

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

T.M., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
FRANKLIN DELANO ROOSEVELT)
HOSPITAL, Montrose, NY, Employer)

Docket No. 21-0782

Issued: November 16, 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 March 11, 2021 appellant filed a timely appeal from an November 16, 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 to consider 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 \$23,577.91, for which she was without fault, for the period April 1, 2003 through August 15, 2020, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 16, 2020 decision, a appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.

without an appropriate offset; (2) whether it properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$200.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On March 22, 1991 appellant then a 53-year-old secretary, filed an occupational disease claim (Form CA-2) alleging that she developed an emotional condition due to factors of her federal employment. She noted that she first became aware of her condition on October 1990 and realized its relation to her federal employment on March 7, 1991. Appellant's retirement plan was listed on her claim form as Federal Employees Retirement System (FERS). OWCP accepted her claim for anxiety disorder, neurasthenia, malaise, fatigue, and aggravation of chronic fatigue syndrome. Appellant stopped work on March 18, 1991 and did not return. OWCP paid her wage-loss compensation on the periodic rolls commencing June 16, 2002.

On August 3, 2020 OWCP sent a FERS/SSA dual benefits calculation form to SSA.

On August 12, 2020 OWCP received a completed FERS/SSA dual benefits calculation form wherein SSA calculated appellant's SSA age-related retirement benefit rates with FERS and without FERS from April 2003 through December 2019. Beginning April 2003, the SSA rate with FERS was \$593.50 and without FERS was \$501.80. Beginning December 2003, the SSA rate with FERS was \$605.90 and without FERS was \$512.30. Beginning December 2004, the SSA rate with FERS was \$622.20 and without FERS was \$526.10. Beginning December 2005 the SSA rate with FERS was \$647.70 and without FERS was \$547.60. Beginning December 2006 the SSA rate with FERS was \$669.00 and without FERS was \$565.60. Beginning December 2007, the SSA rate with FERS was \$684.30 and without FERS was \$578.60. Beginning December 2008, the SSA rate with FERS was \$723.90 and without FERS was \$612.10. Beginning December 2009, the SSA rate with FERS was \$723.90 and without FERS was \$612.10. Beginning December 2010, the SSA rate with FERS was \$723.90 and without FERS was \$612.10. Beginning December 2011, the SSA rate with FERS was \$749.90 and without FERS was \$634.10. Beginning December 2012, the SSA rate with FERS was \$762.60 and without FERS was \$644.80. Beginning December 2013, the SSA rate with FERS was \$774.00 and without FERS was \$654.40. Beginning December 2014, the SSA rate with FERS was \$787.10 and without FERS was \$665.50. Beginning December 2015, the SSA rate with FERS was \$787.10 and without FERS was \$665.50. Beginning December 2016, the SSA rate with FERS was \$789.40 and without FERS was \$667.40. Beginning December 2017, the SSA rate with FERS was \$805.10 and without FERS was \$680.70. Beginning December 2018, the SSA rate with FERS was \$827.60 and without FERS was \$699.70. Beginning December 2019, the SSA rate with FERS was \$840.80 and without FERS was \$710.80.

On September 11, 2020 OWCP prepared a FERS offset calculation worksheet wherein it noted the calculation of appellant's SSA offset overpayment from April 1, 2003 through August 15, 2020 and computed a total overpayment amount of \$23,577.91. This form indicated that from April 1 through November 30, 2003 appellant received an overpayment in the amount of \$737.63. From December 1, 2003 through November 30, 2004 she received an overpayment in the amount of \$1,125.75. From December 1, 2004 through November 30, 2005 appellant received an overpayment in the amount of \$1,156.37. From December 1, 2005 through November 30, 2006 she received an overpayment in the amount of \$1,204.50. From December 1, 2006 through November 30, 2007 appellant received an overpayment in the amount of \$1,244.21. From December 1, 2007 through November 30, 2008 she received an overpayment in the amount of

