

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

C.C., Appellant)	
)	
and)	Docket No. 20-1253
)	Issued: May 21, 2021
SOCIAL SECURITY ADMINISTRATION,)	
Swainsboro, GA, 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 June 3, 2020 appellant filed a timely appeal from a December 10, 2019 merit decision and a January 30, 2020 nonmerit 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 \$95,345.95, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits for the period November 1, 2012 through

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 30, 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.*

March 30, 2019 without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; (3) whether OWCP properly required recovery of the overpayment by deducting \$350.00 from appellant's continuing compensation payments every 28 days; and (4) whether OWCP properly denied appellant's request for a prerecoument hearing under 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On February 25, 1999 appellant, then a 52-year-old claims representative/social insurance specialist, filed an occupational disease claim (Form CA-2) alleging that the stress on her job and heavy workloads caused or aggravated her conditions of severe anxiety, depression, and adult attention-deficit/hyperactivity disorder. She noted that she first became aware of her conditions and realized their relation to her federal employment on December 15, 1993. Appellant stopped work on December 2, 1996.³ OWCP accepted the claim for major depression and chronic generalized anxiety disorder. The record reflects that OWCP paid appellant wage-loss compensation on the periodic compensation rolls as of June 16, 2002.

A notification of personnel action (Form SF-50) dated May 25, 1997 indicated that appellant's service computation date was June 25, 1965 and that her retirement plan was Federal Employees' Retirement System (FERS) and Federal Insurance Contributions Act. The retirement plan code was listed as "K."

On March 5, 2019 SSA indicated that appellant received disability benefits for the period May 1997 through October 2012. A Federal Employees Retirement System (FERS)/SSA Dual Benefits worksheet reported the following SSA benefit rates with a FERS offset and without a FERS offset from November 2012 through December 2018: beginning November 2012, the SSA rate with FERS was \$1,209.00 and without FERS was \$30.70; beginning December 2012, the SSA rate with FERS was \$1,229.60 and without FERS was \$31.20; beginning December 2013, the SSA rate with FERS was \$1,248.00 and without FERS was \$31.60; beginning December 2014, the SSA rate with FERS was \$1,269.20 and without FERS was \$32.10; beginning December 2015, the SSA rate with FERS was \$1,269.20 and without FERS was \$32.10; beginning December 2016, the SSA rate with FERS was \$1,273.00 and without FERS was \$32.10; beginning December 2017, the SSA rate with FERS was \$1,298.50 and without FERS was \$32.70; and beginning December 2018, the SSA rate with FERS was \$1,334.80 and without FERS was \$33.60.

On April 11, 2019 OWCP prepared a FERS offset calculation worksheet wherein calculated appellant's SSA offset overpayment from November 1, 2012 through March 30, 2019. The total overpayment was determined to be \$95,345.95. OWCP specifically found that appellant received an overpayment in the amount of \$1,165.35 for the period November 1 through 30, 2012; an overpayment in the amount of \$14,420.31 for the period December 1, 2012 through November 30, 2013; an overpayment in the amount of \$14,636.90 for the period December 1, 2013 through November 30, 2014; an overpayment in the amount of \$14,885.98 for the period December 1, 2014 through November 30, 2015; an overpayment in the amount of \$14,926.77 for the period December 1, 2015 through November 30, 2016; an overpayment in the amount of \$14,931.71 for the period December 1, 2016 through November 30, 2017; an overpayment in the

³ Appellant was divorced on November 14, 1997.

amount of \$15,231.33 for the period December 1, 2017 through November 30, 2018; and an overpayment in the amount of \$5,147.60 for the period December 1, 2018 through March 30, 2019.

In a letter dated April 11, 2019, OWCP notified appellant that, based on information provided by SSA regarding the amount of her age-related retirement benefits, which were attributable to federal service, her FECA wage-loss compensation had been adjusted. After the SSA offset, appellant was to receive net FECA wage-loss compensation of \$2,498.03 every 28 days.

In an April 15, 2019 memorandum of telephone call (Form CA-110), OWCP related that appellant indicated that she was drawing social security benefits on her ex-husband's account.

On May 21, 2019 OWCP issued a preliminary determination finding that an overpayment of compensation in the amount of \$95,345.95 had been created. It explained that the overpayment occurred because appellant's SSA age-related retirement benefits that she received from November 1, 2012 through March 30, 2019 were partially based on credits earned while working for the Federal Government, and that this portion of her SSA benefit constituted a prohibited dual benefit. OWCP found appellant not at fault in the creation of the overpayment and forwarded an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). It requested that she provide supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support her reported income and expenses. OWCP afforded appellant 30 days to respond.

