

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

C.S., Appellant)	
)	
and)	Docket No. 20-1120
)	Issued: March 24, 2021
U.S. POSTAL SERVICE, POST OFFICE, Springfield, IL, 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
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On May 8, 2020 appellant filed a timely appeal from a November 19, 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.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$12,762.07, for which she was without fault, because she concurrently received Social Security Administration (SSA) age-related retirement

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 19, 2019 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.*

benefits and FECA wage-loss compensation for the period July 1, 2017 through August 18, 2018 without appropriate offset; and (2) whether it properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On May 7, 1998 appellant, then a 46-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that she had sustained severe right carpal tunnel syndrome and a right elbow condition from repetitive upper extremity motions due to factors of her federal employment.³ OWCP assigned the claim OWCP File No. xxxxxx984. It accepted the claim for right carpal tunnel syndrome and right cubital tunnel syndrome. Appellant underwent authorized endoscopic right carpal tunnel release and ulnar nerve release at the right elbow on May 8, 1998. She returned to work on August 3, 1998. OWCP subsequently accepted a recurrence of disability commencing August 31, 1998 and expanded its acceptance of the claim to include a right shoulder strain. Appellant returned to her date-of-injury position on October 29, 1998.⁴

On December 11, 1999 appellant filed a traumatic injury claim (Form CA-1) alleging that she had sustained a right shoulder injury on December 11, 1999 when she picked up a handful of mail and felt a pop in her right shoulder while in the performance of duty. She stopped work on December 11, 1999. OWCP assigned the claim OWCP File No. xxxxxx613. It accepted the claim for right rotator cuff tear. Appellant returned to limited duty for four hours per day effective June 19, 2000, working 20 hours a week. OWCP paid compensation on the daily rolls for the remaining 20 hours a week. It administratively combined OWCP File No. xxxxxx984 and OWCP File No. xxxxxx613, with the latter serving as the master file.

OWCP subsequently expanded its acceptance of the claim to include traumatic injuries to the right shoulder, chest, ribs, and an L5-S1 disc protrusion sustained on March 28, 2001 when appellant tripped and fell onto her right side while on light duty. Appellant stopped work on March 28, 2001 and did not return. OWCP paid her wage-loss compensation for total disability from work. It placed appellant on the periodic rolls, effective August 26, 2001.⁵

In July 2013, appellant attained 62 years of age. On July 22, 2013 OWCP issued a letter advising appellant to notify OWCP upon receipt of SSA retirement benefits. Section 8116(d)(2) of FECA required that a claimant's continuing compensation benefits be reduced if he or she began receiving SSA retirement benefits based on his or her age and federal service. OWCP noted that it was notifying appellant of this requirement as she was approaching her 62nd birthday, the minimum age at which an individual is eligible to receive SSA retirement benefits. It noted that failure to report receipt of such retirement benefits to OWCP could result in an overpayment of compensation, which could be subject to recovery. Consequently, if appellant had been approved for SSA retirement benefits, or were currently receiving SSA retirement benefits, she was directed

³ Appellant's retirement coverage was listed as Federal Employees Retirement System (FERS).

⁴ On October 14, 1999 OWCP granted appellant a schedule award for five percent permanent impairment of the right upper extremity. The period of the award ran from February 1 through May 21, 1999.

⁵ By decision dated March 21, 2011, OWCP accepted a recurrence of disability commencing January 24, 2011.

to contact OWCP immediately so that it could begin the process of making any necessary adjustments to her compensation benefits.

In an EN1032 form signed on July 30, 2017, appellant indicated that she received SSA age-related retirement benefits in the amount of \$830.00 monthly. In an EN1032 form signed on July 19, 2018, she indicated that she received SSA age-related retirement benefits in the amount of \$970.00 monthly.