\$1,275.37. From December 1, 2008 through November 30, 2009 appellant received an overpayment in the amount of \$1,345.29. From December 1, 2009 through November 30, 2010 she received an overpayment in the amount of \$1,345.29. From December 1, 2010 through November 30, 2011 appellant received an overpayment in the amount of \$1,345.29. From December 1, 2011 through November 30, 2012 she received an overpayment in the amount of \$1,397.24. From December 1, 2012 through November 30, 2013 appellant received an overpayment in the amount of \$1,417.48. From December 1, 2013 through November 30, 2014 she received an overpayment in the amount of \$1,439.14. From December 1, 2014 through November 30, 2015 appellant received an overpayment in the amount of \$1,463.21. From December 1, 2015 through November 30, 2016 she received an overpayment in the amount of \$1,467.22. From December 1, 2016 through November 30, 2017 appellant received an overpayment in the amount of \$1,468.02. From December 1, 2017 through November 30, 2018 she received an overpayment in the amount of \$1,496.90. From December 1, 2018 through November 30, 2019 appellant received an overpayment in the amount of \$1,539.02. From December 1, 2019 through August 15, 2020 she received an overpayment in the amount of \$1,110.00.

In a preliminary overpayment determination dated September 2, 2020, OWCP informed appellant that she received an overpayment of compensation in the amount of \$23,577.91, for the period April 1, 2003 through August 15, 2020, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset, which constituted a prohibited dual benefit. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method, and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records that support income and expenses. Additionally, OWCP provided an overpayment action request form and further notified appellant 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. No additional evidence was received.

By decision dated November 16, 2020, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$23,577.91 for the period April 1, 2003 through August 15, 2020, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset, which constituted a prohibited dual benefit. 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 failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$200.00 every 28 days from appellant's continuing compensation payments.

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.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 OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.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 age-related retirement benefits 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 OWCP properly determined that appellant received an overpayment of compensation in the amount of \$23,577.91, for which she was without fault, for the period April 1, 2003 through August 15, 2020, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA retirement benefits attributable to federal service for the same period.⁷ The record supports that appellant received FECA wage-loss compensation on the periodic rolls beginning June 16, 2002. Appellant received SSA age-related retirement benefits beginning April 2003. The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to her federal service commencing April 1, 2003. Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.⁸

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 appellant's specific SSA age-related retirement benefits that were attributable to federal service. SSA provided its rates with FERS and without FERS for specific periods April 1, 2003 through August 15, 2020. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$23,577.91.

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see 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 20 C.F.R. § 10.421(d); *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *S.M.*, *supra* note 5.

⁸ *Id.*

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$23,577.91 for the period April 1, 2003 through August 15, 2020.

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.⁹

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary 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 the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹⁰ An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹¹

Additionally, 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 in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹²

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.¹³

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 of recovery of the overpayment must be considered, and repayment is still required unless adjustment

⁹ 5 U.S.C. § 8129.

¹⁰ 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(2) (September 2020).

¹¹ *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *id.* at Chapter 6.400.4.a(3).

¹² 20 C.F.R. § 10.437(a)(b).

¹³ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁴ However, appellant had the responsibility to provide financial information to OWCP,¹⁵ but failed to do so.

In its preliminary overpayment determination, dated September 21, 2020, OWCP requested that appellant provide a completed Form OWCP-20 with supporting financial documentation, including copies of income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support income and expenses. It advised her that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant did not provide the requested Form OWCP-20 or submit any financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

Accordingly, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides in pertinent part 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 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.¹⁶

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$200.00 every 28 days from appellant's continuing compensation payments.

OWCP provided appellant a Form OWCP-20 with its September 21, 2020 preliminary overpayment determination. It afforded her the opportunity to provide appropriate financial information and documentation to OWCP. However, appellant did not complete the Form OWCP-20 or provide financial documentation to support her income and expenses prior to the final November 16, 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

¹⁴ *Id.* at § 10.436.

¹⁵ *Id.* at § 10.438; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

¹⁶ 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).

¹⁷ *Id.* at § 10.438(a).

designed to collect the debt promptly and in full.¹⁸ As appellant did not submit supporting financial documentation to OWCP as requested, the Board finds that OWCP properly required recovery of the \$23,577.91 overpayment at the rate of \$200.00 every 28 days from appellant's continuing compensation payments.¹⁹

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$23,577.91, for which she was without fault, for the period April 1, 2003 through August 15, 2020, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an 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 \$200.00 every 28 days from her continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 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

¹⁸ See *J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Liquidation, *Responsibility for the Collection and Settlement of Debts*, Chapter 6.300.2 (September 2020). 20 C.F.R. § 10.436; *id.* at Chapter 6.400.4a(2).

¹⁹ See *J.A.*, *id.*; *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).