On a May 31, 2019 overpayment action request form, appellant requested that OWCP issue a decision based on the written evidence of record. She indicated that she disagreed with the amount of the overpayment as she was entitled to her former spouse's SSA benefits, and the portion of his earnings included in her SSA benefits should not be considered in the FERS offset. Appellant also requested waiver of recovery of the overpayment and an extension of time until the amount of the overpayment was resolved. She provided two benefit statements from SSA regarding her entitlement to benefits under two separate claim numbers.⁴

On June 15, 2019 appellant requested a prerecouplement hearing. She disagreed with the amount of the overpayment alleging that OWCP incorrectly calculated the FERS offset. Appellant also requested waiver of recovery of the overpayment, asserting that recovery would be against equity and good conscience. She resubmitted a benefit letter from SSA, as well as a narrative statements and a listing of her monthly expenditures and accounts.

In a June 17, 2019 letter, SSA informed appellant that her regular monthly net SSA payment was \$1,198.00. It also indicated that "the [N]umber [H]older [(NH)] receives \$533.90 off another record as a BIC [Beneficiary Identification Code] B6."

By decision dated August 21, 2019, OWCP'S hearing representative found that the case was not in posture for a hearing. The hearing representative indicated that appellant presented evidence which showed that a portion of her SSA payment was based on another SSA record and

⁴ The forms included handwritten notations indicating that one of the claim numbers was for appellant's claim, while the other claim number was for entitlement to her former spouse's benefits.

thus the amount of her computed FERS payment compelled further investigation. The case was remanded for OWCP for further development, including having the SSA provide an explanation for its calculations and to explain the meaning of “BIC B6.”

On October 1, 2019 OWCP provided SSA with another FERS/SSA dual benefits calculation form. It requested that SSA provide an explanation for its calculation and explain the meaning of “BIC B6.”

On October 9, 2019 SSA completed the dual benefits calculation form, which listed the following SSA benefit rates for appellant with a FERS offset and without a FERS offset from November 2012 through December 2018: beginning November 2012, the SSA rate with FERS was \$1,209.00 and without FERS was \$990.70; beginning December 2012, the SSA rate with FERS was \$1,229.60 and without FERS was \$1,007.60; beginning December 2013, the SSA rate with FERS was \$1,248.00 and without FERS was \$1,022.60; beginning December 2014, the SSA rate with FERS was \$1,269.20 and without FERS was \$1,040.10; beginning December 2016, the SSA rate with FERS was \$1,273.00 and without FERS was \$1,043.20;⁵ beginning December 2017, the SSA rate with FERS was \$1,298.50 and without FERS was \$1,064.10; and beginning December 2018, the SSA rate with FERS was \$1,334.80 and without FERS was \$1,093.80. A remark on the form indicated “NH RIB EFF: [November] 2012.” An SSA representative explained that it meant that the “NH” was the actual person/wage earner and “RIB EFF: [November] 2012” meant that the retirement was effective November 2012.

On October 18, 2019 OWCP requested that SSA provide an explanation for its calculations and explain the meaning of BIC B6.

On October 22, 2019 a claims specialist from the SSA advised that appellant was receiving benefits per her own record and was also entitled to benefits per another record as a “BIC B6” (a divorced wife over the age of 62). She indicated that the earnings from appellant’s own record were calculated with FERS and without FERS to determine the offset amount.

On October 23, 2019 OWCP issued a *de novo* preliminary determination finding that an overpayment of compensation in the amount of \$95,345.95 had been created for the period November 1, 2012 through March 30, 2019. It utilized its April 11, 2019 FERS offset calculation worksheet to determine the overpayment amount. OWCP found appellant not at fault in the creation of the overpayment and forwarded an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). It requested that she provide supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support her reported income and expenses. OWCP afforded appellant 30 days to respond.

In a November 18, 2019 letter, appellant requested that OWCP review her case. She asserted that her social security benefit from her account was \$800.90 and that amount should be used for the FERS offset. However, OWCP combined appellant’s social security with her ex-husband’s social security (non-FERS) of \$533.90 to calculate the FERS offset and erroneously withheld \$533.90 from her OWCP payments. A letter dated November 12, 2019 from SSA

⁵ The SSA rate with FERS and without FERS for December 2015 was not reported.

indicated that her new monthly benefit on her social security account would be \$800.90, and that her monthly benefit based on the other record would be \$1,426.80.

