

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$52,892.77, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits for the period February 1, 2015 through October 10, 2020, 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 \$702.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On November 2, 2006 appellant, then a 55-year-old inventory management specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 8, 2006 she sustained injury when she stepped into a pothole, thereby slightly twisting her left ankle, and fell to the ground on her right knee the palms of her hands while in the performance of duty. She stopped work on the date of the claimed injury. OWCP accepted that appellant sustained an open wound of the right knee, derangement of the medial and lateral menisci of the right knee, bilateral sprains of the shoulders/upper arms, brachial neuritis or radiculitis, rotator cuff sprain of the left shoulder, and reaction to spinal or lumbar puncture. It paid her wage-loss compensation for disability from work on the supplemental rolls commencing May 28, 2009 and on the periodic rolls commencing June 30, 2013.

On August 28, 2020 OWCP requested that SSA provide information as to whether appellant had received Federal Employees Retirement System (FERS)/SSA dual benefits.

On September 15, 2020 SSA completed a FERS/SSA dual benefit calculation form, which indicated appellant's SSA benefit rates with a FERS offset and without a FERS offset commencing February 1, 2015. Beginning February 1, 2015, the SSA rate with FERS was \$1,696.90 and without FERS was \$943.30; beginning December 1, 2015 the SSA rate with FERS was \$1,696.90 and without FERS was \$943.30; beginning December 1, 2016 the SSA rate with FERS was \$1,701.90 and without FERS was \$946.00; beginning December 1, 2017 the SSA rate with FERS was \$1,735.90 and without FERS was \$964.90; beginning December 1, 2018 the SSA rate with FERS was \$1,784.50 and without FERS was \$991.90; and beginning December 1, 2019 the SSA rate with FERS was \$1,813.00 and without FERS was \$1,007.80.

On October 20, 2020 OWCP prepared a FERS offset calculation based on the SSA documentation wherein it noted the calculation of appellant's overpayment from February 1, 2015. It determined that during the period February 1 through November, 2015 appellant received an overpayment of \$7,527.72; during the period December 1, 2015 through November 30, 2016 she received an overpayment of \$9,092.89; during the period December 1, 2016 through November 30, 2017 she received an overpayment of \$9,095.72; during the period December 1, 2017 through November 30, 2018 she received an overpayment of \$9,277.42; during the period December 1, 2018 through November 30, 2019 she received an overpayment of \$9,537.33; and during the period December 1, 2019 through October 10, 2020 she received an overpayment of \$8,361.69. OWCP found a total overpayment in the amount of \$52,892.77.

In a preliminary overpayment determination dated October 21, 2020, OWCP advised appellant that it had preliminarily determined that she received a \$52,892.77 overpayment of

compensation for the period February 1, 2015 through October 10, 2020, because she received SSA age-related retirement benefits based on her age and attributable to her federal service, without an offset being made, while she received FECA compensation benefits. It also preliminarily determined that appellant was without fault in the creation of the overpayment. OWCP instructed her to submit a completed overpayment recovery questionnaire (Form OWCP-20), to determine whether waiver of recovery of the overpayment should be granted. It informed her 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. OWCP provided appellant with 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 November 20, 2020 OWCP received appellant's Form OWCP-20, which indicated the appellant had \$67,870.61 in assets, however, no supporting financial documentation was received

By decision dated December 1, 2020, OWCP finalized its preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$52,892.77, for the period February 1, 2015 through October 10, 2020, because she received SSA retirement benefits based on her age and attributable to her federal service, without an offset being made, while she received FECA compensation benefits. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because her assets exceeded the allowance resource base of \$6,200.00 for a claimant, like appellant, with no spouse or dependent. OWCP indicated that appellant submitted no financial documents supporting her claimed monthly expenses and required recovery of the overpayment by deducting \$702.00 from her 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 his or her duty.⁴ 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.⁵

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.⁶ 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.⁷

⁴ 5 U.S.C. § 8102.

