

Administration (SSA) age-related retirement benefits for the period October 1, 2017 through October 12, 2019 without an appropriate offset; (2) whether it properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$445.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 3, 2000 appellant, then a 44-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she became entangled in a screen door and fell while in the performance of duty. She stopped work that day. OWCP accepted appellant's claim for cervical and lumbar sprains, bilateral shoulder strains, bilateral bucket handle tear of the medial meniscus, degenerative cervical and lumbar disc disease, and bilateral chondromalacia patellae. Appellant underwent several surgical procedures, which OWCP authorized. OWCP paid appellant wage-loss compensation on the periodic rolls effective March 20, 2000. A Notification of Personnel Action, PS Form 50, dated April 6, 2010 identified appellant's retirement plan as Federal Employees Retirement System (FERS).

On October 10, 2019 OWCP received a FERS/SSA dual benefits calculation worksheet from SSA dated October 7, 2019. This form related the following SSA benefit rates with a FERS offset and without a FERS offset from October 2017 through December 2018: beginning October 2017, the SSA rate with FERS was \$1,058.70 and without FERS was \$278.50; beginning December 2017, the SSA rate with FERS was \$1,079.80 and without FERS was \$284.00; beginning December 2018, the SSA rate with FERS was \$1,110.00 and without FERS was \$291.90.

On October 15, 2019 OWCP advised appellant that it would review her case to determine whether she had been receiving a prohibited dual benefit. It noted that if SSA had confirmed that a portion of her SSA age-related retirement benefits were attributed to her years of federal service as an employee under the FERS program, then that portion would require an offset from her FECA compensation benefits.

On November 4, 2019 OWCP prepared a FERS offset calculation worksheet wherein it noted the calculation of appellant's SSA/FERS offset overpayment from October 1, 2017 through October 12, 2019. The total overpayment was determined to be \$19,667.43. OWCP found that appellant received an overpayment in the amount of \$1,568.97 during the period October 1 through November 30, 2017; \$9,575.84 during the period December 1, 2017 through November 30, 2018; and \$8,522.62 for the period December 1, 2018 through October 12, 2019. Based on information provided by SSA regarding the amount of her age-related retirement benefits, which were attributable to federal service, OWCP adjusted appellant's FECA wage-loss compensation effective October 13, 2019.

³ Docket No. 04-1297 (issued October 15, 2004).

In a November 5, 2019 letter, OWCP notified appellant that her FECA benefits were being adjusted based on the FERS portion of SSA benefits that were attributable to federal service. It advised appellant that she would receive \$1,833.37 in FECA wage-loss compensation every four weeks after the SSA offset.

On November 20, 2019 OWCP issued a preliminary overpayment determination finding that an overpayment of compensation in the amount of \$19,667.43 had been created. It explained that the overpayment occurred because the SSA age-related retirement benefits appellant received from October 1, 2017 through October 12, 2019 were partially based on credits earned while working for the Federal Government, and that this portion of her SSA benefits constituted a prohibited dual benefit. OWCP found appellant without fault in the creation of the overpayment and forwarded an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) for her completion. 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. Additionally, OWCP 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 an overpayment action request form dated December 12, 2019, appellant requested that OWCP make a decision on the written evidence regarding possible waiver and recovery of the overpayment, which had occurred through no fault of her own. She also indicated that she could not afford to repay the overpayment. On an attached Form OWCP-20 dated December 12, 2019 appellant reported a total monthly income of \$2,943.37. She noted that she supported, by sometimes helping out, her 72-year-old sister and 43-year-old son. Appellant reported total monthly household expenses of \$5,919.25. She indicated that she had \$125.00 in cash, \$11,172.17 in her checking account; and approximately \$879.00 in savings, for total assets of \$12,176.17. Appellant submitted limited documentation of income and expenses, consisting of receipts of payments from a healthcare provider, totaling \$50.98, and an invoice from AAA battery for \$140.00.⁴

By decision dated April 24, 2020, OWCP finalized its preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$19,667.43 as she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period October 1, 2017 through October 12, 2019.⁵ 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 \$445.00 every 28 days from appellant's continuing compensation payments.

⁴ In a March 11, 2020 letter, OWCP informed appellant that per a February 6, 2020 letter from Office of Personnel Management (OPM) she had received dual benefits of retirement and FECA compensation for the period October 1 through November 21, 2011 for an overpayment of \$2,958.00. It noted that, beginning March 1, 2020, \$100.00 would be deducted every four weeks from her FECA compensation payments until the overpayment is repaid in full.

⁵ OWCP indicated that November 12, 2019 was the end period of the overpayment. This, however, appears to be a typographical error as the correct date was October 12, 2019.

