

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

_____))
E.T., Appellant))
))
and)) **Docket No. 22-0234**
)) **Issued: August 17, 2022**
SELECTIVE SERVICE SYSTEM, SUPPORT))
SERVICES DIRECTORATE, Rosslyn, VA,))
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 December 1, 2021 appellant filed a timely appeal from a September 7, 2021 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 \$14,309.80, for the period April 1, 2009 through June 19, 2021, 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 September 7, 2021 decision, appellant submitted additional evidence to OWCP. 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; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$636.47 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On November 4, 1993 appellant, then a 47-year-old administrative assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained a left ankle injury at work on October 28, 1993 when she tripped on a computer wire and fell to the ground while in the performance of duty. She stopped work on the date of the injury. OWCP initially accepted appellant's claim for a left ankle sprain and later expanded the acceptance of her claim to include right ankle sprain, bilateral tibialis tendinitis, medial meniscus tear of the left knee, bilateral foot sprains, and osteoarthritis of the left lower leg. Appellant began working for a private employer and, beginning in 2002, OWCP paid her wage-loss compensation for intermittent periods of disability from work.

On June 10, 2021 OWCP sent a Federal Employees Retirement System (FERS)/SSA dual benefits form to SSA with a computation period listed as April 2008 to the present.

On June 29, 2021 SSA completed the FERS/SSA dual benefits form and provided appellant's monthly benefits with and without FERS beginning April 1, 2009. It indicated that: beginning April 1, 2009, appellant's SSA rate with FERS was \$892.30 and without FERS was \$802.00; beginning December 2009 her SSA rate with FERS was \$892.30 and without FERS was \$802.00; beginning December 2010 her SSA rate with FERS was \$892.30 and without FERS was \$802.00; beginning December 2011 her SSA rate with FERS was \$924.40 and without FERS was \$830.80; beginning December 2012 her SSA rate with FERS was \$940.00 and without FERS was \$844.90; beginning December 2013 her SSA rate with FERS was \$954.10 and without FERS was \$857.60; beginning December 2014 her SSA rate with FERS was \$970.30 and without FERS was \$872.10; beginning December 2015 her SSA rate with FERS was \$970.30 and without FERS was \$872.10; beginning December 2016 her SSA rate with FERS was \$973.20 and without FERS was \$874.70; beginning December 2017 her SSA rate with FERS was \$992.60 and without FERS was \$892.10; beginning December 2018 her SSA rate with FERS was \$1,020.40 and without FERS was \$917.10; beginning December 2019 the SSA rate with FERS was \$1,036.70 and without FERS was \$931.70; and beginning December 2020 her SSA rate with FERS was \$1,050.10 and without FERS was \$943.80.

On July 13, 2021 OWCP prepared a FERS offset overpayment calculation worksheet, based on the benefits rates provided by SSA, wherein it noted the calculations of appellant's overpayment from April 1, 2009. It determined: for the period April 1, 2009 through November 30, 2011 appellant received an overpayment of \$2,899.52; for the period December 1, 2011 through November 30, 2012 appellant received an overpayment of \$1,129.37; for the period December 1, 2012 through November 30, 2013 appellant received an overpayment of \$1,144.34; for the period December 1, 2013 through November 30, 2014 appellant received an overpayment of \$1,161.18; for the period December 1, 2014 through November 30, 2016 appellant received an overpayment of \$2,366.51; for the period December 1, 2016 through November 30, 2017 appellant received an overpayment of \$1,185.25; for the period December 1, 2017 through

November 30, 2018 appellant received an overpayment of \$1,209.31; for the period December 1, 2018 through November 30, 2019 appellant received an overpayment of \$1,243.01; for the period December 1, 2019 through November 30, 2020 appellant received an overpayment of \$1,266.92; and for the period December 1, 2020 through June 19, 2021 appellant received an overpayment of \$704.38. The total overpayment was determined to be \$14,309.80.

On July 13, 2021 OWCP advised appellant that it was adjusting her wage-loss compensation to offset the portion of her SSA age-related retirement benefits attributable to her federal service. It informed her that the portion of the SSA benefits that she earned as a federal employee was part of the FERS retirement package and that FECA did not allow the simultaneous receipt of workers' compensation and federal retirement benefits. Appellant's new net compensation payment was \$2,545.88.

On July 28, 2021 OWCP issued a preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$14,309.80 for the period April 1, 2009 through June 19, 2021, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset. It also determined 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 rate of recovery, 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 statement, bills and canceled checks, pay slips, and any other records supporting income and expenses. Additionally, OWCP 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. Appellant did not respond.

By decision dated September 7, 2021, OWCP finalized the preliminary overpayment determination finding that appellant received an overpayment of compensation in the amount of \$14,309.80 for the period April 1, 2009 through June 19, 2021, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery because she failed to submit the requested financial information within the afforded period. OWCP required recovery of the overpayment by deducting \$636.47 from appellant's 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.³ Section 8116 limits the right of an employee to receive

³ 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.⁴

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.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation in the amount of \$14,309.80, for the period April 1, 2009 through June 19, 2021, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

Beginning in 2002 OWCP paid appellant wage-loss compensation for intermittent disability due to her accepted October 28, 1993 employment injury. Beginning April 1, 2009, appellant received SSA age-related retirement benefits. The evidence of record indicates that, while she was receiving wage-loss compensation benefits under FECA, she was also receiving SSA age-related retirement benefits that were attributable to her federal service without an appropriate offset. A claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁷ Consequently, the Board finds that fact of overpayment has been established.⁸

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 a dual benefits form from SSA with respect to appellant's SSA age-related retirement benefits attributable to federal service. SSA provided its rates with FERS and without FERS for specific periods from April 1, 2009 through June 19, 2021. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$14,309.80. The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period April 1, 2009 through June 19, 2021 and finds that an overpayment of compensation in the amount of \$14,309.80 was created.

⁴ *Id.* at § 8116.

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

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

⁷ *M.R.*, Docket No. 20-0427 (issued October 30, 2020). *See also N.B., id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁸ *See K.H.*, Docket No. 18-0171 (issued August 2, 2018).

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP 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.⁹ 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.¹⁰

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.¹¹ Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.¹²

In its preliminary overpayment determination dated July 28, 2021, OWCP requested a completed overpayment recovery questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support appellant's reported 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, however, did not respond. The evidence of record is, therefore, insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹³

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁴

⁹ 5 U.S.C. § 8129.

¹⁰ 20 C.F.R. § 10.438.

¹¹ *Id.* at § 10.436.

¹² *Id.*

¹³ *Supra* note 10.

¹⁴ *See T.E.*, Docket No. 19-0348 (issued December 11, 2019).

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.¹⁵

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."¹⁶ When an individual fails to provide the 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.¹⁷

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$636.47 from appellant's continuing compensation payments every 28 days.

The record supports that, in requiring recovery of the overpayment by deducting \$636.47 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. 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 \$636.47 from appellant's compensation payments every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation in the amount of \$14,309.80, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period April 1, 2009 through June 19, 2021, 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 \$636.47 from appellant's compensation payments every 28 days.

¹⁵ *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).

¹⁶ 20 C.F.R. § 10.441; *see A.F.*, Docket No. 19-0054 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

¹⁷ *R.O.*, Docket No. 18-0076 (issued August 3, 2018); *Gail M. Roe*, 47 ECAB 268 (1995). At the time of the September 7, 2021 final overpayment determination, OWCP paid appellant \$2,545.88 in FECA wage-loss compensation every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the September 7, 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