

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

_____)	
T.T., Appellant)	
)	
and)	Docket No. 20-0524
)	Issued: October 27, 2021
DEPARTMENT OF THE NAVY, MARE)	
ISLAND NAVAL SHIPYARD, Vallejo, CA,)	
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 January 6, 2020 appellant filed a timely appeal from a December 19, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (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 OWCP properly determined that appellant received an overpayment of compensation in the amount of \$6,934.82 during the period August 1, 2016

¹ The Board notes that, following the December 19, 2019 decision, the Board and 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.*

² 5 U.S.C. § 8101 *et seq.*

through October 12, 2019, for which she was without fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation 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 \$470.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On August 10, 1987 appellant, then a 49-year-old procurement clerk (typing), filed an occupational disease claim (Form CA-2) alleging that she developed low back pain due to factors of her federal employment.⁴ She noted that she first became aware of her condition on June 12, 1985 and realized its relation to her federal employment on April 15, 1987. Appellant did not stop work. On September 20, 1989 OWCP accepted her claim for aggravation of bulging disc L3-S1. It paid appellant's wage-loss compensation on the supplemental rolls through March 9, 1989 and then on the periodic rolls beginning April 7, 1991.

A notification of personnel action (Form SF-50) from the employing establishment indicated that appellant's retirement coverage was under the Federal Employees Retirement System (FERS).

On August 16, 2019 OWCP forwarded SSA a FERS/SSA dual benefits calculation worksheet to determine whether an offset of compensation benefits was required.

On October 7, 2019 OWCP received SSA's completed FERS/SSA dual benefits calculation worksheet dated October 2, 2019, wherein SSA listed appellant's SSA age-related retirement benefit rates with and without a FERS offset as follows: beginning August 2016 the monthly SSA rate with FERS was \$1,147.10 and without FERS was \$970.90; beginning December 1, 2016 appellant's SSA rate with FERS was \$1,150.50, and without FERS was \$973.80; beginning December 1, 2017 appellant's SSA rate with FERS was \$1,173.50, and without FERS was \$993.20; and beginning December 1, 2018 appellant's SSA rate with FERS was \$1,206.30 and without FERS was \$1,021.00.

On October 21, 2019 OWCP notified appellant that FECA requires that her continuing compensation benefits be reduced by that portion of SSA retirement benefits attributable to her federal service.

OWCP completed a FERS offset overpayment calculation form on November 8, 2019. It determined the overpayment amount by multiplying the FERS offset amount by the number of

³ Docket No. 08-0128 (issued June 4, 2008); Docket No. 92-2117 (issued December 21, 1993).

⁴ The case record indicates that appellant received disability benefits from SSA from November 1988 through July 2016.

days in each period August 1, 2016 through October 21, 2019. OWCP found that: from August 1 through November 30, 2016, appellant received an overpayment of compensation in the amount of \$708.67; from December 1, 2016 through November 30, 2017 appellant received an overpayment of compensation in the amount of \$2,126.23; from December 1, 2017 through November 30, 2018 appellant received an overpayment of compensation in the amount of \$2,169.54; and from December 1, 2018 through October 21, 2019 appellant received an overpayment of compensation in the amount of \$1,930.38. This resulted in a total overpayment in the amount of \$6,934.82.

On November 8, 2019 OWCP made a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$6,934.82, for which she was without fault, because her wage-loss compensation benefits for the period August 1, 2016 through October 12, 2019 that had not been reduced to offset her SSA age-related retirement benefits attributable to federal service. 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 provide supporting financial documentation including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, OWCP notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written record or a prerecoumpment hearing.

On December 2, 2019 OWCP received an undated Form OWCP-20. Appellant advised that she had none of the incorrectly paid checks or payments in her possession. She did not otherwise complete the form. Appellant provided a copy of her 2018 federal income tax return.

By decision dated December 19, 2019, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$6,934.82 for the period August 1, 2016 through October 12, 2019. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, because the Form OWCP-20 was incomplete. OWCP required recovery of the overpayment by deducting \$470.00 from appellant's continuing compensation payments beginning January 5, 2019.

LEGAL PRECEDENT

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.⁵ 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.⁶

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

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8116.

attributable to the employee's federal service.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received a \$6,934.82 overpayment during the period August 1, 2016 through October 12, 2019 because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

In its December 19, 2019 decision, OWCP found that an overpayment of compensation was created for the period August 1, 2016 through October 12, 2019. The overpayment determination was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant. A claimant cannot receive both FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁹ The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service during the period August 1, 2016 through October 12, 2019. Consequently, the fact of overpayment has been established.

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 benefit rates that were attributable to her federal service. SSA provided her age-related retirement benefit rates with FERS, and without FERS for specific periods commencing August 1, 2016 through October 12, 2019. OWCP provided its overpayment calculations for each relevant period based on SSA's FERS offset calculation worksheet in its November 8, 2019 preliminary overpayment determination.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period August 1, 2016 through October 12, 2019 and finds that it properly determined an overpayment of compensation in the amount of \$6,934.82 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

⁷ 20 C.F.R. § 10.421(d); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁸ FECA Bulletin No. 97-09 (February 3, 1997); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁹ 5 U.S.C. § 8116(d)(2); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

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

recovery would defeat the purpose of FECA or would be against equity and good conscience.¹¹ The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.¹²

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.¹³ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁴

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.¹⁵

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.¹⁶ 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.¹⁷

ANALYSIS -- ISSUE 2

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

¹¹ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

¹² *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹³ 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 2018).

¹⁴ *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).

¹⁵ 20 C.F.R. § 10.437(a)(b).

¹⁶ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁷ *Id.* at § 10.438(b).

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 or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁸ Appellant, however, did not provide a fully completed Form OWCP-20 or provide supporting financial documentation to OWCP.¹⁹

In its preliminary determination dated November 8, 2019, OWCP advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant did not submit a fully completed Form OWCP-20, nor did she provide supporting financial documentation. As a result, OWCP 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.²⁰ The Board thus finds that OWCP properly denied waiver of recovery of the 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.²¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$470.00 every 28 days from appellant's continuing compensation payments.

The record supports that, in requiring recovery of the overpayment by deducting \$470.00 from appellant's compensation payments every 28 days, OWCP took into consideration the factors set forth in section 10.441 and found that this method of recovery would minimize any resulting hardship on appellant. Appellant failed to provide sufficient information regarding her income, expenses, and assets, and OWCP followed minimum collection guidelines by requiring installments large enough to collect the full debt promptly. Therefore, OWCP properly required

¹⁸ *Id.* at § 10.436.

¹⁹ *Id.* at § 10.438(b); *D.M.*, Docket No. 20-0694 (issued December 31, 2020); *M.D.*, Docket No. 19-1500 (issued February 24, 2020); *T.J.*, Docket No. 19-1242 (issued January 13, 2020).

²⁰ *D.M.*, *id.*; *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

²¹ 20 C.F.R. § 10.441(a); *A.F.*, *supra* note 11; *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

recovery of the overpayment by deducting \$400.00 from her continuing compensation payments every 28 days.²²

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$6,934.82 during the period August 1, 2016 through October 12, 2019, for which she was without fault, as she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without 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 \$470.00 every 28 days from her continuing compensation payments.

²² *Supra* note 13 at Chapter 6.500.8(c)(1) (September 2018); *see also* K.C., Docket No. 21-0430 (issued August 13, 2021).

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 27, 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