

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

R.V., Appellant)
)
)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
EAST ORANGE-VA NEW JERSEY HEALTH)
CARE SYSTEM, East Orange, NJ, Employer)

Docket No. 20-1331
Issued: March 24, 2021

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 8, 2020 appellant filed a timely appeal from a May 7, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees'

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, she asserted that oral argument should be granted because the overpayment was created through no fault of her own and that she was unable to repay it. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Compensation Act² and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$68,041.59, for which she was without fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation for the period February 1, 2004 through March 3, 2018 without appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery by deducting \$478.12 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On March 2, 2004 appellant, then a 62-year-old office assistant, filed an occupational disease claim (Form CA-2) alleging that she had sustained bilateral carpal tunnel syndrome and left de Quervain's tenosynovitis due to keyboarding and filing on or before January 21, 2004 while in the performance of duty. Appellant's retirement coverage was listed on the claim form as Federal Employees Retirement System (FERS).

OWCP accepted the claim for bilateral carpal tunnel syndrome and right cubital tunnel syndrome. It later expanded its acceptance of the claim to include bilateral tenosynovitis. Appellant stopped work on June 15, 2004, the date she underwent authorized right wrist flexor tenosynovectomy and right carpal tunnel release.⁴ She remained off work.

On October 28, 2004 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 her of this requirement as she had attained 62 years of age, 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 she had been approved for SSA retirement benefits, or were currently receiving SSA retirement benefits, to contact OWCP immediately so that it could begin the process of making any necessary adjustments to her compensation benefits. On November 8, 2004 appellant elected FECA benefits retroactive to June 15, 2004. OWCP paid her wage-loss compensation

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the May 7, 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.*

⁴ Appellant also underwent authorized left carpal tunnel release on October 12, 2004.

retroactively to June 15, 2004. It paid appellant wage-loss compensation on the periodic rolls effective October 1, 2007.

On February 14, 2018 OWCP provided SSA a dual benefits calculation form. It listed the computation period as December 31, 2004 to the present.

On March 13, 2018 OWCP received the completed FERS/SSA dual benefits calculation form, wherein SSA calculated SSA benefit rates with a FERS offset and without a FERS offset from February 2004 through December 2017. Beginning February 1, 2004, the SSA rate with FERS was \$253.20 and without FERS was \$772.20. Beginning March 1, 2004, the SSA rate with FERS was \$957.20 and without FERS was \$772.20. Beginning November 1, 2007, the SSA rate with FERS was \$1,333.50 and without FERS was \$852.70. Beginning December 1, 2007, the SSA rate with FERS was \$1,364.20 and without FERS was \$872.30. Beginning December 1, 2008, December 1, 2009, and December 1, 2010 the SSA rate with FERS was \$1,443.30 and without FERS was \$922.90. Beginning December 1, 2011, the SSA rate with FERS was \$1,495.20 and without FERS was \$956.00. Beginning December 1, 2012, the SSA rate with FERS was \$1,520.50 and without FERS was \$972.30. Beginning December 1, 2013, the SSA rate with FERS was \$1,543.30 and without FERS was \$986.90. Beginning December 1, 2014 and December 1, 2015, the SSA rate with FERS was \$1,569.40 and without FERS was \$1,003.60. Beginning December 1, 2016, the SSA rate with FERS was \$1,574.10 and without FERS was \$1,006.60. Beginning December 1, 2017, the SSA rate with FERS was \$1,605.50 and without FERS was \$1,026.70.

By letter dated March 20, 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 March 31, 2018, in the amount of \$534.28.

