

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

C.L., Appellant	)	
	)	
and	)	<b>Docket No. 22-0349</b>
	)	<b>Issued: August 30, 2022</b>
<b>DEPARTMENT OF THE NAVY, NAVAL</b>	)	
<b>INSTALLATIONS COMMAND, Norfolk, VA,</b>	)	
<b>Employer</b>	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 5, 2022 appellant filed a timely appeal from a July 28, 2021 merit decision and a September 17, 2021 nonmerit 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.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$14,368.65 for the period June 1, 2018 through September 12, 2020, for which she was without fault, because she concurrently received FECA

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

<sup>2</sup> The Board notes that following the September 17, 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.*

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; (3) whether OWCP properly required recovery of the overpayment by deducting \$400.00 every 28 days from appellant's compensation payments; and (4) whether OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

### **FACTUAL HISTORY**

On September 27, 2002 appellant, then a 50-year-old training specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 26, 2002 she sustained a right hip injury when she slipped and fell on stairs while in the performance of duty. She stopped work on the date of the claimed injury. OWCP accepted appellant's claim for unspecified disorder of the right hip joint; aggravation of preexisting degenerative lumbar disc disease; displacement of right thoracic intervertebral disc without myelopathy; aggravation of preexisting spinal stenosis at L4-5; and sprain of the lumbar region. It paid appellant wage-loss compensation for disability from work on the supplemental rolls commencing December 13, 2002 and on the periodic rolls commencing March 23, 2003.

On August 6, 2020 OWCP sent a Federal Employees Retirement System (FERS)/SSA dual benefits form to SSA for completion.

On August 17, 2020 SSA completed the FERS/SSA dual benefits form which indicated that appellant received SSA age-related retirement benefits that were attributable to federal service beginning June 1, 2018. It provided age-related retirement benefit rates with and without a FERS offset from June 1, 2018 as follows: beginning June 1, 2018, appellant's SSA rate with FERS was \$1,655.60 and without FERS was \$1,147.60; beginning December 1, 2018 her SSA rate with FERS was \$1,701.90 and without FERS was \$1,179.70; and beginning December 1, 2019 her SSA rate with FERS was \$1,729.10 and without FERS was \$1,198.50.

On September 15, 2020 OWCP prepared a FERS offset overpayment calculation worksheet, based on the benefit rates provided by SSA, wherein it noted the calculations of appellant's overpayment from June 1, 2018. It determined: for the period June 1 through November 30, 2018 appellant received an overpayment of \$3,064.75; for the period December 1, 2018 through November 30, 2019 appellant received an overpayment of \$6,283.62; and for the period December 1, 2019 through September 12, 2020 appellant received an overpayment of \$5,020.29. The total overpayment was determined to be \$14,368.65.

On September 17, 2020 OWCP advised appellant that it was reducing her wage-loss compensation to offset the portion of her SSA age-related retirement benefits attributable to her federal service. It indicated that her new net compensation every 28 days would be \$2,412.22.

In a preliminary overpayment determination dated June 23, 2021, OWCP notified appellant of its preliminary find that she had received an overpayment of compensation in the amount of \$14,368.65 for the period June 1, 2018 through September 12, 2020,<sup>3</sup> because she

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<sup>3</sup> In the preliminary overpayment determination and later documents, OWCP inadvertently listed December 8, 2020 as the end date of the period in which the \$14,368.65 overpayment was created. However, payment records and

concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. 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 and 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 prerecoupment hearing. Appellant did not respond within the afforded period.

By decision dated July 28, 2021, OWCP finalized the preliminary overpayment determination finding that appellant received an overpayment of compensation in the amount of \$14,368.65 for the period June 1, 2018 through September 12, 2020,<sup>4</sup> because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation 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 also determined that recovery of the overpayment would be made by deducting \$400.00 from appellant's compensation payments every 28 days.<sup>5</sup>

On September 1, 2021 OWCP received appellant's request for a prerecoupment hearing in the form of an overpayment action request form, dated August 12, 2021. Appellant requested waiver of recovery of the overpayment. She contended that she was without fault in creating the overpayment because she was given misinformation.

By decision dated September 17, 2021, OWCP's Branch of Hearings and Review denied appellant's request for a prerecoupment hearing. It explained that "[o]n September 3, 2021, [appellant was] issued a final decision of overpayment of compensation. The final decision concerning an overpayment is not subject to the hearing provision of 5 U.S.C. § 8124(b)."

### **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.<sup>6</sup> Section 8116 limits the right of an employee to receive

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overpayment calculation documents reveal that September 12, 2020 was the actual end date of the period in which the overpayment was created.

<sup>4</sup> *Id.*

<sup>5</sup> At the time of the July 28, 2021 final overpayment decision, OWCP paid appellant wage-loss compensation at a rate of \$2,193.41 every 28 days.

