

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

C.H., Appellant)	
)	
and)	Docket No. 20-1456
)	Issued: November 23, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Harrison, OH, Employer)	
)	

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 July 23, 2020 appellant filed a timely appeal from a January 29, 2020 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 \$15,666.00, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 29, 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 20, 2018 through April 27, 2019 without an 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 \$300.00 from appellant's continuing compensation each month.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ 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 February 25, 2011 appellant, then a 59-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that she injured her right hand and upper arm on October 14, 2010 when she fell while in the performance of duty. Her retirement system coverage was listed as Federal Employees Retirement System (FERS). OWCP accepted the claim for aggravation of preexisting right shoulder osteoarthritis and arthropathy, aggravation right shoulder impingement syndrome; right carpal tunnel syndrome; and right middle and ring finger flexor tenosynovitis. It paid appellant wage-loss compensation on the supplemental rolls as of March 14, 2011 and on the periodic rolls as of June 5, 2011.

On April 23, 2019 OWCP forwarded to SSA a FERS/SSA dual benefits calculation form.

On April 27, 2019 SSA completed the FERS/SSA dual benefits calculation form. It indicated appellant's SSA benefit rates with a FERS offset and without a FERS offset from March through December 2018. Beginning March 2018, the SSA rate with FERS was \$1,725.70 and without FERS was \$561.40. Beginning December 2018, the SSA rate with FERS was \$1,774.00 and without FERS was \$577.10.

On May 14, 2019 OWCP prepared a FERS offset calculation worksheet wherein it noted the calculation of appellant's SSA offset overpayment from March 20, 2018 through April 27, 2019. The total overpayment was determined to be \$15,666.00. OWCP found that appellant received an overpayment in the amount of \$9,826.18 for the period March 20 through November 30, 2018, and \$5,839.82 for the period December 1, 2018 through April 27, 2019.

In a May 16, 2019 letter, OWCP advised appellant that she had been receiving SSA age-related retirement benefits since March 20, 2018 and that the SSA confirmed that a portion of her benefits were attributed to her federal service and required an offset of her FECA compensation benefits. It indicated that, starting April 28, 2019, \$1,104.83 would be offset from her FECA payments and that her new net compensation payment would be \$394.93. OWCP also informed appellant that an overpayment of compensation for the period March 20, 2018 through April 27, 2019 had resulted.

On June 21, 2019 OWCP issued a preliminary overpayment determination finding that an overpayment of compensation in the amount of \$15,666.00 had been created. It explained that the overpayment occurred because appellant's SSA age-related retirement benefits that she received

³ *Order Remanding Case*, Docket No. 19-1114 (issued April 30, 2020).

from March 20, 2018 through April 27, 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 her at fault in the creation of this overpayment. It also forwarded an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) and requested that appellant 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 her 30 days to respond.

On July 19, 2019 appellant requested a preresoupment hearing before a representative of OWCP's Branch of Hearings and Review. She indicated that she disagreed with the amount of the overpayment. Appellant also maintained that the overpayment occurred through no fault of her own and requested waiver of the recovery of the overpayment.

On a partially-completed Form OWCP-20 dated July 18, 2019, appellant listed her total monthly income as \$4,581.59 and her total monthly expenses as \$4,796.06. She indicated that she had a checking account balance of \$69,344.00, a Thrift Savings Plan (TSP) account valued at approximately \$110,000.00, and that she owned two properties, in addition to her home, which were valued at approximately \$8,000.00 and \$30,000.00.

A preresoupment hearing was held telephonically on November 14, 2019. During the hearing, appellant described her household finances. At the conclusion of the hearing, OWCP's hearing representative provided appellant with instructions as to how the Form OWCP-20 should be completed. Additionally, she advised appellant throughout the hearing that she needed to provide a breakdown of her expenses along with supportive evidence of all income, expenses, and assets listed on the form. The record remained open for 30 days to afford appellant the opportunity to submit additional evidence.

Appellant submitted over 300 pages of financial records.

By decision dated January 29, 2020, OWCP's hearing representative finalized the June 21, 2019 preliminary overpayment determination. She found that the evidence of record was sufficient to establish that an overpayment of compensation in the amount of \$15,666.00 had been created for the period March 20, 2018 through April 27, 2019 because appellant concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. The hearing representative modified the fault determination, however, finding that appellant was without fault in the creation of the overpayment. Taking into account the record, the Form OWCP-20 and the information received post hearing, the hearing representative found that appellant's total monthly income was \$3,244.86 and appellant's monthly expenses were \$2,626.63. She noted that many of the receipts/statements submitted appeared to pertain to one-time past expenses. The hearing representative also noted that appellant has significant assets including approximately \$69,000.00 in her checking account, \$120,000.00 in a TSP account, as well as additional assets which include two properties aside from her primary residence with values of \$8,000.00 and \$30,000.00 and six vehicles, four of which would be considered assets. She denied waiver of the overpayment and set recovery of the overpayment at \$300.00 from appellant's FECA compensation each month.

