

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

_____)
E.R., Appellant)

and)

U.S. POSTAL SERVICE, MCGAHEYSVILLE)
POST OFFICE, McGaheysville, VA, Employer)
_____)

Docket No. 21-0133

Issued: November 15, 2021

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 3, 2020 appellant filed a timely appeal from a September 24, 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 \$89,478.37 for the period May 25, 2015 through August 15, 2020, for which she was not at fault, as she concurrently received Social Security

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 24, 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 evidence for the first time on appeal. *Id.*

Administration (SSA) age-related retirement benefits and FECA wage-loss compensation without 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 \$516.06 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On March 24, 2015 appellant, then a 67-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 13, 2015 she injured her right shoulder when she stepped onto a mail tub and fell onto her right side while in the performance of duty. Her supervisor noted on the claim form that her retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted appellant's claim for a complete rupture of the right rotator cuff. It paid her wage-loss compensation on the supplemental rolls commencing May 25, 2015 and on the periodic rolls commencing May 31, 2015.

On August 3, 2020 OWCP provided SSA with a FERS/SSA dual benefits calculation form. It listed the computation period as March 13, 2015 to the present.

On August 5, 2020 SSA completed the FERS/SSA dual benefit calculation worksheet and provided appellant's SSA age-related retirement benefit rates with FERS and without FERS from January 2015 through December 2019. SSA indicated that: beginning January 2015, appellant's SSA rate with FERS was \$1,846.20 and without FERS was \$483.40; beginning January 2016, appellant's SSA rate with FERS was \$1,864.20 and without FERS was \$483.40; beginning December 2016, appellant's SSA rate with FERS \$1,869.70 and without FERS was \$484.80; beginning January 2017, appellant's SSA rate with FERS was \$1,879.30 and without FERS was \$484.80; beginning December 2017, appellant's SSA rate with FERS was \$1,916.80 and without FERS was \$494.40; beginning January 2018, appellant's SSA rate with FERS was \$1,921.00 and without FERS was \$494.40; beginning December 2018, appellant's SSA rate with FERS was \$1,974.70 and without FERS was \$508.20; beginning December 2019, appellant's SSA rate with FERS \$2,006.20 and without FERS was \$516.30.

In an August 5, 2020 letter, OWCP advised appellant that it had found that she was receiving both FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset, resulting in a prohibited dual benefit. It noted that her FECA compensation payments "must be adjusted for the FERS portion of SSA benefits."

An August 5, 2020 OWCP periodic disability payment plate for the period July 19 through August 15, 2020 indicated in the comments section that OWCP adjusted appellant's FECA wage-loss compensation by her "FERS offset."

OWCP completed a FERS offset overpayment calculations worksheet on August 5, 2020. It determined the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$89,478.37. This form indicated that: from May 25 through November 30, 2015, appellant received an overpayment of compensation in the amount of \$8,536.22; from December 1 through 31, 2015 appellant received an overpayment of compensation in the amount of \$1,392.75; from December 1, 2016 through November 30, 2017 appellant received an overpayment of compensation in the amount of \$15,249.49; from December 1 through 31, 2016 appellant received

an overpayment of compensation in the amount of \$1,415.34; from January 1 through November 30, 2017, appellant received an overpayment of compensation in the amount of \$15,354.82; from December 1 through 31, 2017, appellant received an overpayment of compensation in the amount of \$1,453.66; from January 1 through November 11, 2018, appellant received an overpayment of compensation in the amount of \$15,708.28; from December 1, 2018 through November 30, 2019, appellant received an overpayment of compensation in the amount of \$17,646.35; and from December 1, 2019 through August 15, 2020, appellant received an overpayment of compensation in the amount of \$12,721.45.

On August 12, 2020 OWCP notified appellant of its preliminary overpayment determination that she received an overpayment of compensation in the amount of \$89,478.37 as she had received FECA wage-loss compensation for the period May 25, 2015 through August 15, 2020 that had not been reduced by the portion of her SSA age-related retirement benefits attributable to her federal service, and that this portion of her SSA benefit was a prohibited dual benefit. It further advised her of its preliminary determination that she was without fault in the creation of the overpayment. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records, which support income and expenses. Additionally, it provided appellant with an overpayment action request form and notified her 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 precoupment hearing.

In a completed Form OWCP-20 dated September 7, 2020, appellant advised that her monthly income, including her husband's income, totaled \$3,540.00. She further advised that her ordinary monthly expenses totaled \$2,805.46 and her monthly bank and credit card debt totaled approximately \$1,154.02. Appellant listed available funds as including a \$3,249.65 checking account balance, a \$584.98 savings account balance, and a \$3,500.00 transfer from a separate bank account. She indicated that she had \$172,185.90 in an individual retirement account and \$57,975.99 in a thrift savings plan account. Appellant stated that she had informed OWCP that she was receiving SSA benefits, and that if she had known that payments to her were incorrect, she would not have accepted them. She stated that the overpayment was not her fault, and she indicated that she wanted to return to full-duty work, but her physicians prevented her from doing so.

By decision dated September 24, 2020, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$89,478.37 because the SSA/FERS offset was not applied to FECA wage-loss compensation payments for the period May 25, 2015 through August 15, 2020. 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 submitted did not suggest that she would suffer severe financial hardship in repaying the debt, and it did not receive supporting financial documentation. OWCP concluded, therefore, that repayment would not defeat the purpose of FECA or be against good equity and conscience. It required recovery of the overpayment by deducting \$516.06 from appellant's continuing compensation payments beginning October 11, 2020.

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.³ 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.⁴

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.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that fact of overpayment has been established.

Beginning on May 25, 2015, appellant received FECA wage-loss compensation while she continued to receive age-related retirement benefits from SSA. As noted, a claimant cannot receive concurrent compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁷ The fact of overpayment is therefore established.

The Board further finds, however, that the case is not in posture for decision regarding the amount of the overpayment. The Board notes that OWCP improperly calculated appellant's overpayment for the period May 25, 2015 through August 15, 2020. An August 5, 2020 OWCP periodic disability payment plate for the period July 19 through August 15, 2020 indicated that OWCP adjusted her FECA compensation payment by her FERS offset. Consequently, the SSA benefits appellant received beginning July 19, 2020 were not dual benefits and should not have been included in the overpayment calculation.

On remand, OWCP shall determine the exact amount of the overpayment of compensation and the correct dates during which the overpayment occurred. It shall then issue a new preliminary overpayment determination with an overpayment action request form, an overpayment recovery questionnaire, and instructions for appellant to provide supporting financial information. After

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁶ FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁷ 5 U.S.C. § 8116(d)(2); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.⁸

CONCLUSION

The Board finds that fact of overpayment has been established. The Board further finds that this case is not in posture for decision regarding the period and amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 15, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

⁸ In light of the Board's disposition of Issue 1, the Issues of 2 and 3 are rendered moot.