

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

M.S., Appellant)	
)	
and)	Docket No. 20-1261
)	Issued: June 10, 2021
DEPARTMENT OF ENERGY, WESTERN)	
POWER ADMINISTRATION, Montrose, CO,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 5, 2020 appellant filed a timely appeal from a May 27, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$76,632.68 for which she was without fault because she concurrently received FECA wage-loss compensation and Social Security

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence following the May 27, 2020 OWCP decision. 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.*

Administration (SSA) age-related retirement benefits for the period February 1, 2015 through March 28, 2020, 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 \$1,315.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On December 11, 2009 appellant, then a 56-year-old energy management and marketing coordinator, filed a traumatic injury claim (Form CA-1) alleging that on October 5, 2009 she was assaulted by a fellow employee while in the performance of duty and sustained depression and post-traumatic stress disorder (PTSD). Appellant's retirement coverage was noted on the form as Federal Employees Retirement System (FERS). On April 29, 2010 OWCP accepted the claim for PTSD and paid appellant compensation on the supplemental rolls, effective February 28, 2010, and the periodic rolls, effective July 4, 2010.

On February 12, 2020 OWCP forwarded a FERS/SSA dual benefits calculation to SSA to determine whether an offset of compensation benefits was required.

On March 23, 2020 OWCP received from SSA a March 6, 2020 completed FERS/SSA dual benefits calculation form, which indicated that appellant had been in receipt of SSA age-related retirement benefits since February 2015. The form showed SSA benefit rates with and without a FERS offset. Beginning February 2015, the SSA rate with FERS was \$1,984.40 and without FERS was \$773.40, beginning December 2015, the SSA rate with FERS was \$1,984.40 and without FERS was \$773.40, beginning December 2016, the SSA rate with FERS was \$1,990.30 and without FERS was \$775.70, beginning December 2017, the SSA rate with FERS was \$2,030.10 and without FERS was \$791.20, beginning December 2018, the SSA rate with FERS was \$2,086.90 and without FERS was \$813.30, and beginning December 2019, the SSA rate with FERS was \$2,120.20 and without FERS was \$826.30.

In an April 8, 2020 letter, OWCP informed appellant that it would begin deducting the portion of SSA age-related retirement benefits attributable to her federal service from her 28-day periodic compensation benefits, effective March 29, 2020. It noted that appellant's gross SSA benefit each month was \$2,120.20 and without FERS her SSA benefit was \$826.30. OWCP explained that the amount of FERS/SSA dual benefits to be deducted from her FECA benefits was, therefore, \$1,293.90 per month, or \$1,194.37 every 28 days.

On April 20, 2020 OWCP completed a FERS offset calculation worksheet, determined the 28-day FERS offset amount for the days in each period, and computed a total overpayment amount of \$76,632.68. The offset calculation worksheet indicated: from February 1 through November 30, 2015, appellant received an overpayment in the amount of \$12,096.69; from December 1, 2015 through November 30, 2016, she received an overpayment in the amount of \$14,611.85; from December 1, 2016 through November 30, 2017, she received an overpayment in the amount of \$14,615.24; from December 1, 2017 through November 30, 2018, she received an overpayment in the amount of \$14,907.64; from December 1, 2018 through November 30, 2019, she received an overpayment in the amount of \$15,325.19; and from December 1, 2019 through March 28, 2020, she received an overpayment in the amount of \$5,076.07.

OWCP issued a preliminary overpayment determination on April 20, 2020, finding that an overpayment of compensation in the amount of \$76,632.68 had been created because it had failed

to reduce appellant's wage-loss compensation payments for the period February 1, 2015 through March 28, 2020 to offset her SSA age-related retirement benefits that were attributable to federal service. It explained that it had reduced her ongoing OWCP benefits for the periodic roll cycle, effective March 29, 2020. Therefore, OWCP determined that an overpayment occurred for the period February 1, 2015 through March 28, 2020. It determined that appellant was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised appellant that she could request a waiver of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, OWCP further notified appellant 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 May 27, 2020, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$76,632.68 for the period February 1, 2015 through March 28, 2020 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without an appropriate offset. It also found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP noted that as of the date of the decision, no response had been received to the preliminary overpayment determination and appellant had not requested a waiver. It required recovery of the overpayment by deducting \$1,315.00 every 28 days from appellant's continuing compensation payments.

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 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.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

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

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

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

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$76,632.68 for which she was without fault because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period February 1, 2015 to March 28, 2020, without an appropriate offset.

The evidence of record indicates that, while appellant was receiving compensation for wage loss under FECA, she also was receiving SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both compensation for wage loss under FECA and SSA age-related retirement benefits attributable to federal service for the same period.⁷ The information provided by SSA established that, during the period February 1, 2015 through March 28, 2020, appellant received SSA age-related retirement benefits that were attributable to federal service while she also received FECA benefits that were not reduced by an appropriate offset. Consequently, the 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 federal service. SSA provided its rate with FERS and without FERS for specific periods from February 1, 2015 through March 28, 2020. OWCP provided its calculations for each relevant period based on the SSA worksheet which showed that appellant received an overpayment of compensation in the amount of \$76,632.68. The Board, thus, finds that appellant received prohibited dual benefits for the period February 1, 2015 through March 28, 2020, totaling \$76,632.68.

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.⁸ 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.⁹

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

⁷ 20 C.F.R. § 10.421(d); *see S.M., supra* note 5; *L.J., supra* note 5.

⁸ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see A.S., Docket No. 17-0606* (issued December 21, 2017).

⁹ *See Robert Atchison*, 41 ECAB 83, 87 (1989).

not exceed a specified amount as determined by OWCP.¹⁰ 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.¹¹

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.¹² Failure to submit the requested information 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.¹³

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.¹⁴

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she did not provide a completed Form OWCP-20 and documentation supporting her income or expenses. Although OWCP advised appellant to submit Form OWCP-20 and documentation substantiating her income and expenses, she failed to do so, as required by section 10.438 of OWCP's regulations.¹⁵

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.¹⁶ The Board also finds that appellant did not establish that she was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience.

¹⁰ 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).

¹¹ *Id.* at § 10.437(a)(b).

¹² *Id.* at § 10.438(a); *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

¹³ *Id.* at § 10.438(b).

¹⁴ 20 C.F.R. § 10.436.

¹⁵ *See P.B.*, Docket No. 20-0862 (issued November 25, 2020); *R.W.*, Docket No. 18-1059 (issued February 6, 2019).

¹⁶ *Supra* note 10.

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.¹⁷

Section 10.441(a) of OWCP's regulations¹⁸ 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.”¹⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$1,315.00 every 28 days from appellant's continuing compensation payments.

OWCP provided appellant a Form OWCP-20 with its April 20, 2020 preliminary overpayment determination and afforded her the opportunity to provide appropriate financial information and documentation to OWCP.²⁰ Appellant did not complete Form OWCP-20 and provide the necessary financial documentation to support her income and expenses prior to the May 27, 2020 final overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²¹ When an individual fails to provide requested financial information, OWCP shall follow minimum collection guidelines designed to collect the debt promptly and in full.²² The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.²³ The Board, therefore, finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$1,315.00 every 28 days.

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

¹⁸ *Id.* at § 10.441(a).

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

²⁰ 20 C.F.R. § 10.438.

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

²² *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, *supra* note 10 at Chapter 6.400.3 (September 2018).

²³ *Supra* note 10 at Chapter 6.500.8(c)(1) (September 2018).

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$76,632.68 for which she was without fault because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period February 1, 2015 through March 28, 2020, without an appropriate offset. The Board also finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$1,315.00 from appellant's continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the May 27, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 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