

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

A.G., Appellant)	
)	
and)	Docket No. 19-1807
)	Issued: March 24, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Butler, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 19, 2019 appellant filed a timely appeal from a June 18, 2019 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.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$13,039.41, for which she was not at fault, because she concurrently received Social Security Administration (SSA) age-related retirement benefits while also receiving FECA wage-loss compensation for the period March 1, 2015 through June 25, 2016, without appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$492.06 from appellant's continuing compensation payments every 28 days.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 4, 2000 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained stress-related conditions on February 28, 2000 due to overwork and being subjected to various wrongful actions by her supervisor while in the performance of duty. She stopped work on the date of the claimed injury. After development of appellant's claim, OWCP accepted the conditions of acute stress disorder and post-traumatic stress disorder as work related. Effective April 12, 2000, appellant retired from the employing establishment on disability retirement under the Federal Employees Retirement System (FERS). She elected to receive FECA benefits and OWCP paid her wage-loss compensation for disability from work on the supplemental rolls commencing April 12, 2000 and on the periodic rolls commencing November 3, 2002.

In a February 8, 2011 letter, OWCP advised appellant that FECA requires a claimant's FECA benefits to be reduced if he or she begins receiving SSA retirement benefits based on age and federal service, and that failure to report such SSA retirement benefits could result in an overpayment of compensation.

In a document dated April 27, 2012, an SSA official informed OWCP that appellant was in receipt of SSA benefits. In EN1032 forms, signed on March 25, 2013 and April 2, 2014, appellant advised OWCP that she was in receipt of SSA retirement benefits as part of an annuity for federal service. Each EN1032 form indicated that it covered the 15-month period prior to the signature date.

In an April 11, 2014 letter, OWCP informed appellant that FECA benefits must be adjusted for the FERS portion of benefits paid by SSA, *i.e.*, the portion of SSA benefits attributable to federal service.

In a March 16, 2016 form entitled "FERS SSA dual benefits calculation fax transmittal," the employing establishment requested that SSA provide, with effective dates, the SSA rate with FERS and the SSA rate without FERS for SSA benefits attributable to federal service.

On July 5, 2016 OWCP received from SSA a form entitled "OPM [Office of Personnel Management]-FERS case with multiple rate changes" which indicated that, effective March 1, 2015, appellant had an SSA rate with FERS of \$1,680.60 and an SSA rate without FERS of \$861.70. The form further noted that, effective December 1, 2015, she also had an SSA rate with FERS of \$1,680.60² and an SSA rate without FERS of \$861.70.

An SSA/FERS offset was applied to appellant's wage-loss compensation benefits commencing June 26, 2016.

In a May 7, 2019 FERS offset calculation sheet based on the SSA documentation (providing the SSA payment rates both with and without FERS), OWCP calculated that, for the

² The form actually listed the figure \$168.60, but the content and context of the other data reported on the form show that this is an inadvertent typographical error created by the omission of a zero.

period March 1, 2015 through June 25, 2016, appellant received an overpayment in the amount of \$13,039.41.

In a May 13, 2019 notice, OWCP advised appellant of its preliminary determination that she received a \$13,039.41 overpayment of compensation for the period March 1, 2015 through June 25, 2016 because she received SSA retirement benefits based on her age and attributable to her federal service, without an offset being made, while she received FECA wage-loss compensation benefits. It also made a preliminary determination that appellant was at fault in the creation of the overpayment because she accepted payments she knew or reasonably should have known to be incorrect. OWCP indicated that appellant had been advised in February 8, 2011 and April 11, 2014 letters of the need for an SSA/FERS offset when receiving both SSA retirement benefits attributable to federal service and FECA benefits. It informed her that she could submit evidence challenging the fact, amount, or finding of fault, and request waiver of recovery of the overpayment. OWCP advised appellant that she could submit additional evidence in writing or at a prerecoupment hearing, but that a prerecoupment hearing must be requested within 30 days of the date of the written notice of the overpayment. It requested that she complete and return an enclosed financial information questionnaire (Form OWCP-20) within 30 days even if she was not requesting waiver of the overpayment. OWCP also requested that appellant submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised her that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days.

In a June 10, 2019 overpayment action request form received on June 17, 2019, appellant advised OWCP that she believed she was without fault in the creation of the \$13,039.41 overpayment and that she wished to request waiver of recovery of the overpayment. She attached copies of EN1032 forms, dated March 16, 2015 and April 8, 2016, in which she advised OWCP that she was in receipt of SSA retirement benefits as part of an annuity for federal service. Appellant did not submit a completed Form OWCP-20 within the afforded period.

