

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

L.K., Appellant)	
)	
and)	Docket No. 20-1574
)	Issued: June 23, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Newark, NJ, Employer)	
)	

Appearances:
Appellant, pro se
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 August 4, 2020 appellant filed a timely appeal from a May 7, 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 to consider 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 \$11,556.62 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 September 1, 2014 through

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the May 7, 2020 decision, appellant submitted 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 additional evidence for the first time on appeal. *Id.*

March 30, 2019, without an appropriate offset; (2) whether appellant received an overpayment of compensation for the period September 1, 2014 through March 30, 2019 for which she was without fault because OWCP did not make proper deductions for life insurance premiums; (3) whether OWCP properly denied waiver of recovery of the overpayment; and (4) whether it properly required recovery of the overpayment by deducting \$305.53 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On July 6, 1996 appellant then a 45-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 25, 1996 she sustained an injury to the right-side of her neck when lifting a tray of mail while in the performance of duty. OWCP accepted her claim for aggravation of cervical sprain and later expanded the acceptance of her claim to include prolonged depressive reaction.³ Appellant stopped work on June 25, 1996. OWCP paid her wage-loss compensation on the periodic rolls beginning August 10, 1996. Appellant was paid on the supplemental rolls beginning May 21, 2002. Beginning June 16, 2002, OWCP paid appellant pursuant to a loss of wage-earning capacity determination through July 7, 2007 and placed her back on the periodic rolls effective August 5, 2007.

On December 14, 2012 OWCP informed appellant that section 8116(d)(2) of FECA (5 U.S.C. § 8116(d)(2)) required that the claimant's continuing compensation benefits be reduced if she begins receiving SSA retirement benefits based upon her age and federal service. Because appellant was approaching her 62nd birthday, the minimum age at which an individual is eligible to receive SSA retirement benefits, it was notifying her of this requirement. OWCP further noted that failure to report receipt of such retirement benefits could result in an overpayment of compensation that could be subject to recovery.

In a letter dated August 7, 2014, the Office of Personnel Management (OPM) notified OWCP that appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage. It requested that OWCP deduct for code "C0: Basic" with no reduction. OPM noted that the commencing date for the post-retirement deduction was April 12, 2008. It noted that appellant had elected to cancel Option B and Option C coverage, effective March 1, 2014, and referenced her letter dated February 26, 2014.⁴ OPM noted that her final salary upon which FEGLI was based was \$52,191.00. It further noted that OWCP was not withholding for the Post Retirement Basic Life Insurance (PRBLI) no reduction coverage.

In an internal memorandum dated August 8, 2014, OWCP requested that deductions be made for code C0. It indicated that OPM had advised that life insurance coverage should be continued past age 65 for this claimant and that appellant's final salary upon which FEGLI was based was \$52,191.00. The PRBLI was "No Reduction" coverage. OPM further noted that the

³ Appellant filed another claim for an injury sustained on January 10, 1995, which OWCP accepted for sprain of the neck under OWCP File No. xxxxxx166. This case is closed. OWCP administratively combined File Nos. xxxxxx005 and xxxxxx166, with the current claim serving as the master file

⁴ In a letter dated February 26, 2014, appellant elected to cancel her optional life insurance and retain only the basic life insurance.

commencing date for the postretirement deduction was April 12, 2008 and that the claimant elected to cancel Option B and Option C coverage, effective March 1, 2014.⁵

In a letter dated September 17, 2014, OPM notified OWCP that appellant was eligible to continue FEGLI coverage. It requested that OWCP deduct for code "C0 Basic." OPM noted that the commencement date for the postretirement amended deductions was September 1, 2014. It further noted that appellant had elected to change to 75 percent reduction of her Basic Life Insurance and cancel all other insurance. OPM also noted that appellant's final salary upon which FEGLI was based was \$52,191.00.

In an internal memorandum dated September 17, 2014, OWCP again requested that deductions be made for code "C0." It indicated that OPM had advised that life insurance coverage should be continued past age 65 for this claimant and that appellant's final salary, upon which FEGLI was based, was \$52,191.00. The PRBLI was 75 percent reduction coverage. OPM also noted that the commencement date for the postretirement deduction was September 1, 2014. The memorandum further indicated that OPM had received written notification from the claimant that, effective immediately, she requested to change to 75 percent reduction of her Basic Life Insurance and cancel all other insurance she may have.

On EN1032 forms dated December 25, 2014, December 16, 2015, December 7, 2016, January 11, 2018, and January 4, 2019, appellant indicated that she was not in receipt of Social Security disability benefits.