On January 10, 2018 OWCP sent SSA a FERS/SSA dual benefits calculation form for its completion. On February 7, 2018 it received the completed FERS/SSA dual benefits calculation form, wherein SSA listed appellant's SSA benefit rates with a FERS offset and without a FERS offset from July through December 2017. Beginning July 2017, the SSA rate with FERS was \$1,195.40 and without FERS was \$272.00. Beginning December 2017, the SSA rate with FERS was \$1,219.30 and without FERS was \$277.40.

By letter dated August 15, 2018, OWCP informed appellant that the portion of SSA age-related retirement benefits attributable to her federal service would be deducted from her 28-day periodic rolls compensation payments beginning August 18, 2018, in the amount of \$869.45.

In a FERS offset calculation form dated August 17, 2017, OWCP used the information provided by SSA to calculate the 28-day FERS offset for the relevant periods, and calculated a total overpayment in the amount of \$12,762.07. It found that during the period July 1 through November 30, 2017 an overpayment had been created in the amount of \$4,657.59, for the period December 1, 2017 through August 18, 2018 an amount of \$8,104.48.

On August 24, 2018 OWCP issued a preliminary determination that appellant was overpaid compensation in the amount of \$12,762.07 for the period July 1, 2017 through August 18, 2018 because the SSA/FERS offset was not applied to payments for this period. It determined that she was without fault in the creation of the overpayment due to the complexity of benefits administration and could not have reasonably known about the improper payments. OWCP requested that appellant submitted a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method, and advised her that she could request waiver of recovery of the overpayment. It requested financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. It further notified her that, within 30 days of the date of the letter, she could contest the overpayment and request a telephone conference, a final decision based on the written evidence, or a precoupment hearing. No response was received.

By decision dated November 19, 2019, OWCP finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$12,762.07 because the SSA/FERS offset had not been applied to payments for the period July 1, 2017 through August 18, 2018. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery, because she had not completed the Form OWCP-20. Recovery of the overpayment was due and payable in full.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of 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 FECA's implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA benefits that are attributable to federal service of the employee.⁸ 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$12,762.07 as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period July 1, 2017 through August 18, 2018 without appropriate offset.

A claimant cannot receive concurrent FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.¹⁰ The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to her federal service from July 1, 2017 through August 18, 2018.

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. The SSA provided appellant's SSA rate with FERS and without FERS during the applicable period. OWCP found that, since SSA benefits were paid monthly and FECA benefits were paid every 28 days, the monthly offset had to be adjusted to a 28-day payment cycle amount. This amount differed for each period beginning August 2018. OWCP calculated that the lack of offset from July 1, 2017 through August 18, 2018 resulted in an overpayment total of \$12,762.07. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$12,762.07, thus creating an overpayment of compensation in that amount, for the period July 1, 2017 through August 18, 2018.

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8116.

⁸ 20 C.F.R. § 10.421(d); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

⁹ FECA Bulletin No. 97-09 (February 3, 1997).

¹⁰ *Supra* note 7. *See also M.R.*, Docket No. 20-0427 (issued October 30, 2020); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

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.”¹¹ 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.¹²

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 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.¹³ Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.¹⁴

In its preliminary determination dated August 24, 2018, OWCP explained the importance of providing the completed Form OWCP-20 and accompanying financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support reported income and expenses. It advised appellant that it would deny waiver of recovery of the overpayment if she failed to furnish the requested financial information within 30 days. Appellant did not submit a completed Form OWCP-20 or otherwise submit financial information necessary for OWCP to determine whether recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

On appeal, appellant contends that OWCP should waive the overpayment due to financial hardship. As explained above, she has not submitted the financial information necessary for OWCP to consider waiver of the overpayment.

¹¹ 5 U.S.C. § 8129.

¹² 20 C.F.R. § 10.438.

¹³ *Id.* at § 10.436.

¹⁴ *Id.* at § 10.438.

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations, necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁵

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$12,762.07, for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period July 1, 2017 through August 18, 2018 without appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2019 merit 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

¹⁵ See *T.E.*, Docket No. 19-0348 (issued December 11, 2019).