

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

S.M., Appellant)	
)	
and)	Docket No. 21-0772
)	Issued: November 30, 2021
DEPARTMENT OF AGRICULTURE, FOREST)	
SERVICE, CHATTAHOOCHEE OCONEE)	
NATIONAL FOREST, Gainesville, 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 April 23, 2021 appellant filed a timely appeal from a November 3, 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.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$47,136.84, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without appropriate offset for the period May 1, 2013 to August 15, 2020; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required

¹ 5 U.S.C. § 8101 *et seq.*

recovery of the overpayment by deducting \$400.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On April 20, 2002 appellant, then a 54-year-old accounting technician, filed an occupational disease claim (Form CA-2) for acute stress disorder resulting from factors of her federal employment. She stopped work on February 21, 2002. On June 18, 2004 OWCP accepted acute stress disorder. It paid appellant wage-loss compensation on the supplemental rolls for disability from work commencing April 8, 2003 and on the supplemental rolls commencing April 1, 2005.

On July 18, 2020 SSA forwarded a completed Federal Employees Retirement System (FERS)/SSA dual benefits calculation form to OWCP. The form indicated that beginning in May 2013 appellant's SSA rate with FERS was \$1,372.70 and without FERS was \$862.60, beginning in December 2013 her SSA rate with FERS was \$1,393.20 and without FERS was \$875.50; beginning in December 2014 her SSA rate with FERS was \$1,416.80 and without FERS was \$890.30; beginning in December 2015 her SSA rate with FERS was \$1,416.80 and without FERS was \$890.30; beginning in December 2016 her SSA with FERS was \$1,421.00 and without FERS was \$892.90; beginning in December 2017 her SSA with FERS was \$1,449.40 and without FERS was \$910.70; beginning in December 2018 her SSA with FERS was \$1,489.90 and without FERS was \$936.10; and beginning in December 2019 her SSA with FERS was \$1,513.70 and without FERS was \$951.00.

In a September 3, 2020 letter, OWCP notified appellant that, based on information provided by SSA regarding the amount of her age-related retirement benefits which were partially attributable to federal service, her FECA wage-loss compensation would be offset by the portion of her SSA age-related retirement benefits attributable to her federal service.

In a preliminary determination of even date, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$47,136.84 because her wage-loss compensation benefits had not been reduced for the period May 1, 2013 through August 15, 2020 by the portion of her SSA benefits that were attributable to her federal service. It calculated the overpayment amount by determining the difference between her SSA amount with and without FERS for the stated period and adding this amount to find a total overpayment of \$47,136.84. OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment and requested that she complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit supporting financial documentation. Additionally, it notified her that, she could request a telephone conference, a final decision based on the written evidence, or a prerecoument hearing. OWCP allotted 30 days for appellant to respond.

On September 26, 2020 appellant requested waiver of recovery of the \$47,136.84 overpayment.

By decision dated November 3, 2020, OWCP finalized the preliminary determination that appellant had received an overpayment of compensation in the amount of \$47,136.84 for the period

May 1, 2013 through August 15, 2020, for which she was without fault, because her FECA wage-loss compensation payments were not offset by the portion of her SSA age-related retirement benefits attributable to her federal service. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery because the evidence of record did not establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$400.00 from appellant's continuing compensation payments every 28 days.

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 duty.² However, section 8116 also 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.³ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁴

Section 10.421(d) of OWCP's implementing regulations requires that it reduce the amount of compensation by the amount of any SSA benefits that are attributable to the federal service of the employee.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$47,136.84, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without appropriate offset for the period May 1, 2013 to August 15, 2020.

In its November 3, 2020 decision, OWCP found that an overpayment of compensation was created for the period May 1, 2013 to August 15, 2020. The overpayment was based on the evidence received from SSA with respect to retirement benefits paid to appellant. As noted, a claimant cannot receive both compensation for wage loss and SSA age-related retirement benefits

² *Id.* § 8102(a).

³ *Id.* at § 8116.

⁴ *Id.* at § 8129(a).

⁵ 20 C.F.R. § 10.421(d); *see R.R.*, Docket No. 19-0104 (issued March 9, 2020); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *L.J.*, 59 ECAB 264 (2007).

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

attributable to federal service for the same period.⁷ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service beginning May 1, 2013. OWCP, however, neglected to offset her FECA benefits until August 15, 2020. Accordingly, the Board finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation for the period May 1, 2013 to August 15, 2020.

