

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

K.M., Appellant)	
)	
and)	Docket No. 21-0917
)	Issued: November 10, 2021
)	
U.S. POSTAL SERVICE, BRICK POST OFFICE, Brick, NJ, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 13, 2021 appellant filed a timely appeal from a November 26, 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 \$6,474.86 for which she was without fault because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset for the period April 1 through October 12, 2019; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on March 21, 2005 appellant, then a 51-year-old clerk, sustained left shoulder impingement syndrome when she pulled flats from a case while in the performance of duty. Appellant stopped work on March 22, 2005. On November 8, 2005 and August 24, 2012 OWCP accepted that appellant sustained recurrences of disability on May 16, June 13, August 12, and September 27, 2005 and March 29, 2012. It paid appellant wage-loss compensation on the supplemental rolls effective May 10, 2005.

On October 8, 2019 SSA forwarded a completed Federal Employees Retirement System (FERS)/SSA dual benefits calculation form to OWCP. The form indicated that, beginning in April 2019, appellant's SSA rate with FERS was \$1,415.00 and without FERS was \$407.80.

OWCP, in a letter dated November 4, 2019, informed appellant that her compensation would be offset by the portion of her SSA age-related retirement benefits attributable to her federal service, effective November 9, 2019.

In a preliminary overpayment determination dated November 13, 2019, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$6,474.86 because her wage-loss compensation benefits had not been reduced for the period April 1 through October 12, 2019 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 \$6,474.86. OWCP further advised appellant of its preliminary overpayment 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 precoupment hearing. OWCP allotted 30 days for appellant to respond.

On November 25, 2019 appellant completed an overpayment action request form and requested that OWCP make a decision based on the written evidence. She claimed that she was not aware of an offset because she was receiving SSA age-related retirement benefits and not SSA disability benefits. In an accompanying Form OWCP-20 of even date, appellant reported monthly income of \$2,873.22, including SSA benefits of \$1,279.00 and FECA compensation benefits of \$1,594.22. She reported monthly expenses which included: \$1,480.00 for rent; \$50.00 for water, \$120.00 for electric; \$40.00 for gas; \$25.00 for renter's insurance; \$240.00 for cable and internet service; \$200.00 for cell phones; \$240.00 for car maintenance; \$209.00 for car insurance; \$250.00 for food; \$150.00 for clothing; \$75.00 for prescription and medical co-payments; \$75.00 for personal necessities; \$200.00 for miscellaneous expenses; and \$290.00 for credit card payments, totaling \$3,644.00. Appellant reported no funds. She submitted limited supporting documentation of her income and expenses, consisting of bills for cell phone service in the amount of \$656.95, gas in the amount of \$92.97, cable and internet service in the amount of \$230.25, water and sewage in the amount of \$80.39, electric in the amount of \$110.19, and a state tax bill for \$406.72.

On March 10, 2020 OWCP received an election of benefits form signed by appellant on January 14, 2020 in which she elected to receive Office of Personnel Management (OPM) retirement benefits, effective March 31, 2020.

OWCP, by decision dated November 26, 2020, finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$6,474.86 for the period April 1 through October 12, 2019 for which she was not at fault, because her FECA 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 she did not provide financial documentation supporting all of her reported expenses. OWCP required recovery of the overpayment in full within 30 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 \$6,474.86 for which he was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset for the period April 1 through October 12, 2019.

In its November 20, 2020 decision, OWCP found that an overpayment of compensation was created for the period April 1 through October 12, 2019. 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.* at § 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 April 1, 2019. OWCP, however, neglected to offset her FECA benefits until October 12, 2019. Accordingly, the Board finds that it properly determined that appellant received an overpayment of wage-loss compensation for the period April 1 through October 12, 2019.

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.⁸

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.⁹ 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.¹⁰

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. The information is also used to determine the repayment schedule, if necessary.¹¹ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹²

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 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).

⁹ 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).

¹⁰ *Id.* at § 10.437(a)(b).

¹¹ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹² *Id.* at § 10.438(b).

ANALYSIS -- ISSUE 2

The Board further 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.¹³

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not provided the necessary supporting financial information. Appellant submitted a completed Form OWCP-20 on November 25, 2019 and noted a total monthly income of \$2,873.22 and total monthly expenses of \$3,644.00. However, she only submitted limited supporting financial documentation of her cell phone, utility, and cable bills, and a state tax bill. No other documentation supporting her purported income or expenses was submitted. Although appellant had been advised to submit documentation substantiating all her income and expenses in OWCP's preliminary overpayment determination dated November 13, 2019, she failed to provide sufficient documentation of her income and expenses as required by section 10.438 of its regulations.¹⁴ OWCP, therefore, did not have the financial information necessary to determine if appellant needed substantially all of her current income to meet current ordinary and necessary living expenses.¹⁵

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.¹⁶ Consequently, as she did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.¹⁷

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, she has failed to establish that OWCP acted improperly by denying waiver of recovery of the \$6,474.86 overpayment.¹⁸

¹³ *Id.* at § 10.436.

¹⁴ *A.W.*, Docket No. 20-1210 (issued June 3, 2021); *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *R.W.*, Docket No. 18-1059 (issued February 6, 2019).

¹⁵ *Supra* notes 11 and 14.

¹⁶ *See D.B.*, Docket No. 21-0009 (issued June 7, 2021); *P.B.*, *supra* note 14; *G.G.*, Docket No. 19-0684 (issued December 23, 2019); *V.T.*, Docket No. 18-0628 (issued October 25, 2018).

¹⁷ *See D.B.*, *id.*; *G.G.*, *id.*; *A.F.*, Docket No. 19-0054 (issued June 12, 2019); *see S.B.*, Docket No. 16-1795 (issued March 2, 2017).

¹⁸ *See A.W.*, *supra* note 14; *S.W.*, Docket No. 20-0363 (issued November 23, 2020); *B.C.*, Docket No. 19-0629 (issued June 2, 2020).

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$6,474.86 for which he was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset for the period April 1 through October 12, 2019. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.¹⁹

ORDER

IT IS HEREBY ORDERED THAT the November 26, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 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

¹⁹ With respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *D.J.*, Docket No. 19-1163 (issued September 22, 2020); *J.R.*, Docket No. 19-1418 (issued March 4, 2020). As appellant was not in receipt of continuing wage-loss compensation at the time of OWCP's overpayment determination, the Board does not have jurisdiction over the method of recovery of the overpayment in this case. *See id.*; *Miguel A. Muniz*, 54 ECAB 217 (2002); *Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.