



Pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$56,461.28 for the period June 1, 2015 through November 9, 2019, for which she was without fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation, 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 \$475.00 every 28 days from appellant's continuing compensation payments.

### **FACTUAL HISTORY**

On April 8, 2015 appellant, then a 66-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging on that date she injured her right knee when she tripped and fell over a fan while in the performance of duty. She stopped work on April 8, 2015. On May 12, 2015 OWCP accepted appellant's claim for right knee contusion. On May 29, 2015 appellant filed a claim for compensation (Form CA-7) for leave-without-pay compensation for the period May 23 through 29, 2015. On the reverse side of the claim form the employing establishment indicated that appellant was enrolled in the Federal Employees Retirement System (FERS) retirement plan. In an August 27, 2015 letter, OWCP authorized wage-loss compensation for total disability on the periodic rolls, effective June 1, 2015. It subsequently expanded the acceptance of the claim to include derangement of the posterior horn of the medial meniscus, chronic pain syndrome, major depressive disorder, and effusion right knee.

On August 19, 2019 OWCP forwarded a FERS/SSA dual benefits calculation transmittal to the SSA to determine whether an offset of compensation benefits was required.

On September 4, 2019 OWCP received a completed FERS/SSA dual benefits calculation form dated August 27, 2019 from SSA, which reported that appellant had been in receipt of age-related retirement benefits since January 15, 2015. The form listed her SSA age-related retirement benefit rates with FERS and without FERS as follows: beginning January 2015 the monthly SSA rate with FERS was \$2,071.00 and without FERS was \$1,033.30; beginning December 1, 2016 appellant's SSA rate with FERS was \$2,077.00, and without FERS was \$1,033.30; beginning December 1, 2017 appellant's SSA rate with FERS was \$2,119.00, and without FERS was \$1,057.00; beginning December 1, 2018 appellant's SSA rate with FERS was \$2,178.00 and without FERS was \$1,086.50.

OWCP completed a FERS offset calculation worksheet on December 10, 2019. It determined the overpayment amount by multiplying the daily FERS offset amount by the number of days in each period from June 1, 2015 through November 9, 2019, resulted in a total overpayment of \$56,461.28. OWCP related: from June 1 to November 30, 2015, appellant received an overpayment in the amount of \$6,260.41; from December 1, 2015 through November 30, 2016 appellant received an overpayment in the amount of \$12,520.82; from

---

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

December 1, 2016 through November 30, 2017 appellant received an overpayment in the amount of \$12,522.71; from December 1, 2017 through November 30, 2018 appellant received an overpayment in the amount of \$12,779.01; and from December 1, 2018 through November 9, 2019 appellant received an overpayment in the amount of \$12,378.33.

On October 2, 2019 OWCP notified appellant that FECA required that her continuing compensation benefits be reduced by that portion of SSA retirement benefits attributable to her federal service.

In a December 10, 2019 letter, OWCP informed appellant that she had been receiving dual FERS and SSA age-related retirement benefits without an appropriate offset. It further informed her that her FECA wage-loss compensation benefits must be adjusted based on the FERS portion of SSA benefits that were attributable to federal service. OWCP indicated that appellant's FECA benefits would be reduced by \$1,007.54 to \$1,894.36 every 28 days.

On February 5, 2020 OWCP made a preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$56,461.28, for which she was not at fault, because her wage-loss compensation payments for the period June 1, 2015 through November 9, 2019 had not been reduced to offset her SSA age-related retirement benefits attributable to federal service. It determined that she was without fault in the creation of the overpayment because she could not have reasonably known that an improper payment had occurred. OWCP requested that she complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation to determine a reasonable repayment schedule and advised that she could request waiver of recovery. It further requested that appellant 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 notified her that within 30 days of the date of the letter, she could request a final decision based on the written record or a prerecoupment hearing.

On March 2, 2020 appellant, through her representative, requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review and further requested waiver of the overpayment. The hearing was held on June 11, 2020.

OWCP subsequently received a completed Form OWCP-20 dated June 23, 2020, wherein appellant advised that she had monthly income of \$4,157.85 including FECA benefits and SSA benefits of \$2,213.00. Appellant listed monthly expenses of \$1,332.99 for a mortgage, \$300.00 for food, \$350.00 for utilities, and \$1,067.00 for miscellaneous household expenses, medical and dental expenses, automobile expenses, and personal necessities. She listed a monthly car payment of \$1,039.00. Appellant listed her assets totaling \$338.92, including \$150.00 in cash, \$81.18 in a checking account, and \$107.74 in savings.

Appellant provided supporting financial documentation including a dental bill of \$1,460.00, car payment of \$1,039.18, and mortgage, property taxes, and homeowner's insurance of \$1,332.99. She also provided her Thrift Savings Plan (TSP) account balance of \$64,376.03.