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.⁴ 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.⁵

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁶ 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 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$15,666.00, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period March 20, 2018 through April 27, 2019 without an appropriate offset.⁸

The evidence of record indicates that, while appellant was receiving compensation for wage-loss compensation benefits under FECA, she was also receiving SSA age-related retirement attributable to her federal service during the relevant period. A claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period.⁹ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service during the period March 20, 2018 through April 27, 2019. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided its rate with FERS and without FERS for specific periods March through December 2018. OWCP provided its calculations of the amount that should have been

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see P.B.*, Docket No. 20-0862 (issued November 25, 2020); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

⁷ FECA Bulletin No. 97-09 (February 3, 1997); *see also S.M.*, Docket No. 20-0152 (issued August 10, 2020).

⁸ *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

⁹ *See N.B.*, Docket No. 20-0727 (issued January 26, 2021); *D.M.*, Docket No. 19-1369 (issued June 30, 2020).

offset during the relevant period of March 20, 2018 through April 27, 2019 based on information provided by SSA and determined that appellant received an overpayment in the amount of \$15,666.00.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period March 20, 2018 through April 27, 2019 and finds that an overpayment of compensation in the amount of \$15,666.00 was created.¹⁰

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹¹ Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹²

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if 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 and, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹³ An individual's liquid assets include, but are not limited to, cash on hand, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits. Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as TSP or 401(k)), jewelry, and artwork.¹⁴

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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be

¹⁰ See *N.B., id.; L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹¹ 5 U.S.C. § 8129(a)-(b).

¹² *Id.*; *L.S.*, 59 ECAB 350 (2008).

¹³ 20 C.F.R. § 10.436. OWCP's procedures provide that a claimant is deemed to need substantially all of his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020). OWCP's procedures further provide that assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent, plus \$1,200.00 for each additional dependent. *Id.* at Chapter 6.400.4a(2).

¹⁴ *Id.* at Chapter 6.400.4b(3)(a), (b).

made, gives up a valuable right or changes his or her position for the worse.¹⁵ OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.¹⁶

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.¹⁷

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.¹⁸

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because her assets exceed the allowable resource base. The Board notes that the case record reflects that she has over \$120,000.00 in assets in her TSP account and over \$69,000.00 in her checking account, amounts which exceeds the allowable resource base of \$10,300.00 for an individual, such as she, who has a spouse within the meaning of FECA.¹⁹ Appellant also has two properties, aside from her primary residence, one worth \$8,000.00 and another worth \$30,000.00. She also has six vehicles, four of which would be considered assets.²⁰ As appellant's current assets exceed the allowable resource base, appellant has not established that recovery of the overpayment would defeat the purpose of FECA.²¹ Because she has not met the second prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is unnecessary

¹⁵ 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁶ *Id.* at § 10.437(b)(1); *supra* note 14.

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

¹⁸ *R.L.*, Docket No. 20-0186 (issued September 14, 2020).

¹⁹ The hearing representative found, and the case record supports, that appellant has monthly income of \$3,244.86 and monthly expenses of \$2,626.63. The hearing representative explained in detail why some expenses were excluded as they were either unexplained, unsupported by current information, unclear whether it was a one-time payment or recurring payment, or not considered ordinary and necessary.

²⁰ *See supra* note 18.

²¹ *See id.*

for OWCP to consider the first prong of the test, *i.e.*, whether she needs substantially all of her current income to meet current ordinary and necessary living expenses.²²

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because she has not shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt or that she relinquished a valuable right or changed her position for the worse in reliance on the payment which created the overpayment.²³

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the \$15,666.00 overpayment.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides that, 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 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.²⁴

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$300.00 from appellant's compensation payments each month.

The record supports that, in requiring recovery of the overpayment by deducting \$300.00 from appellant's compensation payments each month, OWCP took into consideration the financial information submitted by her as well as the factors set forth in section 10.441 and found that this method of recovery would minimize any resulting hardship on her. Therefore, the Board finds that it properly required recovery of the overpayment by deducting \$300.00 from her compensation payments each month.

CONCLUSION

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$15,666.00, for which she was not at fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits for the period March 20, 2018 through April 27, 2019, without an appropriate offset. The Board also

²² See *T.D.*, Docket No. 20-0972 (issued January 28, 2021).

²³ See *T.D.*, *id.*; *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

²⁴ *Supra* note 20 at § 10.441(a); see *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$300.00 from her compensation payments each month.

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 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