

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

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<b>B.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-0431</b>
	)	<b>Issued: October 20, 2021</b>
<b>U.S. POSTAL SERVICE, HAMERSVILLE</b>	)	
<b>POST OFFICE, Hamersville, OH, Employer</b>	)	
_____	)	

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 28, 2021 appellant filed a timely appeal from a December 21, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 \$15,659.79 for the period October 1, 2019 through December 5, 2020 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; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$463.35 from appellant's continuing compensation payments every 28 days.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On December 29, 2016 appellant, then a 63-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a lumbar strain due to factors of her federal employment, which included twisting and lifting mail repetitively. The claim form indicated that her retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for lumbar strain and sciatica. It paid appellant wage-loss compensation on the supplemental rolls commencing February 4, 2017 and on the periodic rolls as of April 30, 2017.

On November 4, 2020 OWCP forwarded a FERS/SSA dual benefits calculations form to SSA to determine whether an offset of benefits was required.

On November 12, 2020 OWCP received a FERS/SSA dual benefit calculation transmittal from SSA setting forth appellant's SSA rate with FERS and without FERS commencing October 2019. With FERS, appellant was entitled to a monthly SSA rate of \$1,169.70 effective October 2019 and \$1,188.40 effective December 2019. Without FERS, she would have been entitled to a monthly SSA rate of \$85.10 effective October 2019 and \$86.40 effective December 2019.

On November 17, 2020 OWCP completed a FERS offset calculation form wherein it tabulated the overpayment from October 1, 2019 through December 5, 2020. It determined the overpayment amount by multiplying the daily FERS offset amount by the number of days in each period. OWCP related that from October 1 through November 30, 2019 an overpayment was created in the amount of \$2,181.36, and from December 1, 2019 through December 5, 2020 in the amount of \$13,478.43. It found that the overpayment totaled \$15,659.79.

In a preliminary overpayment determination dated November 17, 2020, OWCP advised appellant that she received a \$15,659.79 overpayment of compensation for the period October 1, 2019 through December 5, 2020 because her wage-loss compensation benefits had not been reduced by her SSA age-related retirement benefits attributable to federal service. It also made a preliminary determination that she was without fault in the creation of this overpayment. OWCP advised appellant that she could submit evidence challenging the fact or amount of the overpayment. It instructed her to complete an overpayment recovery questionnaire (Form OWCP-20) to determine whether waiver should be granted, and if not, a reasonable repayment schedule would be created. OWCP informed appellant that she should 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. It provided 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.

On December 2, 2020 appellant completed the Form OWCP-20. She requested waiver of recovery of the overpayment because she did not realize that she had received an overpayment. Appellant reported \$2,915.00 in monthly income, \$2,226.78 in monthly expenses, and \$122.00 in assets (cash, checking account, and savings account). However, she did not submit any supporting financial documentation.

By final decision dated December 21, 2020, OWCP found that appellant received an overpayment of compensation in the amount of \$15,659.79 for the period October 1, 2019 through December 5, 2020 for which she was without fault. It also determined that, although she was not at fault in the creation of the overpayment, the overpayment could not be waived as there was no evidence to substantiate that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP explained that appellant's monthly income exceeded her monthly expenses and, therefore, waiver of recovery of the overpayment was not warranted. It required recovery of the overpayment by deduction of \$463.35 from her continuing compensation payments every 28 days.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102 of FECA<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$15,659.79 for the period October 1, 2019 through December 5, 2020 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset.

In its December 21, 2020 decision, OWCP found that an overpayment of compensation was created for the period October 1, 2019 through December 5, 2020. The overpayment 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

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at § 8102.

<sup>4</sup> *Id.* at § 8116.

<sup>5</sup> 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).

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

retirement benefits attributable to federal service for the same period.<sup>7</sup> The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service during the period October 1, 2019 through December 5, 2020. Consequently, the fact of overpayment has been established.<sup>8</sup>

To determine the amount of the overpayment, the portion of the SSA benefits that were attributed to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA benefits that were attributable to federal service. The SSA provided the SSA rate with FERS, and without FERS for the specific period commencing October 1, 2019 through December 5, 2020. OWCP provided its calculations for each relevant period based on the SSA worksheet and in its November 17, 2020 preliminary overpayment determination.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period October 1, 2019 through December 5, 2020 and finds that an overpayment in the amount of \$15,659.79 was created.

### **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.<sup>9</sup> Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>10</sup>

Section 10.436 of OWCP's implementing regulations provides that 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 from data provided by the Bureau of Labor Statistics.<sup>11</sup> An individual is deemed to need

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<sup>7</sup> 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).

<sup>8</sup> *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

<sup>9</sup> 5 U.S.C. § 8129(a)-(b).

<sup>10</sup> *C.B.*, Docket No. 20-0031 (issued July 27, 2020); *L.S.*, 59 ECAB 350 (2008).

<sup>11</sup> 20 C.F.R. § 10.436. OWCP's procedures provide that the assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2018).

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.<sup>12</sup>

Section 10.437 of OWCP's implementing regulations provides that 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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>13</sup> OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup>

### 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 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.<sup>17</sup>

OWCP found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience as appellant's monthly income exceeded her monthly

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<sup>12</sup> *Id.* at Chapter 6.400.4(a)(3) (September 2018).

<sup>13</sup> 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

<sup>14</sup> *Supra* note 11 at Chapter 6.400.4(c)(3) (September 2018).

<sup>15</sup> 20 C.F.R. § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>16</sup> *Id.* at § 10.438(b).

<sup>17</sup> *Supra* note 15.

expenses. The Board finds that her monthly income exceeded her monthly expenses by the allotted amount. Consequently, OWCP properly denied waiver of recovery of the overpayment.<sup>18</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 of Title 20 of the Code of Federal Regulations provides that if an overpayment of compensation has been made to one entitled to future payments, proper adjustment shall be made by decreasing subsequent 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.”<sup>19</sup> When an individual fails to provide requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.<sup>20</sup>

### **ANALYSIS -- ISSUE 3**

The record supports that, in requiring repayment of the overpayment by deducting \$463.35 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. Therefore, OWCP properly required repayment of the overpayment by deducting \$463.35 from her compensation payments every 28 days.<sup>21</sup>

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$15,659.79 for the period October 1, 2019 through December 5, 2020 for which she was without fault, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation 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 \$463.35 from her continuing compensation payments every 28 days.

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<sup>18</sup> *Id.*

<sup>19</sup> 20 C.F.R. § 10.441.

<sup>20</sup> *J.R.*, Docket No. 20-1094 (issued January 5, 2021); *R.O.*, Docket No. 18-0076 (issued August 3, 2018); *Gail M. Roe*, 47 ECAB 268 (1995).

<sup>21</sup> *See id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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