



age-related retirement benefits and FECA wage-loss compensation for the period June 1, 2016 to July 22, 2017, without an appropriate offset; (2) whether OWCP properly determined that she was at fault in the creation of the overpayment of compensation, thereby precluding waiver of recovery of the overpayment; and (3) whether it properly required recovery of the overpayment by deducting \$75.00 every 28 days from appellant's continuing compensation payments.

### **FACTUAL HISTORY**

On July 1, 2010 appellant, then a 56-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained a left shoulder sprain while in the performance of duty. OWCP accepted the claim for other affections of the left shoulder not otherwise classified, and a sprain of the left shoulder, upper arm, and rotator cuff. Appellant stopped work on October 8, 2010 and did not return. On December 2, 2010 she underwent authorized left shoulder arthroscopic surgery. OWCP paid appellant wage-loss compensation on the supplemental rolls commencing October 8, 2010 and on the periodic rolls commencing March 13, 2011.<sup>3</sup>

On July 14, 2017 SSA provided a Federal Employees Retirement System (FERS/SSA) dual benefit calculation worksheet to OWCP. SSA indicated that, beginning June 2016, appellant was entitled to full retirement benefits. It provided SSA benefit rates beginning June 2016 with and without FERS offset. With FERS, appellant was entitled to a monthly SSA rate of \$1,325.90 effective June 2016, \$1,329.80 effective December 2016, and \$1,340.80 effective July 1, 2017. Without FERS, she would have been entitled to a monthly SSA rate of \$76.60 effective June 2016, \$76.90 effective December 2016, and \$107.50 effective July 1, 2017.

In a letter dated July 27, 2017, OWCP notified appellant that, based on the information provided by SSA regarding the amount of her SSA age-related retirement benefits which were attributable to federal service, it had adjusted her FECA wage-loss compensation.

OWCP completed a FERS offset calculation form on September 13, 2017. It determined the 28-day FERS offset amount for the days in each period from June 1, 2016 to July 22, 2017 and computed a total overpayment of \$17,071.05.

On September 13, 2017 OWCP issued a preliminary determination that appellant had been overpaid compensation in the amount of \$17,071.05 because she received FECA wage-loss compensation benefits concurrently with SSA retirement benefits from June 1, 2016 to July 22, 2017 without an appropriate offset for the portion of the SSA benefits that were attributable to her federal service. It calculated the overpayment amount by determining the difference between her SSA benefits with and without FERS for each period and adding these amounts to find a total overpayment of \$17,071.05. OWCP further advised appellant of its preliminary determination that she was at fault in the creation of the overpayment because she was aware or should have reasonably been aware that she was not entitled to receive both SSA retirement benefits and FECA benefits. It requested that she submit an overpayment action request

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<sup>3</sup> By decision dated January 14, 2015, OWCP reduced appellant's wage-loss compensation as it found that her actual earnings as a van driver, effective June 23, 2014, fairly and reasonably represented her wage-earning capacity.

form and an overpayment recovery questionnaire (Form OWCP-20). OWCP afforded appellant 30 days to respond.

On September 27, 2017 appellant requested a telephonic hearing on the issues of fault and possible waiver of recovery of the overpayment. She asserted that she was without fault in the creation of the overpayment. Appellant submitted a completed overpayment recovery questionnaire (Form OWCP-20).

During a December 13, 2017 telephone conference, appellant reported her monthly income and expenses. She asserted that she was advised by a representative that she could receive SSA age-related retirement benefits as long as her yearly income did not exceed \$15,000.00.

By decision dated January 25, 2018, OWCP finalized the preliminary determination that appellant had received a \$17,071.05 overpayment of compensation for the period June 1, 2016 to July 22, 2017. It determined that she was at fault in the creation of the overpayment and was, therefore, precluded from waiver of recovery of the overpayment. OWCP required recovery of the overpayment by deducting \$75.00 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.<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 age-related retirement 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>

OWCP's procedures provide that, once an overpayment is identified, it is responsible for determining whether the claimant was with fault or without fault, issuing a preliminary finding, and unless a hearing is requested, OWCP is responsible for issuing a final decision.<sup>8</sup> These

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<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); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

<sup>8</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(a)(2) (May 2004).

procedures note that, if the claimant is determined to be without fault, a preliminary overpayment determination must be released along with a Form OWCP-20 within 30 days of the date the overpayment is identified. Both the reason that the overpayment occurred and the reason for the finding of without fault must be clearly provided. A preliminary overpayment determination informs the claimant of the right to submit evidence and the right to a precoupment hearing on the issues of: (a) fact and amount of overpayment; and (b) waiver of recovery of the overpayment. Along with the preliminary overpayment determination, OWCP should provide a clearly written statement explaining how the overpayment was created.<sup>9</sup>

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

The Board finds that OWCP improperly determined that appellant received an overpayment of wage-loss compensation in the amount of \$17,071.05 because she concurrently received SSA age-related retirement benefits while also receiving FECA benefits for the period June 1, 2016 through July 22, 2017, without an appropriate offset.

As noted above, OWCP's procedures provide that a preliminary finding notice must be released along with a Form OWCP-20 overpayment recovery questionnaire within 30 days of the date the overpayment is identified.<sup>10</sup>

In this case, on July 14, 2017 an overpayment of compensation was identified in a form received by OWCP in connection with the employee receiving SSA age-related retirement benefits wherein SSA advised OWCP that the employee had concurrently received FECA and SSA age-related retirement benefits based on FERS contributions during the period June 1, 2016 through July 22, 2017. It was not until September 13, 2017, however, that OWCP issued a preliminary determination, finding an overpayment in the amount of \$17,071.05 had been created for the period June 1, 2016 through July 22, 2017, more than 30 days after the overpayment was identified.

The Board, thus, finds that OWCP did not follow its own procedures in issuing the January 25, 2018 final overpayment determination as it did not issue a preliminary notice of overpayment within 30 days of identifying an overpayment based upon appellant's receipt of SSA age-related retirement benefits.<sup>11</sup>

### **CONCLUSION**

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$17,071.05 during the period June 1, 2016 to July 22, 2017.

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<sup>9</sup> *Id.*; see also *P.H.*, Docket No. 18-1539 (issued August 2, 2019).

<sup>10</sup> *Supra* note 7.

<sup>11</sup> *P.B. (A.B.)*, Docket No. 19-0605 (issued February 19, 2020). In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 25, 2018 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 23, 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