her SSA age-related retirement benefits attributable to her federal service. It further advised that it found that she was without fault in the creation of 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.

A May 5, 2010 SSA application summary indicated that she reported that she was receiving or expecting to receive FECA benefits.

On May 17, 2010 appellant completed a SSA form indicating that she wanted to temporarily withdraw her application for disability/retirement benefits because she was receiving FECA benefits.

On July 12, 2019 appellant, through counsel, requested a telephonic precoupment hearing. Counsel indicated that appellant was contesting the overpayment because she disagreed that the overpayment occurred and disagreed with the amount of the overpayment. He further indicated that she requested a waiver because she was found to be without fault in the creation of the overpayment.

On July 18, 2019 appellant again requested a precoupment hearing by telephone. She indicated that she was requesting waiver of recovery of the overpayment because she was the caretaker for her adult son with disabilities and did not have the means to repay the amount owed.

Appellant additionally noted that she received the money in good faith and as a result of an error by the government.

In a July 18, 2019 overpayment recovery questionnaire (Form OWCP-20) appellant listed her monthly income as including \$1,549.60 in Social Security benefits, \$2,584.69 in FECA benefits, and \$1,000 in Supplemental Security Income (SSI) benefits from her son. She listed her total monthly income as \$2,703.60. Appellant indicated that she partially supported her disabled 43-year-old son. She listed her monthly expenses as including \$1,286.49 for a mortgage, \$800.00 for food, \$652.87 for utilities, and \$245.13 for other expenses such as medicine, life insurance, and care insurance. Appellant listed her other monthly debts, including credit card, funeral, and retail expenses, as totaling \$959.51. She listed her available funds as including \$20.00 in cash on hand and \$36,272.44 in checking accounts (which she noted was home insurance money received following hurricane damage), and she calculated a total of \$36,292.44 in available funds. Appellant submitted supporting financial documentation, including a checking account transaction record of a deposit of \$13,443.59, checks for \$21,617.57 and \$2,972.00, a cable bill for \$79.61, an electric bill for \$200.48, retail bills for \$27.00, \$39.96, \$27.76, and \$28.00, credit card bills for \$27.00, \$27.00, \$27.00, \$15.00, \$11.00, and \$25.00, a life insurance bill for \$133.13, funeral bills for \$79.45 and \$81.68, a water and sewage bill for \$65.49, an automobile insurance bill for \$412.87, and a mortgage bill for \$1,286.49.

In an undated letter, appellant indicated that, when she applied for SSA disability benefits, she informed SSA that she was receiving FECA benefits, and she was told that she was entitled to receive both SSA and FECA benefits and that she could collect SSA benefits based on her age at the time, which was 65. She stated that as she was unaware of this overpayment and it was a government error; therefore, she should not be required to pay it back. Appellant further noted that the amount of the overpayment was more than she could repay in her lifetime.

On an EN1032 form dated September 15, 2019 appellant indicated that she was receiving SSA benefits as part of an annuity for federal service in the monthly amount of \$1,549.00.

On November 5, 2019 an OWCP hearing representative conducted an oral hearing. Appellant testified that she had paid off one or two of the bills she submitted as evidence, and her available funds had therefore decreased.

Appellant submitted an updated Form OWCP-20 dated November 20, 2019. She listed her monthly income as including \$1,549.00 in SSA benefits and \$1,004.00 in her son's SSI benefits, and she calculated a total monthly income of \$2,553.00. Appellant listed her monthly expenses as including \$1,286.49 for a mortgage, \$500.00 for food, \$120.92 for clothing, \$499.63 for utilities, and she calculated a total of \$1,930.15 in monthly expenses. For other monthly debts, she listed \$139.27, \$802.39, \$670.37, and \$83.99 for retail store debt, \$223.10 for credit card debt, \$70.00 for car insurance, \$20.00 for gasoline, and \$5.00 for "tag" [sic]. Appellant indicated that she had \$20.00 in cash on hand, \$718.08 in a checking account, and \$33,638.44 in a savings account, and she calculated her total available funds as \$34,374.72.

By decision dated January 31, 2020, an OWCP hearing representative finalized OWCP's preliminary determination that appellant had received an overpayment of compensation in the amount of \$160,148.00 for the period May 1, 2010 through March 30, 2019 because a portion of her SSA age-related retirement benefits were based on credits earned in federal service, resulting in a prohibited dual benefit. OWCP further found that appellant was without fault in the creation

of the overpayment, but denied waiver of recovery because based on appellant's submitted financial information, collecting \$500.00 a month would not defeat the purpose of FECA or be against equity good conscience. It required recovery of the overpayment by deducting \$500.00 from appellant's continuing compensation payments every 28 days.

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.⁵ 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.⁶

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA benefits that are attributable to federal service of the employee.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

The evidence of record indicates that, while appellant was receiving 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.⁹ The information provided to OWCP by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service. Consequently, the fact of overpayment has been established.

While SSA indicated in its March 19, 2019 dual benefits calculation form that appellant started receiving SSA benefits in May 2010, it did not specify the exact date appellant started receiving the benefits. In a FERS offset calculation form dated April 2, 2019, OWCP documented its calculation of the total overpayment in the amount of \$160,148.00 for the period May 1, 2010 until March 30, 2019. It related that, during the period from May 1, 2010 to June 30, 2011, the amount of the overpayment was \$18,251.53. However, in a letter to appellant also dated April 2,

⁵ 5 U.S.C. § 8102(a)

⁶ *Id.* at § 8116.

⁷ 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).

⁸ FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁹ *Supra* note 7.

2019, OWCP indicated that she had been receiving SSA age-related retirement benefits since May 10, 2010.

This case will therefore be remanded for OWCP to seek clarification from SSA regarding the exact date that appellant began to receive SSA age-based retirement benefits. It shall then issue a new preliminary overpayment determination explaining the calculation of the overpayment, with an overpayment action request form, Form OWCP-20, and instructions for appellant to provide supporting financial documentation. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁰

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 13, 2021
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

¹⁰ In light of the Board's disposition of issue 1, the issues of waiver and recovery of overpayment are rendered moot.