On January 27, 2015 OWCP sent a FERS/SSA dual benefits calculation form to SSA.

On January 28, 2015 OWCP received a FERS/SSA dual benefits calculation form from SSA wherein SSA advised that appellant had not applied for SSA benefits.

On January 28, 2019 OWCP sent a FERS/SSA dual benefits calculation form to SSA.

On March 22, 2019 SSA submitted a completed FERS/SSA dual benefits calculation form, which indicated SSA benefit rates with a FERS offset and without a FERS offset from December 2016 through December 2018. Beginning December 2016, the SSA rate with FERS was \$1,441.30 and without FERS was \$812.90. Beginning December 2017, the SSA rate with FERS was \$1,470.10 and without FERS was \$829.10. Beginning December 2018, the SSA rate with FERS was \$1,511.20 and without FERS was \$852.30.

In an April 19, 2019 referral note, OWCP requested a fiscal review and indicated that the claimant received an overpayment of compensation due to FERS offset. It noted preparing two memoranda: one for the period December 1, 2016 through March 30, 2019 and the other for the period September 1, 2014 through March 30, 2019 set out in the paragraphs below. OWCP noted that the claimant was owed compensation for making zero reduction PRBLI instead of 75 percent reduction. It indicated that "technically" the period should be December 1, 2016 through March 30, 2019 since FERS was effective December 1, 2016. OWCP indicated that "the OP

⁵ In a notice dated September 17, 2014, OWCP informed appellant that certain claimants were inadvertently underpaid compensation due to an over deduction of life insurance premiums. Appellant was identified as a claimant who had benefits over deducted and would be reimbursed for the underpaid amount of compensation benefits.

amount would be higher and we'd have to issue direct payment for 9/1/14 – 11/30/16.” It requested guidance as to whether a direct payment should be issued.

On April 19, 2019 OWCP prepared an overpayment calculation memorandum from December 1, 2016 through March 30, 2019. From November 13 through December 10, 2016, appellant received net compensation of \$2,705.16. OWCP calculated that from the period December 1 through 10, 2016 appellant received \$966.13. For the period of December 11, 2016 through March 30, 2019, she received a net amount of \$83,658.29. For the period December 1, 2016 through March 30, 2019, appellant received a total of \$84,624.42. OWCP indicated that for the same period appellant should have received \$70,074.07 with FERS offset and 75 percent reduction of PRBLI. It calculated that the overpayment amount was \$14,550.35.

On April 19, 2019 OWCP prepared another overpayment calculation memorandum from September 1, 2014 through March 30, 2019. From August 24 through September 20, 2014, appellant received net compensation of \$2,690.47. OWCP calculated that from the period September 1 through 20, 2014, appellant received net compensation of \$1,921.76. For the period September 21, 2014 through March 30, 2019, appellant received a net amount of \$161,958.11. For the period September 1, 2014 through March 30, 2019, she received a total of \$163,879.87. OWCP indicated that, for the same period, appellant should have received \$152,323.25 with FERS offset and 75 percent reduction of PRBLI. The overpayment amount was calculated as \$11,556.62.

In a FERS offset calculation worksheet received on April 19, 2019, OWCP noted the calculation of appellant's SSA offset overpayment from December 1, 2016 through March 30, 2019 and computed a total overpayment amount of \$17,832.29. This form indicated: from December 1, 2016 through November 30, 2017, appellant received an overpayment of compensation in the amount of \$7,540.80; from December 1, 2017 through November 30, 2018, she received an overpayment of compensation in the amount of \$7,692.00; and from December 1, 2018 through March 30, 2019, appellant received an overpayment of compensation in the amount of \$2,599.49.

On June 3, 2019 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$11,556.62 had been created because appellant received SSA age-related retirement benefits from September 1, 2014 through March 30, 2019 that were partially based on credits earned while working in the Federal Government, which constituted a prohibited dual benefit, and incorrect life insurance reduction was applied as of September 1, 2014. It determined that she 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 payment method, and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records, which support income and expenses. Additionally, OWCP provided her with an overpayment action request form and further 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 June 27, 2019 appellant completed an overpayment action request form and requested that OWCP make a decision based on the written evidence. She noted disagreement that an overpayment occurred and the amount of the overpayment and requested waiver of recovery of

the overpayment because she was found to be without fault in its creation. Appellant attached financial information including bank statements, benefit statements, automobile expenses, and medical expenses.