By decision dated August 24, 2020, OWCP's hearing representative found that appellant had received an overpayment in the amount of \$56,461.28 for the period June 1, 2015 through November 9, 2019. He found appellant without fault in the creation of the overpayment, denied

waiver of recovery. OWCP's hearing representative determined that she had over \$64,000.00 in TSP savings and that, therefore, the evidence of record was insufficient to establish that recovery would defeat the purpose of FECA. He further found that there was no evidence that appellant gave up a valuable right or changed in position for the worse such that recovery of the overpayment would be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$475.00 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.<sup>4</sup> 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.<sup>5</sup>

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 benefits that are attributable to the employee's federal service.<sup>6</sup> 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.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant received an overpayment of compensation in the amount of \$56,462.28 for the period June 1, 2015 through November 9, 2019 because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

In its August 24, 2020 decision, OWCP found that an overpayment of compensation was created for the period June 1, 2015 through November 9, 2019. The overpayment was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant. A claimant cannot receive both FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.<sup>8</sup> The information provided by SSA indicated that appellant received age-related SSA retirement benefits that were attributable to

---

<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8116.

<sup>6</sup> 20 C.F.R. § 10.421(d); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

<sup>8</sup> 5 U.S.C. § 8116(d)(2); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

federal service during the period June 1, 2015 through November 9, 2019. Consequently, the fact of overpayment has been established.<sup>9</sup>

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. 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 appellant's age-related retirement benefit rates with FERS, and without FERS for specific periods commencing June 1, 2015 through November 9, 2019. OWCP then provided its calculations for each relevant period based on a FERS offset calculation worksheet and in its February 5, 2020 preliminary overpayment determination.

The Board has reviewed OWCP's calculations of benefits received by appellant for the period June 1, 2015 through November 9, 2019 and finds that an overpayment of compensation in the amount of \$56,462.28 was created.<sup>10</sup>

### **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.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup>

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

---

<sup>9</sup> *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

<sup>10</sup> *L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

<sup>11</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>12</sup> *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>13</sup> 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).

<sup>14</sup> *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *id.* at Chapter 6.400.4.a(3).

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.<sup>15</sup>

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.<sup>16</sup> 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.<sup>17</sup>

### **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 of recovery of the overpayment 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.<sup>18</sup> OWCP considered appellant's financial information, as reported in her statements, to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

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 of \$64,000.00 exceeded the resource base of \$6,200.00 for an individual as provided in OWCP's procedures.<sup>19</sup> Because appellant has not met the second prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider the first prong of the test, *i.e.*, whether she needs substantially all of her current income to meet ordinary and necessary living expenses.<sup>20</sup> Appellant has not established that she was entitled to waiver on the basis of defeating the purpose of FECA.<sup>21</sup>

Additionally, the evidence does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant has not submitted evidence to substantiate that she would experience severe financial hardship in attempting to repay the debt, or that in reliance

---

<sup>15</sup> 20 C.F.R. § 10.437(a)(b).

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

<sup>17</sup> *Id.* at § 10.438(b).

<sup>18</sup> *Id.* at § 10.436.

<sup>19</sup> *Supra* note 12.

<sup>20</sup> *S.W.*, Docket No. 20-0363 (issued November 23, 2020); *M.H.*, Docket No. 19-1497 (issued September 9, 2020).

<sup>21</sup> *N.B.*, Docket No. 20-0727 (issued January 26, 2021); *R.D.*, Docket No. 19-1598 (issued April 17, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020).

on such payment she gave up a valuable right or changed her position for the worst. Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.<sup>22</sup>

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>23</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 of OWCP's regulations provides that, 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 the error is discovered 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 any hardship.<sup>24</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$475.00 every 28 days from appellant's continuing compensation payments.

In setting the recovery rate at \$475.00, OWCP explained how it considered the factors set forth at 20 C.F.R. § 10.441(a) in setting the amount of repayment from continuing compensation benefits to minimize hardship, while liquidating the debt, as appellant had financial resources sufficient for more than ordinary needs.<sup>25</sup> Thus, it did not abuse its discretion in setting the rate of recovery.<sup>26</sup> The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$475.00 every 28 days.

### **CONCLUSION**

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$56,461.28 as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period June 1, 2015 through November 9, 2019 without proper offset for which she was without fault. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$475.00 every 28 days from her continuing compensation payments.

---

<sup>22</sup> *N.J.*, *supra* note 14; *V.T.*, Docket No. 18-0628 (issued October 25, 2018).

<sup>23</sup> *D.M.*, Docket No. 17-0810 (issued October 2, 2017).

<sup>24</sup> 20 C.F.R. § 10.441(a); *A.F.*, *supra* note 11; *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>25</sup> *D.S.*, Docket No. 18-1447 (issued July 22, 2019).

<sup>26</sup> *T.G.*, Docket No. 17-1989 (issued June 5, 2018); *M.D.*, Docket No. 11-1751 (issued May 7, 2012).

**ORDER**

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

Issued: June 24, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board