

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

_____)	
D.P., Appellant)	
)	
and)	Docket No. 21-1415
)	Issued: August 17, 2022
U.S. POSTAL SERVICE, BOERNE POST OFFICE, Boerne, TX, 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, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 24, 2021 appellant filed a timely appeal from a July 14, 2021 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.³

¹ On October 4, 2021 appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). Appellant contended that her rights had been taken away without explanation. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can be adequately addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the July 14, 2021 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.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$58,263.92 for the period November 12, 2017 through March 27, 2021 for which she was without fault, because she concurrently received FECA wage-loss compensation benefits 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 August 31, 2002 appellant, then a 52-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 31, 2002 she injured her lower back when unloading and lifting a bundle of magazines while in the performance of duty. OWCP accepted the claim for sacroiliac strain and paid appellant wage-loss compensation on the supplemental rolls, effective October 21, 2002 and on the periodic rolls effective January 26, 2003.⁴

On January 14, 2021 OWCP sent a Federal Employees Retirement System (FERS)/SSA dual benefits form to SSA for completion.

In a response dated February 8, 2021, SSA advised that, effective August 2016, appellant's rate with FERS was \$1,720.60 and without FERS was \$348.30, effective December 2016, her rate with FERS was \$1,725.70 and without FERS was \$349.30, effective December 2017, her rate with FERS was \$1,760.20 and without FERS was \$356.20, effective December 2018, her rate with FERS was \$1,809.40 and without FERS was \$366.10, effective December 2019, her rate with FERS was \$1,838.30 and without FERS was \$371.90, and, effective December 2020, her rate with FERS was \$1,862.10 and without FERS was \$376.70.

On March 17, 2021 SSA requested that OWCP "disregard the previous computations" and noted that the "above computation also shows the cents adjustment for Medicare. (The Medicare Premium is deducted to show the true amount issued to the claimant)." SSA indicated that effective August 2016, appellant's rate with FERS was \$1,719.90 and without FERS was \$347.90, effective December 2016, her rate with FERS was \$1,725.00 and without FERS was \$349.00, effective December 2017, her rate with FERS was \$1,760.00 and without FERS was \$356.00, effective December 2018, her rate with FERS was \$1,808.50 and without FERS was \$365.50, effective December 2019, her rate with FERS was \$1,837.60 and without FERS was \$371.60, and effective December 2020, her rate with FERS was \$1,861.50 and without FERS was \$376.50.

OWCP completed a FERS offset overpayment calculation form on April 15, 2021. It calculated the amount that it should have offset from appellant's wage-loss compensation for each period from November 12, 2017 through March 27, 2021. OWCP found that, from November 12 to 30, 2017, appellant received an overpayment of \$589.54, from December 1, 2017 through November 30, 2018, she received an overpayment of \$16,894.29, from December 1, 2018 through November 30, 2019, she received an overpayment of \$17,363.57, from December 1, 2019 through

⁴ By decision dated June 29, 2018, OWCP determined that appellant had received an overpayment of compensation in the amount of \$401.14 because it had paid her wage-loss compensation from August 1, 2016 through November 11, 2017 without offsetting the amount of her SSA age-related retirement benefits attributable to her federal service. It found that she was at fault in the creation of the overpayment and required recovery in full.

November 30, 2020, she received an overpayment of \$17,688.66, and from December 1, 2020 through March 27, 2021, she received an overpayment of \$5,727.86. Based on these figures, OWCP calculated the total overpayment amount of \$58,263.92.

In a May 27, 2021 letter, OWCP informed appellant that it would begin deducting the portion of SSA age-related retirement benefits attributable to her federal service from her compensation benefits. It found that with the SSA offset she was entitled to net compensation every 28 days of \$2,013.23.

In a preliminary overpayment determination dated May 27, 2021, OWCP notified appellant of its preliminary finding that she had received an overpayment of compensation in the amount of \$58,263.92 because her wage-loss compensation benefits had not been reduced for the period November 12, 2017 through March 27, 2021 by the portion of her SSA age-related retirement benefits attributable to her 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 submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records supporting income and expenses. Additionally, OWCP provided an overpayment action request form and notified appellant 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 prerecoument hearing.

On June 3, 2021 appellant asserted that her benefits had been reduced without explanation. She contended that SSA age-related retirement benefits did not have to be deducted from workers' compensation benefits. On July 1, 2021 OWCP again provided the preliminary overpayment determination and the May 27, 2021 letter explaining the reduction in her benefits.

By decision dated July 14, 2021, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$58,263.92 for the period November 12, 2017 through March 27, 2021 because it had failed to offset her compensation payments by the portion of his SSA age-related retirement benefits that were attributable to her federal service. It denied waiver of recovery of the overpayment, noting that appellant had not responded to its preliminary overpayment determination. OWCP required payment for the full amount of the overpayment.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA⁵ 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.⁶ Section 8116 limits the right of an employee to receive

⁵ *Supra* note 3.

⁶ 5 U.S.C. § 8102.

compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁷

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.⁸ 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$58,263.92 for the period November 12, 2017 through March 27, 2021 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.

OWCP paid appellant wage-loss compensation for total disability beginning October 21, 2002. She received SSA age-related retirement benefits beginning August 1, 2016. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service.¹⁰ The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to his federal service. Accordingly, the Board finds that fact of overpayment has been established.¹¹

To determine the amount of the overpayment, the portion of SSA age-related retirement benefits 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 rates with FERS and without FERS from August 2016 through December 2020. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment of compensation in the amount of \$58,263.92 for the period November 12, 2017 through March 27, 2021. The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period November 12, 2017 through March 27, 2021 and finds that an overpayment of compensation in the amount of \$58,263.92 was created.¹²

⁷ *Id.* at § 8116.

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

⁹ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹⁰ *Supra* note 9. *See F.K.*, Docket No. 20-1609 (issued June 24, 2021); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹¹ *See L.K.*, Docket No. 20-1574 (issued June 23, 2021); *S.H.*, Docket No. 20-1157 (issued December 23, 2020).

¹² *See N.B.*, Docket No. 20-0727 (issued January 26, 2021); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA¹³ 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 without fault does not automatically result in waiver of the overpayment. OWCP must exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹⁴

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.¹⁵ 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.¹⁶

Section 10.437 provides that recovery of an overpayment is 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 her position for the worse.¹⁷

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.¹⁸ 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.¹⁹ Failure to submit the requested information

¹³ *Supra* note 3.

¹⁴ *G.L.*, Docket No. 19-0297 (issued October 23, 2019).

¹⁵ 20 C.F.R. § 10.436. OWCP procedures provide that a claimant is deemed to need substantially all 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. Its 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) and (3) (September 2020).

¹⁶ *Id.* at Chapter 6.400.4b(3)(a), (b).

¹⁷ 20 C.F.R. § 10.437(b)(1).

¹⁸ *Id.* at 10.438(a).

¹⁹ *Id.*; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

within 30 days of the request shall result in a denial of waiver of recovery of the overpayment, and no further request for waiver shall be considered until the requested information is furnished.²⁰

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.²¹ Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.²²

In its preliminary overpayment determination dated May 27, 2021, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. Appellant did not respond to the preliminary overpayment determination or submit any supporting financial documentation. OWCP, therefore, did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.²³

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

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$58,263.92 for the period November 12, 2017 through March 27, 2021 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.

²⁰ *Id.* at § 10.438(b).

²¹ *See J.R.*, Docket No.17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

²² 20 C.F.R. § 10.438; *V.B.*, Docket No. 20-0976 (issued January 26, 2021).

²³ *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2022
Washington, DC

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

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

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