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.⁶ 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.⁷

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.⁸ 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$19,667.43, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits for the period October 1, 2017 through October 12, 2019 without an appropriate offset.¹⁰

The evidence of record indicates that, while appellant was receiving compensation for 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.¹¹ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service during the period October 1, 2017 through October 12, 2019. Consequently, the Board finds that fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA's 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

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8116.

⁸ 20 C.F.R. § 10.421(d); *see P.B.*, Docket No. 20-0862 (issued November 25, 2020); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

⁹ FECA Bulletin No. 97-09 (issued February 3, 1997); *see P.B.*, *id.*; *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹⁰ *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

¹¹ *Supra* note 9.

federal service. SSA provided its rates with FERS and without FERS for specific periods from October 1, 2017 through December 2018. OWCP provided its calculations for each relevant period based on SSA's worksheet and properly determined that she received an overpayment in the amount of \$19,667.43. The Board thus finds that appellant received prohibited dual benefits for the period October 1, 2017 through October 12, 2019 totaling \$19,667.43.

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.¹²

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.¹³

Recovery of an overpayment will defeat the purpose of FECA if 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.¹⁴ Additionally, 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.¹⁵

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.¹⁶ Failure to submit the requested information

¹² 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see M.C.*, Docket No. 19-0699 (issued February 12, 2020); *A.F.*, *supra* note 10.

¹³ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁴ 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(2) (September 2018).

¹⁵ *Id.* at § 10.437(a)(b).

¹⁶ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.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

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not provided the necessary supporting financial information. Appellant submitted a completed Form OWCP-20 on December 12, 2019 and noted a total monthly income of \$2,943.37, total monthly expenses of \$5,919.25. She indicated that she had a total of \$12,176.17 in cash and checking and savings accounts. However, the only supporting financial documentation that appellant submitted were two receipts from a healthcare provider, which noted a balance, and an AAA battery invoice. No other documentation supporting her purported income or expenses was submitted. Although appellant had been advised to submit documentation substantiating her income and expenses in OWCP's preliminary overpayment determination dated November 20, 2019, she failed to provide sufficient documentation of her income and expenses as required by section 10.438 of its regulations.¹⁹ OWCP, therefore, did not have the financial information necessary to determine if appellant needed substantially all of her current income to meet current ordinary and necessary living expenses and, also, if her assets exceeded a specified amount as determined by OWCP.²⁰

The Board also finds that appellant has not established that she was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience. In the overpayment action request form, appellant indicated that she could not possibly afford to pay the overpayment. She, however, did not provide any financial information to support her allegations.²¹

Appellant, therefore, has not established that recovery of the overpayment was against equity and good conscience.²²

¹⁷ *Id.* at § 10.438(b).

¹⁸ *Id.* § 10.436.

¹⁹ *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *R.W.*, Docket No. 18-1059 (issued February 6, 2019).

²⁰ *Supra* notes 16 and 19.

²¹ *See P.B.*, *supra* note 19.

²² *P.B.*, *id.*; *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, she has not shown that OWCP improperly refused to waive recovery of the overpayment.²³

On appeal appellant argues that she will experience severe hardship as she has less income coming in and the same expenses going out. However, for the reasons stated above, she has not shown that OWCP improperly denied waiver of recovery of the overpayment. While appellant also indicated that she had provided OWCP with bank statements from April, August, September, October, and November 2019, which included cancelled checks with the bills and expenses she paid along with other cancelled checks and receipts, the record was devoid of such evidence at the time OWCP issued its final overpayment determination.

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.²⁴

Section 10.441(a) of OWCP's regulations²⁵ 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 soon as the error is discovered or his or her attention is called to 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.”²⁶

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$445.00 from appellant's continuing compensation payments every 28 days.

OWCP provided appellant a Form OWCP-20 with its November 20, 2019 preliminary overpayment determination. It afforded her the opportunity to provide appropriate financial information and documentation to OWCP.²⁷ Although appellant completed the Form OWCP-20 overpayment recovery questionnaire, she did not provide sufficient financial documentation to support her income and expenses prior to the final April 24, 2020 overpayment determination. The overpaid individual is responsible for providing information about income, expenses, and assets

²³ See *S.W.*, Docket No. 20-0363 (issued November 23, 2020); *B.C.*, Docket No. 19-0629 (issued June 2, 2020).

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

²⁵ *Id.* at § 10.441(a).

²⁶ *Id.*; see *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²⁷ *Id.* at § 10.438.

as specified by OWCP.²⁸ When an individual fails to provide requested financial information, OWCP shall follow minimum collection guidelines designed to collect the debt promptly and in full.²⁹ The Board, therefore, finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$445.00 every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$19,667.43 for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period October 1, 2017 through October 12, 2019 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 \$445.00 from her continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 3, 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

²⁸ *Id.* at § 10.438(a); *see M.S.*, *supra* note 16.

²⁹ *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, *supra* note 14 at Chapter 6.400.3 (September 2018).