<sup>6</sup> 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.<sup>7</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>8</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>9</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$14,368.65 for the period June 1, 2018 through September 12, 2020, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

OWCP paid appellant wage-loss compensation for total disability due to her accepted injury beginning December 13, 2002. Appellant received SSA age-related retirement benefits beginning June 1, 2018. A claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>10</sup> The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to her federal service. Accordingly, the Board finds that fact of overpayment has been established.<sup>11</sup>

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits attributable to federal service must be calculated. OWCP received a dual benefits form from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided appellant's rate with FERS and without FERS for specific periods from June 1, 2018 through September 12, 2020. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$14,368.65. The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period June 1, 2018 through September 12, 2020 and finds that appellant received an overpayment of compensation in the amount of \$14,368.65.<sup>12</sup>

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<sup>7</sup> *Id.* at § 8116.

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

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

<sup>10</sup> *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).

<sup>11</sup> *See K.H.*, Docket No. 18-0171 (issued August 2, 2018).

<sup>12</sup> *See L.W.*, Docket No. 19-0787 (issued October 23, 2019); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

## 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.<sup>13</sup> 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.<sup>14</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>15</sup> Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.<sup>16</sup>

In its preliminary overpayment determination dated June 23, 2021, OWCP explained the importance of providing the 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 her reported 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 submit sufficient financial documentation necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience. She did not complete the Form OWCP-20 outlining her income, assets, and expenses. 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.<sup>17</sup>

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<sup>13</sup> 5 U.S.C. § 8129.

<sup>14</sup> 20 C.F.R. § 10.438.

<sup>15</sup> *Id.* at § 10.436.

<sup>16</sup> *Supra* note 13.

<sup>17</sup> *Supra* note 12.

Consequently, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>18</sup>

### **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.<sup>19</sup>

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>20</sup> 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.<sup>21</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$400.00 from appellant's compensation payments every 28 days.

The record supports that, in requiring recovery of the overpayment by deducting \$400.00 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 \$400.00 from appellant's compensation payments every 28 days.

### **LEGAL PRECEDENT -- ISSUE 4**

OWCP's regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.<sup>22</sup> The date of the request is determined by the postmark or other

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<sup>18</sup> See *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

<sup>19</sup> *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).

<sup>20</sup> 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).

<sup>21</sup> *R.O.*, Docket No. 18-0076 (issued August 3, 2018); *Gail M. Roe*, 47 ECAB 268 (1995).

<sup>22</sup> 20 C.F.R. § 10.432.

carrier's date marking.<sup>23</sup> Failure to request the prerecoupment hearing within 30 days shall constitute a waiver of the right to a hearing.<sup>24</sup> The only right to a review of a final overpayment decision is with the Board.<sup>25</sup> The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.<sup>26</sup>

#### ANALYSIS -- ISSUE 4

The Board finds that OWCP properly denied appellant's request for a prerecoupment hearing.

OWCP issued a preliminary overpayment determination on June 23, 2021. It advised appellant that she had 30 days to request a prerecoupment hearing. On September 1, 2021 OWCP received her request for a prerecoupment hearing in the form of an overpayment action request form, which was dated August 12, 2021. The timeliness of the request for a prerecoupment hearing is determined by the postmark date or other carrier's marking.<sup>27</sup> However, the case record does not contain a postmarked envelope for appellant's request for a prerecoupment hearing and, therefore, the date of appellant's request is August 12, 2021, the date of the document containing the request.<sup>28</sup> Since the August 12, 2021 request for a prerecoupment hearing was made more than 30 days after the June 23, 2021 preliminary overpayment determination, it was untimely. As noted, the hearing provisions of section 8124(b) are not applicable to final overpayment decisions, which was issued in this case on July 28, 2021.<sup>29</sup> OWCP thus properly denied the request.<sup>30</sup>

#### CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$14,368.65 for the period June 1, 2018 through September 12, 2020, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. The Board

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<sup>23</sup> *Id.* at §§ 10.439, 10.616(a).

<sup>24</sup> *Id.* at § 10.432; *see also C.R.*, Docket No. 15-0525 (issued July 20, 2015); *Willie C. Howard*, 55 ECAB 564 (2004).

<sup>25</sup> 20 C.F.R. § 10.440(b).

<sup>26</sup> *Id.*

<sup>27</sup> *See C.W.*, Docket No. 15-0554 (issued May 27, 2015); 20 C.F.R. §§ 10.439, 10.616(a).

<sup>28</sup> OWCP has administratively decided that the test used in 20 C.F.R. § 10.616(a) for determining the timeliness of a hearing request before OWCP should apply to a request for a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. *See* 20 C.F.R. § 10.439. Accordingly, timeliness is determined by the postmark of the envelope, if available. Otherwise, the date of the letter itself should be used. *See C.R.*, Docket No. 15-0525 (July 20, 2015); *James B. Moses*, 52 ECAB 465 (2001).

<sup>29</sup> *See id.*

<sup>30</sup> *See E.V.*, Docket No. 17-1328 (issued December 11, 2017); *see also R.U.*, Docket No. 16-0027 (issued March 24, 2017).

further finds that OWCP properly denied waiver of recovery of the overpayment and required recovery of the overpayment by deducting \$400.00 from appellant's compensation payments every 28 days. The Board also finds that OWCP properly denied appellant's request for a prerecoupment hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 28 and September 17, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 30, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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