

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

D.K., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Honolulu, HI, Employer)
_____)

**Docket No. 22-0736
Issued: December 6, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 13, 2022 appellant filed a timely appeal from a March 16, 2022 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 to consider the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$62,015.84 for the period March 19, 2006 through October 12, 2019, for which she was without fault, because she concurrently received FECA wage-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.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 29, 2006 appellant then a 71-year-old transportation security screener, filed a traumatic injury claim (Form CA-1) alleging that she injured the left side of her neck, arm, knee, and back when the chair she was sitting in collapsed at the checkpoint exit while in the performance of duty. OWCP accepted her claim for sprain/strain of the neck and sprain/strain of the lumbar region. Appellant's retirement plan was listed as Federal Employees Retirement System (FERS). She received continuation of pay (COP) from January 30 through March 16, 2006. Appellant was subsequently paid compensation by OWCP on the supplemental rolls from March 19 through May 12, 2006, June 11, 2006 through January 19, 2007, and October 13, 2019 through July 16, 2022, and on the periodic rolls from May 14 through June 10, 2006 and January 21, 2007 through October 12, 2019.²

On October 1, 2019 OWCP forwarded a FERS/SSA dual benefits calculation form to SSA.

On October 8, 2019 SSA completed a FERS/SSA dual benefits calculation form and indicated that, effective January 2000, appellant reached retirement age and became eligible for SSA age-related retirement benefits. SSA calculated her SSA age-related retirement benefit rates with FERS and without FERS from January 2006³ through December 2018. Beginning January 2006, the SSA rate with FERS was \$763.10 and without FERS was \$449.30. Beginning December 2006, the SSA rate with FERS was \$788.20 and without FERS was \$464.10. Beginning January 2007, the SSA rate with FERS was \$805.10 and without FERS was \$464.10. Beginning December 2007, the SSA rate with FERS was \$823.60 and without FERS was \$474.70. Beginning December 2008, the SSA rate with FERS was \$871.30 and without FERS was \$502.20. Beginning January 2009, the SSA rate with FERS was \$874.40 and without FERS was \$502.20. Beginning December 2009, the SSA rate with FERS was \$874.40 and without FERS was \$502.20. Beginning December 2010, the SSA rate with FERS was \$874.40 and without FERS was \$502.20. Beginning December 2011, the SSA rate with FERS was \$905.90 and without FERS was \$520.20. Beginning December 2012, the SSA rate with FERS was \$921.20 and without FERS was \$529.00. Beginning December 2013, the SSA rate with FERS was \$935.00 and without FERS was \$536.80. Beginning December 2014, the SSA rate with FERS was \$950.90 and without FERS was \$545.90. Beginning December 2015, the SSA rate with FERS was \$950.90 and without FERS was \$545.90. Beginning December 2016, the SSA rate with FERS was \$953.70 and without FERS was \$547.50. Beginning December 2017, the SSA rate with FERS was \$972.80 and without FERS was \$558.40. Beginning December 2018, the SSA rate with FERS was \$1,000.00 and without FERS was \$574.00.

In a memorandum dated November 6, 2019, OWCP indicated that appellant stopped work on January 30, 2006 and returned to work full time on July 1, 2006. Appellant stopped work on July 15, 2007 and returned on July 22, 2007. Effective August 28, 2006, her hours were reduced to four hours, four days a week and she was temporarily totally disabled effective

² Appellant had previously filed a Form CA-1 for an injury sustained on June 10, 2004 when she lifted bags and baskets and injured her back while in the performance of duty. OWCP assigned OWCP File No. xxxxxx640. It accepted that claim for thoracic and lumbar strain. On August 8, 2006 OWCP administratively combined OWCP File Nos xxxxxx640 and xxxxxx346 with the latter designated as the master file.

³ SSA provided dual benefits calculation beginning January 2000.

December 15, 2016. SSA indicated that appellant had been receiving SSA benefits commencing January 2000. OWCP noted that her employment injury occurred on January 29, 2006 and therefore her overpayment would begin on February 1, 2006. It prepared a compensation adjustment worksheet wherein it noted the calculation of appellant's SSA offset overpayment from February 1, 2006 through October 12, 2019 and computed a total overpayment amount of \$63,100.05.

In an amended memorandum dated October 28, 2020, OWCP indicated that appellant stopped work on January 30, 2006 and was paid COP from January 30 through March 16, 2006 and OWCP wage-loss compensation did not commence until March 19, 2006. It noted that she returned to full-time work on July 1, 2006 and stopped work from July 15 through 18, 2006 and returned to full-time light duty on July 22, 2006. On August 28, 2006 appellant's work hours were reduced to part time on August 28, 2006 and she stopped work completely on December 15, 2006 and was placed on the periodic rolls effective January 21, 2007. SSA indicated that she had been receiving SSA benefits commencing the month of January 2000. OWCP noted that appellant's injury occurred on January 29, 2006 and therefore her overpayment would begin on March 19 through June 30, 2006 and August 28, 2006 through the "present."