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁷ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$52,892.77, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period February 1, 2015 through October 10, 2020, without an appropriate offset.⁸

The evidence of record indicates that, while appellant was receiving wage-loss compensation benefits under FECA, she was also receiving SSA age-related retirement benefits based upon her federal service. As explained, a claimant cannot receive concurrent wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period.⁹ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service during the period February 1, 2015 through October 10, 2020 while she was receiving wage-loss compensation on the periodic rolls. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA's 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. SSA provided its rate with FERS and without FERS for specific periods from February 1, 2015 through October 10, 2020. OWCP properly calculated the overpayment amount for each relevant period based on SSA's worksheet.

On appeal counsel argues that the amount the overpayment was incorrect because appellant had not received SSA benefits in the amounts alleged by OWCP, but counsel did not identify evidence supporting this assertion.

The Board thus finds that appellant received prohibited dual benefits in the amount of \$52,892.77 for the period February 1, 2015 through October 10, 2020, without an appropriate offset.¹⁰

LEGAL PRECEDENT -- ISSUE 2

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.¹¹ Section 8129 of FECA¹² provides that an overpayment must be recovered 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." Thus, a finding that appellant was

⁸ *E.L.*, Docket No. 20-0723 (issued October 15, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

⁹ *E.L.*, *id.*

¹⁰ *See L.W.*, Docket No. 19-0787 (issued October 23, 2019); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

¹¹ *See L.D.*, Docket No. 18-1317 (issued April 17, 2019); *P.J.*, Docket No. 18-0248 (issued August 14, 2018); *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹² 5 U.S.C. § 8129(1)-(b); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see D.C.*, Docket No. 17-0559 (issued June 21, 2018).

without fault does not automatically result in waiver of recovery 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.¹³

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her 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.¹⁴ An individual's liquid assets include, but are not limited to, cash on hand, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits. Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.¹⁵

According to 20 C.F.R. § 10.437 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.¹⁶ To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained, and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.¹⁷

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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver of recovery of the overpayment.¹⁸

ANALYSIS -- ISSUE 2

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

¹³ A.C., *id.*; see V.T., Docket No. 18-0628 (issued October 25, 2018).

¹⁴ 20 C.F.R. § 10.436. OWCP's procedures provide that a claimant is deemed to need substantially all of his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020). OWCP's procedures further provide that 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. *Id.* at Chapter 6.400.4a(2).

¹⁵ *Id.* at Chapter 6.400.4b(3)(a), (b).

¹⁶ 20 C.F.R. § 10.437(a), (b).

¹⁷ *Id.* at § 10.437(b)(1).

¹⁸ 20 C.F.R. § 10.438.

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.¹⁹ Appellant, however, had the responsibility to provide financial information to OWCP.

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

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not shown both that she needs substantially all of her current income to meet ordinary and necessary living expenses and that her assets do not exceed the allowable resource base. As properly determined by OWCP, she did not qualify for waiver of recovery of the overpayment because her assets exceeded the allowable resource base of \$6,200.00 for a claimant, like herself, who had no spouse or dependent.²⁰ Because appellant has not met the second prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it was unnecessary for OWCP to consider the first prong of the test, *i.e.*, whether appellant needs substantially all of her current income to meet current ordinary and necessary living expenses.

The Board finds, for the reasons noted above, that OWCP properly denied waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.²¹ 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."²² When an individual fails to provide the requested information on income, expenses and assets, OWCP should follow minimum collection

¹⁹ *Id.* at § 10.436.

²⁰ *See supra* note 14.

²¹ *R.W.*, Docket No. 19-0451 (issued August 7, 2019); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Albert Pinero*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

²² 20 C.F.R. § 10.441; *see A.F.*, *supra* note 8; *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

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.²³

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$702.00 from appellant's continuing compensation payments every 28 days.

The record supports that, in requiring recovery of the overpayment by deducting \$702.00 from appellant's continuing 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. OWCP followed minimum collection guidelines by requiring installments large enough to collect the full debt promptly. Therefore, the Board finds that OWCP properly required recovery of the overpayment by deducting \$702.00 from appellant's continuing compensation payments every 28 days.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$52,892.77, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period February 1, 2015 through October 10, 2020. The Board further finds that OWCP properly denied appellant's request for waiver of recovery of the overpayment, and properly required recovery of the overpayment by deducting \$702.00 from appellant's continuing compensation payments every 28 days.

²³ *R.O.*, Docket No. 18-0076 (issued August 3, 2018); *Gail M. Roe*, 47 ECAB 268 (1995).

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2020 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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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