

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

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<b>J.W., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0857</b>
	)	<b>Issued: March 24, 2021</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Buffalo, NY, Employer</b>	)	
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*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  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On March 9, 2020 appellant filed a timely appeal from a February 18, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$50,366.97, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and Social Security

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the February 18, 2020 decision, OWCP received 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.*

Administration (SSA) age-related retirement benefits for the period March 1, 2014 through June 22, 2019 without an appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 6, 2002 appellant, then a 54-year-old mail handler, injured her right shoulder when lifting a flat box weighing between 20 and 30 pounds out of a mail cart onto a belt while in the performance of duty. OWCP accepted the claim for right shoulder strain and paid appellant wage-loss compensation. Appellant did not stop work, but returned to modified duty, five hours per day, receiving compensation for the hours she did not work.<sup>4</sup> OWCP paid her wage-loss compensation on the supplemental rolls from October 14, 2002 through April 19, 2003 and on the periodic rolls from April 20, 2003 through October 12, 2019.

On June 12, 2017 OWCP requested that SSA provide a dual benefits calculation.

In a July 6, 2017 FERS offset calculation worksheet, OWCP received a completed Federal Employees Retirement System (FERS)/SSA dual benefits calculation form from SSA wherein SSA advised that, effective March 2014, appellant reached normal retirement age and became eligible for SSA age-related retirement benefits. It noted that, since her retirement coverage was under FERS, her compensation benefits must be offset by any part of her SSA benefit that was calculated by using her federal employment earnings.

On April 19, 2019 OWCP requested that SSA provide an updated dual benefits calculation. Noted on the request, a box marked "2<sup>nd</sup> request" was checked.

On May 6, 2019 OWCP received a completed FERS/SSA dual benefit calculation form from SSA, wherein SSA calculated SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from March 2014 through December 2018. Beginning March 2014, the SSA rate with FERS was \$1,722.00 and without FERS was \$953.70. Beginning December 2014 and December 2015, the SSA rate with FERS was \$1,751.20 and without FERS was \$969.90. Beginning December 2016, the SSA rate with FERS was \$1,756.40 and without FERS was \$972.80. Beginning December 2017, the SSA rate with FERS was \$1,791.50 and without FERS was \$992.20. Beginning December 2018 the SSA rate with FERS was \$1,841.60 and without FERS \$1,019.90.

On June 26, 2019 OWCP prepared a FERS offset calculation worksheet wherein it noted the calculation of appellant's SSA offset overpayment from March 1, 2014 through June 22, 2019 and computed a total overpayment amount of \$50,366.97. This form indicated: from March 1

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<sup>3</sup> Docket No. 09-0528 (issued February 23, 2010).

<sup>4</sup> Appellant was granted disability retirement on November 23, 2005.

through November 30, 2014 appellant received an overpayment in the amount of \$6,965.36; from December 1, 2014 through November 30, 2015 she received an overpayment in the amount of \$9,401.36; from December 1, 2015 through November 30, 2016 she received an overpayment in the amount of \$9,427.11; from December 1, 2016 through November 30, 2017 she received an overpayment in the amount of \$9,429.03; from December 1, 2017 through November 30, 2018 she received an overpayment in the amount of \$9,617.95; and from December 1, 2018 through June 22, 2019 she received an overpayment in the amount of \$5,526.16.

On June 27, 2019 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$50,366.97 had been created because appellant received SSA age-related retirement benefits from March 1, 2014 through June 22, 2019 that were partially based on credits earned while working in the Federal Government, and that this portion of her SSA benefit was a prohibited dual benefit. 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 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.

On July 17, 2019 appellant completed an overpayment action request form and requested a prerecoupment hearing by teleconference. She contested that the overpayment occurred, and the amount of the overpayment, and requested waiver because she was found to be without fault. Appellant indicated that she has worked since 1966 and paid into SSA and believed that she was due these benefits. She further indicated that, if the payment was incorrect, she was without fault and relied on misinformation provided to her. Appellant indicated that she has supported her disabled son for six years and to repay an overpayment would cause her great hardship.<sup>5</sup>

In a partially completed and partially legible Form OWCP-20, appellant reported that her total monthly income included \$1,706.00 from SSA. She reported expenses totaling \$2,500.00 to \$2,800.00. Appellant noted supporting her adult son. She attached financial information including bank statements, utility bills, and credit card bills.

On September 9, 2019 appellant elected to receive FERS benefits, effective September 15, 2019.