In a partially completed Form OWCP-20 dated June 27, 2019, appellant reported cash on hand of \$60.00, a checking account balance of \$2,192.06, and a savings account balance of \$1,700.00. She did not provide information on monthly income, reported expenses, or monthly installment loans.

By decision dated May 7, 2020, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$11,556.62, for the period September 1, 2014 through March 30, 2019, because it failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to her federal service and applied an incorrect life insurance reduction as of September 1, 2014. 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 failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$305.53 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.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 OWCP to 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 age-related retirement benefits 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 for the period December 1, 2016 through March 30, 2019 for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8116.

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

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

related retirement benefits for the period September 1, 2014 through March 30, 2019, without an appropriate offset.

OWCP paid appellant wage-loss compensation for total disability following her injury. It subsequently paid her wage-loss compensation for partial disability pursuant to a loss of wage-earning capacity determination from June 16, 2002 through July 7, 2007 and placed her back on the periodic rolls effective August 5, 2007. Beginning December 1, 2016, appellant received SSA age-related retirement benefits. As noted, a claimant cannot receive compensation for wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.¹⁰ 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 December 1, 2016 through March 30, 2019, she received an overpayment of wage-loss compensation.¹¹ Therefore, fact of overpayment is established.¹²

Although the Board finds that the fact of overpayment has been established with regard to appellant concurrently receiving FECA wage-loss compensation and SSA age-related retirement benefits, the Board finds that the case is not in posture for decision with respect to the amount of the overpayment.

OWCP identified a second overpayment due to the application of an incorrect life insurance deduction. Appellant had elected to change to 75 percent reduction of her Basic Life Insurance and cancel all other insurance. The commencement date for the post-retirement amended deductions was September 1, 2014. However, OWCP failed to clearly separate the two distinct overpayments that were identified and did not properly explain how the amount of each overpayment was derived. The record reveals that the incorrect life insurance reduction commenced on September 1, 2014. However, the period of concurrent receipt of SSA age-related benefits and compensation for wage loss began on December 1, 2016.

The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated.¹³

OWCP received documentation from SSA with respect to the specific amount of age-related SSA retirement benefits that were attributable to federal service. SSA provided the SSA rate with FERS and without FERS for specific periods commencing December 1, 2016 through March 30, 2019. As noted, the record establishes that appellant received SSA age-related retirement benefits, which were attributable to her federal service.

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. After calculating the amount that it should have offset for each relevant period based on the SSA worksheet and adding these amounts together, it concluded that she had received an overpayment

¹⁰ 20 C.F.R. § 10.421(d); *see S.M.*, *supra* note 16; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹¹ *Id.*

¹² *See K.H.*, Docket No. 18-0171 (issued August 2, 2018).

¹³ *J.M.*, Docket No. 18-1505 (issued June 21, 2019); *Teresa A. Ripley*, 56 ECAB 528 (2005).

of compensation in the amount of \$17,832.29. OWCP then found, however, without explanation, that the total amount of the overpayment was \$11,556.62 for the period September 1, 2014 through March 30, 2019, because it failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to her federal service and applied an incorrect life insurance reduction as of September 1, 2014. It did not explain the discrepancy between the overpayment amount calculated of \$17,832.29 and the final overpayment determination calculated of \$11,556.62. Further, OWCP did not clearly address what portion of the \$11,556.62 overpayment was attributed to the concurrent receipt of FECA wage-loss compensation and SSA age-related retirement benefits and what portion was due to OWCP's failure to not make proper deductions for life insurance premiums.

A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.¹⁴ The Board will, therefore, remand the case for OWCP to explain its calculation of the amount of the overpayment.

On remand OWCP shall prepare detailed calculations setting forth how it determined the overpayment. It shall then issue a new preliminary overpayment determination, along with an overpayment action request, Form OWCP-20, and instructions for appellant to provide supporting financial information.¹⁵ After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁶

CONCLUSION

The Board finds that appellant received an overpayment of wage-loss compensation from December 1, 2016 through March 30, 2019 for which she was without fault because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits

¹⁴ *R.B.*, Docket No. 20-0022 (issued October 28, 2020); *O.R.*, 59 ECAB 432 (2008).

¹⁵ *See L.K.*, Docket No. 20-0416 (issued November 12, 2020).

¹⁶ In light of the Board's disposition of Issue 1, Issues 2, 3, and 4 are rendered moot.

without an appropriate offset. The Board further finds, however, that the case is not in posture for decision regarding the amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 23, 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