

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

_____)
B.H., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Knoxville, TN, Employer)
_____)

Docket No. 20-1437
Issued: August 18, 2022

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, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 9, 2020 appellant filed a timely appeal from a March 5, 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.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$27,940.06 for the period July 1, 2018 through January 4, 2020, for which she was without fault, because she concurrently received FECA wage-

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the March 5, 2020 decision, 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.*

loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On December 1, 2015 appellant, then a 61-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 19, 2015 she suffered a left knee contusion, lumbar strain, and cervical sprain when her work vehicle was struck from behind while in the performance of duty. OWCP accepted the claim for left knee contusion, cervical spine sprain, and lumbar spine sprain. It paid appellant wage-loss compensation on the supplemental rolls from February 5 through March 5, 2016 and on the periodic rolls as of March 6, 2016.

In a letter dated April 17, 2019, the employing establishment requested that OWCP determine whether appellant's SSA age-related retirement benefits required a Federal Employee Retirement System (FERS) offset. It noted that she was 65 years of age and may have been in receipt of SSA benefits due to age, not disability.

On April 30, 2019 OWCP provided SSA with a FERS/SSA dual benefits form.

On December 23, 2019 SSA completed the dual benefits form and confirmed that appellant received SSA age-related retirement benefits, effective July 2018. It reported that beginning July 2018, appellant's SSA rate with FERS was \$1,744.80 and without FERS was \$244.10; beginning December 2018 appellant's SSA rate with FERS was \$1,793.60 and without FERS was \$250.90; and beginning December 2019 appellant's SSA rate with FERS was \$1,822.20 and without FERS was \$254.90.

In a FERS offset overpayment calculation form dated January 23, 2020, OWCP documented its calculation of appellant's SSA/FERS offset overpayment for the period July 1, 2018 through January 4, 2020. The total overpayment was determined to be \$27,940.06. OWCP found that appellant received an overpayment of compensation in the amount of \$7,569.46 for the period July 1 through November 30, 2018; an overpayment in the amount of \$18,562.18 for the period December 1, 2018 through November 30, 2019; and an overpayment in the amount of \$1,808.42 for the period December 1, 2019 through January 4, 2020.

In a letter dated January 23, 2020, OWCP notified appellant that her FECA wage-loss compensation benefits had been adjusted because it had been determined that she was receiving prohibited FERS/SSA dual benefits.

In a preliminary determination dated February 4, 2020, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$27,940.06 because her wage-loss compensation benefits had not been reduced for the period July 1, 2018 through January 4, 2020 by the portion of her SSA age-related retirement benefits that were attributable to her federal service. OWCP found appellant to be without fault in the creation of the overpayment and forwarded an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). It requested that she provide supporting financial documentation including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records

to support her reported income and expenses. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated March 5, 2020, OWCP finalized the preliminary determination that appellant had received an overpayment of compensation in the amount of \$27,940.06, for the period July 1, 2018 through January 4, 2020, for which she was without fault, because it had failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to her federal service. It 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 was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP requested that appellant forward recovery of the \$27,940.06 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 his or her duty.³ 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.⁴

Section 10.421(d) of OWCP's implementing regulations requires that it 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 provides that FECA benefits have to be adjusted for the FERS portion of SSA age-related retirement 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 OWCP properly determined that appellant received an overpayment of compensation in the amount of \$27,940.06, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period July 1, 2018 through January 4, 2020 without an appropriate offset.

The record indicates that, while appellant was receiving FECA wage-loss compensation, she was also receiving SSA age-related retirement benefits attributable to federal service. As noted, a claimant cannot receive both compensation for wage loss and SSA age-related retirement

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.W.*, Docket No. 19-0787 (issued October 23, 2019).

⁶ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also S.M.*, Docket No. 20-0152 (issued August 10, 2020).

benefits attributable to federal service for the same period.⁷ Consequently, the fact of the overpayment has been established.

To determine the amount of the overpayment, the portion of the SSA 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 the SSA rate with FERS and without FERS for specific periods commencing July 1, 2018 through January 4, 2020. OWCP provided its overpayment calculations for each relevant period based on the SSA worksheet. No contrary evidence was provided.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period July 1, 2018 through January 4, 2020, and finds that an overpayment of compensation in the amount of \$27,940.07 was created.⁸

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of FECA provides: "Adjustment or recovery [of an overpayment] by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience."⁹

Recovery of an overpayment will defeat the purpose of FECA when 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 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 \$50.00.¹¹ Also, 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.¹² An individual's liquid assets

⁷ See *I.U.*, Docket No. 20-0129 (issued July 31, 2020).

⁸ *Id.*

⁹ 5 U.S.C. § 8129(b).

¹⁰ 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 2018). 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).

¹¹ *Id.* at Chapter 6.400.4(a)(3); *C.B.*, Docket No. 20-0031 (issued July 27, 2020); *N.J.*, Docket No. 19-1170 (issued January 10, 2020).

¹² See *supra* note 10 at Chapter 6.400.4(a)(2) (September 2018).

include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.¹³

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.¹⁴

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.¹⁵

ANALYSIS -- ISSUE 2

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

As OWCP found appellant not at 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.¹⁶ However, appellant had the responsibility to provide financial information to OWCP,¹⁷ but failed to do so.

In its preliminary determination, dated February 4, 2020, OWCP requested that appellant provide a completed Form OWCP-20 and 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, which was necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

¹³ *Id.* at Chapter 6.400.4(b)(3).

¹⁴ *Id.* at § 10.437(a)(b).

¹⁵ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁶ *Id.* at § 10.436.

¹⁷ *Id.* at § 10.438; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$27,940.06 for the period July 1, 2018 through January 4, 2020, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board