By decision dated June 18, 2019, OWCP's hearing representative finalized the preliminary determination that appellant received a \$13,039.41 overpayment of compensation for the period March 1, 2015 through June 25, 2016 because she received SSA retirement benefits based on her age and attributable to her federal service, without an offset being made, while she received FECA wage-loss compensation benefits. OWCP found that appellant was without fault in the creation of the overpayment, noting that the preliminary finding of fault had been "overturned" given the complexity of the SSA/FERS offset calculations and the fact that she had reported her receipt of SSA benefits on EN1032 forms. It denied her request for waiver of recovery of the overpayment because she did not complete the required financial information questionnaire in full or provide the required supporting financial documents necessary to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. Noting appellant's failure to submit the requested financial information, it required repayment of the overpayment by deducting \$496.06 from her 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.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 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.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$13,039.41 because she concurrently received SSA age-related retirement benefits while also receiving FECA benefits for the period March 1, 2015 through June 25, 2016.

Commencing April 12, 2000, OWCP paid appellant wage-loss compensation benefits for total disability due to her accepted injury. Appellant received wage-loss compensation benefits and SSA age-related retirement benefits for the same period, *i.e.*, March 1, 2015 through June 25, 2016. The information provided by SSA indicated that a portion of appellant's age-related SSA benefits were attributable to her federal service. As OWCP neglected to offset her FECA benefits for the period March 1, 2015 through June 25, 2016, she received a prohibited dual benefit which created an overpayment of wage-loss compensation.⁷

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. It 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 SSA rate with FERS and without FERS beginning March 1, 2015.⁸ OWCP provided its calculations of the amount that it should have offset for the relevant period based on the SSA document. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received

³ 5 U.S.C. § 8102.

⁴ *Id.* at § 8116.

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

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

⁷ *See id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁸ Commencing March 1, 2015, the SSA rate with FERS was \$1,680.60 and the SSA rate without FERS was \$861.70, and therefore the monthly FERS offset was \$818.90.

prohibited dual benefits totaling \$13,039.41, creating an overpayment of compensation in that amount.⁹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁰ Section 10.438 of OWCP's regulations provides 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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

OWCP found appellant without fault in the creation of the overpayment. Therefore, 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.¹² Appellant, however, had the responsibility to provide financial information to OWCP,¹³ and she did not do so.

In its preliminary determination dated May 13, 2019, OWCP clearly explained the importance of providing a completed overpayment information questionnaire (Form OWCP-20) and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant, however, did not respond to this request. She did not complete the Form OWCP-20 in full or otherwise submit the financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

⁹ See A.S., Docket No. 19-0171 (issued June 12, 2019).

¹⁰ 5 U.S.C. § 8129.

¹¹ 20 C.F.R. § 10.438.

¹² See *supra* note 10.

¹³ See *supra* note 11.

Consequently, as appellant did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.¹⁴

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of Title 20 of the Code of Federal Regulations provides that if an overpayment of compensation has been made to one entitled to future payments, proper adjustment shall be made by decreasing subsequent 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."¹⁵ When an individual fails to provide requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.¹⁶

ANALYSIS -- ISSUE 3

The record supports that, in requiring repayment of the overpayment by deducting \$492.06 from appellant's compensation payments every 28 days, OWCP took into consideration the factors set forth in section 10.441 and found that this method of recovery would minimize any resulting hardship on appellant. Appellant failed to provide information on income, expenses, and assets, and OWCP followed minimum collection guidelines by requiring installments large enough to collect the full debt promptly. Therefore, OWCP properly required repayment of the overpayment by deducting \$492.06 from her compensation payments every 28 days.¹⁷

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$13,039.41 because she concurrently received SSA age-related retirement benefits while also receiving FECA wage-loss compensation for the period March 1, 2015 through June 25, 2016. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$492.06 from her continuing compensation payments every 28 days.

¹⁴ *Id.*

¹⁵ 20 C.F.R. § 10.441.

¹⁶ *R.O.*, Docket No. 18-0076 (issued August 3, 2018); *Gail M. Roe*, 47 ECAB 268 (1995).

¹⁷ *See id.*

ORDER

IT IS HEREBY ORDERED THAT the June 18, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board