By decision dated December 10, 2019, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$95,345.95, for the period November 1, 2012 through March 30, 2019, because it had failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to 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 the evidence of record was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$350.00 every 28 days from appellant's continuing compensation payments.

On December 31, 2019 appellant requested a prerecoupment hearing. She disagreed with the overpayment amount, noting that it did not represent her own SSA earnings, but included the earnings of her ex-husband which are not subject to the FERS offset. Appellant requested waiver of recovery of the overpayment as it was against equity and good conscience.

By decision dated January 30, 2020, OWCP's Branch of Hearings and Review denied appellant's request for a prerecoupment hearing, finding that she had not timely requested a hearing on the preliminary overpayment determination, and that the final overpayment determination was not subject to a hearing pursuant to 5 U.S.C. § 8124(b).

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) 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 his or her federal employment.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 the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related retirement 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 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.⁹

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8116.

⁸ 20 C.F.R. § 10.421(d); *see M.A.*, Docket No. 20-0120 (issued January 8, 2021); *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *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).

ANALYSIS -- ISSUE 1

The Board finds that OWCP has established that appellant received an overpayment of compensation.

The record indicates that appellant was receiving wage-loss compensation under FECA while also receiving SSA age-related retirement benefits attributable to her own federal service during the relevant period. A claimant cannot receive both compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.¹⁰ Consequently, the fact of the overpayment has been established.

The Board finds, however, that the case is not in posture for decision regarding the amount of the overpayment. As previously noted, OWCP is required to reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's own federal service.¹¹ On March 5, 2019 SSA noted in a FERS/SSA dual benefits transmittal that appellant had received SSA age-related retirement benefits subject to SSA/FERS offset. On April 11, 2019 OWCP prepared a FERS offset calculation worksheet wherein it noted the calculation of her SSA offset overpayment from November 1, 2012 through March 30, 2019, which it determined to be \$95,345.95. As a result of an OWCP hearing representative's August 21, 2019 decision, SSA completed a new FERS/SSA dual benefits transmittal on October 9, 2019 which indicated appellant's SSA benefit rates with a FERS offset and without a FERS offset from November 2012 through December 2018. This form indicated higher SSA rates without FERS. On October 22, 2019 a SSA claims specialist indicated that appellant was receiving benefits on her own record and was also entitled to benefits on another record as a divorced wife over age 62 or BIC (Beneficiary Identification Code) B6 (a divorced wife over the age of 62). She indicated that the earnings from appellant's own record were reported with FERS and without FERS to use to determine the offset amount. However, while October 9, 2019 FERS/SSA transmittal purportedly reported SSA earnings based on appellant's own record, OWCP utilized the March 5, 2019 FERS/SSA transmittal to calculate the amount of the overpayment. Therefore, OWCP has not established that the April 11, 2019 offset calculation from November 2012 through December 2018 was based solely on her SSA contributions from her federal employment.

The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated.¹² With respect to the amount of the overpayment, the Board finds that OWCP has not adequately explained how the overpayment was determined from appellant's own earnings record. As such, the Board is unable to verify the amount of the overpayment of compensation in the amount of \$95,345.95.

Accordingly, the Board finds that the case must be remanded to OWCP. On remand OWCP shall determine the proper amount of the overpayment of compensation based on the correct rates provided by SSA, from appellant's own earning record, for the period during which

¹⁰ See *N.B.*, Docket No. 20-0727 (issued January 26, 2021); *D.M.*, Docket No. 19-1369 (issued June 30, 2020).

¹¹ *Id.*

¹² See *S.H.*, Docket No. 20-1189 (issued January 27, 2021); *R.E.*, Docket No. 19-1583 (issued May 27, 2020); *J.M.*, Docket No. 18-1505 (issued June 21, 2019); *Teresa A. Ripley*, 56 ECAB 528 (2005).

the overpayment occurred. It shall then issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, and instructions for her to provide supporting financial information. After such further development as necessary, OWCP shall issue a *de novo* decision.¹³

CONCLUSION

The Board finds that OWCP has established that appellant received an overpayment of compensation. The Board also finds that the case is not in posture for decision regarding the amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The January 30, 2020 decision is set aside as moot. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 21, 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

¹³ As the amount of the overpayment is not in posture for decision, the issues of waiver and recovery of the overpayment are rendered moot. Additionally, in light of the disposition of the case, the issue pertaining to whether appellant's request for a prerescission hearing was untimely filed is also rendered moot.