In a FERS offset calculation form dated March 31, 2020, 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 \$68,041.59. It found that during the period February 1 through 29, 2004, an overpayment had not been created as the SSA rate with FERS was \$253.20 and the SSA rate without FERS had been \$772.20. For the period March 1 through September 30, 2004, an overpayment had been created in the amount of \$1,305.16; for the period November 1 through 30, 2007, an overpayment had been created in the amount of \$475.52; for the period December 1, 2007 through November 30, 2008, an overpayment had been created in the amount of \$5,935.23; for the period December 1, 2008 through November 30, 2011, an overpayment had been created in the amount of \$18,785.87; for the period December 1, 2011 through November 30, 2012, an overpayment had been created in the amount of \$6,505.95; for the period December 1, 2012 through November 30, 2013, an overpayment had been created in the amount of \$6,596.47; for the period December 1, 2013 through November 30, 2014, an overpayment had been created in the amount of \$6,695.14; for the period December 1, 2014 through November 30, 2015, and overpayment had been created in the amount of \$6,808.25; for the period December 1, 2015 through November 30, 2016, an overpayment had been created in the amount of \$6,826.91; for the period December 1, 2016 through November 30, 2017, an overpayment had been created in the amount of \$6,828.71; for the period December 1, 2017 through March 3, 2018, an overpayment had been created in the amount of \$1,774.56. OWCP added the overpaid amounts to equal \$68,041.59.

On April 3, 2020 OWCP issued a preliminary determination that appellant was overpaid compensation in the amount of \$68,041.59 for the period February 1, 2004 through March 3, 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 submit 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 prerecoupment hearing. No response was received.

By decision dated May 7, 2020, OWCP determined that appellant had received an overpayment of compensation in the amount of \$68,041.59 because the SSA/FERS offset had not been applied to payments for the period February 1, 2004 through March 3, 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. OWCP required recovery of the overpayment by deducting \$478.12 every 28 days from appellant's continuing compensation payments.

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.⁵ 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.⁶

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.⁷ 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.⁸

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8116.

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

⁸ FECA Bulletin No. 97-09 (February 3, 1997).

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$68,041.59 as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period February 1, 2004 through March 3, 2018 without appropriate offset.

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.⁹ The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to her federal service from February 1, 2004 through March 3, 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 February 2004. OWCP calculated that the lack of offset from February 1, 2004 through March 3, 2018 resulted in an overpayment total of \$68,041.59. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$68,041.59, thus creating an overpayment of compensation in that amount, for the period February 1, 2004 through March 3, 2018.

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.

⁹ *Supra* note 5. *M.R.*, Docket No. 20-0427 (issued October 30, 2020). *See also N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹⁰ 5 U.S.C. § 8129.

¹¹ 20 C.F.R. § 10.438.

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.¹² Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.¹³

In its preliminary determination dated May 3, 2020, OWCP explained the importance of providing the completed Form OWCP-20 and 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 timely 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.

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.¹⁴

On appeal appellant contends that OWCP should waive the overpayment due to financial hardship. She asserts that she timely requested a precoupment hearing, but did not receive a response. The Board notes that OWCP did not receive a request for a precoupment hearing or other response to the preliminary notice of overpayment prior to the issuance of the May 7, 2020 final overpayment determination.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides in pertinent part: 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 soon as the error is discovered or his 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.¹⁵

¹² *Id.* at § 10.436.

¹³ *Id.* at § 10.438.

¹⁴ *See T.E.*, Docket No. 19-0348 (issued December 11, 2019).

¹⁵ 20 C.F.R. § 10.441(a); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$478.12 from appellant's continuing compensation payments every 28 days.

OWCP provided appellant a Form OWCP-20 with its April 3, 2020 preliminary determination. It afforded her the opportunity to provide appropriate financial information and documentation to OWCP. Appellant, however, did not complete the Form OWCP-20 or otherwise provide the necessary financial information to support her income and expenses prior to the final May 7, 2020 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁶ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.¹⁷ As appellant did not submit financial information as requested, the Board finds that OWCP properly required recovery of the \$68,041.59 overpayment at the rate of \$478.12 every 28 days from appellant's continuing compensation payments.¹⁸

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$68,041.59, for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period February 1, 2004 through March 3, 2018 without appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$478.12 every 28 days from her continuing compensation payments.

¹⁶ *Id.* at § 10.438(a).

¹⁷ See *J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.2 (September 2018).

¹⁸ *J.C.*, Docket No. 20-1062 (issued January 4, 2021); see *J.A.*, *id.*; *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2020 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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