OWCP received receipts, bank statements, and credit card statements in support of appellant's request for waiver.

The prerecoupment hearing was held on December 12, 2019. Appellant testified that she was not disputing the fact, amount, or period of the overpayment, but wished OWCP consider waiver. The hearing representative requested additional and more current supporting financial documentation including recent bills for electricity, gas, other utilities, home and automobile insurance premiums, medical and dental expenses not covered by insurance, car loan and two

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<sup>5</sup> By decision dated August 6, 2019, OWCP expanded appellant's claim to include right shoulder rotator cuff tear.

statements from her checking accounts. Appellant reported that credit cards were used for food and household expenses. She denied owning any valuable property or other funds. The hearing representative further requested that appellant provide proof of her son's disability. No additional financial information/documentation was received.

By decision dated February 18, 2020, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$50,366.97 for the period March 1, 2014 through June 22, 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. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because she did not provide all of the requested information regarding income, expenses, debts, and assets necessary to determine whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP's hearing representative noted that many copies of the bills were from 2018 through early 2019.<sup>6</sup> He noted that appellant provided no documentation regarding disabilities of her son. The hearing representative indicated that absent complete and current documentation of appellant's expenses and assets the evidence was insufficient to establish that recovery of the overpayment would defeat the purposes of FECA or be against equity and good conscience. OWCP required the overpayment be due and payable in full.

### **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>7</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>8</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>9</sup> 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.<sup>10</sup>

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<sup>6</sup> The Board notes that on November 18, 2019 appellant submitted an October 2019 medical bill for \$356.31 and a September 2019 revolving credit bill for \$165.25.

<sup>7</sup> 5 U.S.C. § 8102(a).

<sup>8</sup> *Id.* at § 8116.

<sup>9</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

<sup>10</sup> 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 \$50,366.97, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period March 1, 2014 through June 22, 2019, without an appropriate offset.

The record supports that appellant received FECA wage-loss compensation for total disability on the supplemental rolls beginning October 14, 2002 and under an LWEC beginning April 20, 2003, and that she received SSA age-related retirement benefits beginning March 2014. As noted, a claimant cannot receive concurrent FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>11</sup> The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to her federal service from March 1, 2014 through June 22, 2019. Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.<sup>12</sup>

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to appellant's specific SSA age-related retirement benefits that were attributable to federal service. SSA provided its rates with FERS and without FERS for specific periods March 1, 2014 through June 22, 2019. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that she received an overpayment in the amount of \$50,366.97.

The Board thus finds that appellant received prohibited dual benefits for the period March 1, 2014 through June 22, 2019 in the amount of \$50,366.97.

## **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.<sup>13</sup>

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment will defeat the purpose of FECA when such recovery would cause hardship 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,

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<sup>11</sup> 20 C.F.R. § 10.421(d); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007). *See also N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. § 8129.

and, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP.<sup>14</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>15</sup>

Section 10.437 of OWCP's implementing regulations provides that 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; and 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>16</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>17</sup>

### ANALYSIS -- ISSUE 2

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

As OWCP found that 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.<sup>18</sup>

While appellant submitted a partially completed Form OWCP-20 dated July 17, 2019, she failed to furnish sufficient financial documentation to support her income and expenses. OWCP's hearing representative found that she did not provide all of the requested information regarding income, expenses, debts, and assets necessary to determine whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. He noted that many copies of the bills were from 2018 through early 2019. The hearing representative further noted that appellant had not provided any documentation supporting that she cared for her disabled son. He indicated that absent complete and current documentation of appellant's expenses and assets the evidence was insufficient to establish that recovery of the overpayment would defeat the

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<sup>14</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. *Supra* note 3 at Chapter 6.400.4(a)(2) (September 2018).

<sup>15</sup> *Id.* at Chapter 6.400.4(a)(3); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

<sup>16</sup> 20 C.F.R. § 10.437(a)(b).

<sup>17</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>18</sup> *Id.* at § 10.436.

purposes of FECA or be against equity and good conscience. No additional financial information or supporting documentation was received.

As appellant failed to establish that recovery of the overpayment of compensation would either defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery.<sup>19</sup>

On appeal appellant asserts that she is financially unable to afford the repayment of the debt based on her current income. As explained above, she did not submit sufficient financial information or supporting documentation. Thus, OWCP properly denied waiver of recovery of the overpayment.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$50,366.97, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period March 1, 2014 through June 22, 2019 without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

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<sup>19</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 18, 2020 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

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