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. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. The SSA provided appellant's SSA benefit rates with FERS and without FERS for the period May 1, 2013 to August 15, 2020. OWCP provided its calculations of the amount that it should have offset during the relevant period based on the SSA worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period May 1, 2013 to August 15, 2020 and finds that an overpayment of compensation in the amount of \$47,136.84 was created.⁸

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.⁹

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. The information is also used to determine the repayment schedule, if necessary.¹⁰

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

⁷ 5 U.S.C. § 8116(d)(2); *see W.C.*, Docket No. 20-1241 (issued February 9, 2021); *R.D.*, Docket No. 19-1598 (issued April 17, 2020); *C.M.*, Docket No. 19-1451 (issued March 4, 2020); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

⁸ *See W.C., id.*; *M.S.*, Docket No. 18-0740 (issued February 4, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

⁹ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see A.S.*, Docket No. 17-0606 (issued December 21, 2017).

¹⁰ 20 C.F.R. § 10.438(a); *R.G.*, Docket No. 21-0148 (issued June 7, 2021); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

The fact that a claimant is without fault in the creation of an overpayment does not preclude OWCP from recovering the overpayment.¹¹ Waiver is only possible if recovery would defeat the purpose of FECA or be against equity and good conscience.¹² Appellant, however, did not provide the requested financial documentation to OWCP.¹³

In its preliminary overpayment determination dated September 3, 2020, OWCP explained the importance of providing the completed Form OWCP-20 and supporting financial documentation. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. On September 26, 2020 appellant submitted the overpayment action request form. However, no additional evidence was received prior to OWCP's November 3, 2020 final overpayment determination. OWCP, therefore, did not have the necessary financial information to determine whether waiver of recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience within 30 days of the preliminary overpayment determination.¹⁴ It was, therefore, required to deny waiver of recovery of the overpayment.¹⁵

For the foregoing reasons, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

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 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 facts, so as to minimize any hardship.¹⁶

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$400.00 from appellant's continuing compensation payments every 28 days.

¹¹ See *M.W.*, Docket No. 20-1107 (issued March 17, 2021); *L.M.*, Docket No. 19-1197 (issued January 8, 2020); *M.D.*, Docket No. 19-1500 (issued February 24, 2020); *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *R.B.*, Docket No. 15-0808 (issued October 26, 2015).

¹² 20 C.F.R. § 10.436; *J.C.*, Docket No. 19-0122 (issued June 11, 2019).

¹³ *Id.* at § 10.438(b); *T.J.*, Docket No. 19-1242 (issued January 13, 2020).

¹⁴ See *R.G.*, *supra* note 10; *D.B.*, Docket No. 20-0592 (issued September 21, 2020); *R.M.*, Docket No. 19-1570 (issued June 1, 2020); *E.M.*, Docket No. 19-0857 (issued December 31, 2019); *G.G.*, Docket No. 19-0684 (issued December 23, 2019).

¹⁵ *Supra* note 12.

¹⁶ 20 C.F.R. § 10.441(a). See also *L.B.*, Docket No. 11-2076 (issued August 29, 2012); *G.B.*, Docket No. 11-1568 (issued February 15, 2012).

OWCP provided a Form OWCP-20 to appellant with the September 3, 2020 preliminary overpayment determination. Appellant did not complete the Form OWCP-20 or provide any financial information to support that she was financially unable to repay the debt prior to the final November 3, 2020 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁷ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.¹⁸ The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.¹⁹ Further, the Board has held that OWCP may properly collect an overpayment from the amount of compensation owed a claimant through a schedule award.²⁰ While appellant did not submit the financial information requested, the record reflects that her continuing 28-day compensation as of August 16, 2020 was \$1,922.76. Therefore, deducting \$400.00 every 28 days from her continuing compensation does not exceed the 25 percent repayment rate.²¹

As appellant did not submit the financial documentation to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in directing recovery of the \$47,136.84 overpayment at the rate of \$400.00 every 28 days from her continuing compensation payments.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$47,136.84, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset for the period May 1, 2013 to August 15, 2020. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$400.00 every 28 days from her continuing compensation payments.

¹⁷ *Id.* at § 10.438. *See also* *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

¹⁸ *See R.G.*, *supra* note 10; *J.A.*, Docket No. 19-1946 (issued July 13, 2020); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.3 (September 2018).

¹⁹ *Id.* at Chapter 6.500.8(c)(1) (September 2018).

²⁰ *W.L.*, Docket No. 16-0037 (issued June 23, 2016); *M.O.*, Docket No. 14-1133 (issued September 22, 2014).

²¹ *D.B.*, *supra* note 14; *E.M.*, *supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 30, 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