OWCP prepared a FERS offset overpayment calculation worksheet on the same day. It noted the calculation of appellant's SSA offset overpayment from March 19, 2006 through October 12, 2019 and computed a total overpayment amount of \$62,015.84. OWCP determined that, during the period March 19 through June 30, 2006, she received an overpayment in the amount of \$1,075.89. Beginning August 28 through November 30, 2006, appellant received an overpayment in the amount of \$982.78. Beginning December 1 through 31, 2006, she received an overpayment in the amount of \$331.22. Beginning January 1 through November 30, 2007, appellant received an overpayment in the amount of \$3,754.75. Beginning December 1, 2007 through November 30, 2008, she received an overpayment in the amount of \$4,209.80. Beginning December 1 through 31, 2008, appellant received an overpayment in the amount of \$377.21. Beginning January 1 through November 30, 2009, she received an overpayment in the amount of \$4,098.29. Beginning December 1, 2009 through November 30, 2010, appellant received an overpayment in the amount of \$4,478.67. Beginning December 1, 2010 through November 30, 2011, she received an overpayment in the amount of \$4,478.67. Beginning December 1, 2011 through November 30, 2012, appellant received an overpayment in the amount of \$4,645.38. Beginning December 1, 2012 through November 30, 2013, she received an overpayment in the amount of \$4,719.33. Beginning December 1, 2013 through November 30, 2014, appellant received an overpayment in the amount of \$4,791.53. Beginning December 1, 2014 through November 30, 2015 she received an overpayment in the amount of \$4,873.47. Beginning December 1, 2015 through November 30, 2016, appellant received an overpayment in the amount of \$4,886.70. Beginning December 1, 2016 through November 30, 2017, she received an overpayment in the amount of \$4,887.79. Beginning December 1, 2017 through November 30, 2018, appellant received an overpayment in the amount of \$4,986.46. Beginning December 1, 2018 through October 12, 2019, she received an overpayment in the amount of \$4,437.89.

On October 28, 2020 OWCP notified appellant of its preliminary overpayment determination that she received an overpayment of compensation in the amount of \$62,015.84 for the period March 29 through June 30, 2006 and August 28, 2006 through October 12, 2019 because she concurrently received FECA wage-loss compensation benefits and SSA age-related

retirement benefits without an appropriate offset. It 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 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 that support income and expenses. Additionally, OWCP provided an overpayment action request form and further notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence, or a precoupment hearing.

In an overpayment action request form dated November 20, 2020, appellant disagreed with the fact and amount of the overpayment and requested waiver because she was found without fault in the creation of the overpayment.

In a November 20, 2020 Form OWCP-20, appellant reported that her total monthly income included \$871.00 from SSA, \$1,988.48 in FECA benefits, and annuity from her husband of \$1,600.11, resulting in total monthly income of \$4,459.59. She reported expenses totaling \$3,632.78. Appellant indicated monthly expenses of \$2,100.00 for mortgage, \$400.00 for food, \$25.00 for clothing, \$341.57 for utilities, and \$766.21 for other miscellaneous expenses, including car insurance and gasoline. She further noted cash on hand of \$12.73, a checking account balance of \$5,508.82, savings account balances of \$98,089.06 and \$7,647.70. Appellant submitted no supporting financial information.

By decision dated March 16, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$62,015.84 for the period March 19 through June 30, 2006 and August 28, 2006 through October 12, 2019, because it failed to offset her FECA wage-loss compensation payments by the portion of her SSA age-related retirement benefits that were attributable to her federal service.⁴ It further 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 failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by payment in full.

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.⁵ 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.⁶

⁴ In the final overpayment cover letter OWCP noted an overpayment period of March 19, 2006 through October 12, 2019.

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8116.

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.⁷ 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 age-related retirement benefits 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits.

OWCP paid appellant wage-loss compensation for total disability following her injury. Appellant received COP from January 30 through March 16, 2006. OWCP subsequently paid her compensation on the supplemental rolls from March 19 through May 12, 2006, June 11, 2006 through January 19, 2007, and October 13, 2019 through July 16, 2022, and on the periodic rolls from May 14 through June 10, 2006 and January 21, 2007 through October 12, 2019. Appellant initially received SSA age-related retirement benefits commencing January 2000. As noted, a claimant cannot receive compensation for wage-loss compensation and SSA retirement benefits attributable to federal service for the same period.⁹ The information provided by SSA indicated that a portion of appellant's age-related retirement benefits were attributable to her federal service. As appellant's FECA benefits were not offset she received an overpayment of wage-loss compensation.¹⁰ Therefore, fact of overpayment is established.¹¹

The Board further finds that this case is not in posture for decision regarding the period and amount of the overpayment.

Based on the rates provided by SSA, OWCP calculated the overpayment of compensation by determining the portion of SSA benefits that were attributable to appellant's federal service. SSA provided her SSA rate with FERS and without FERS beginning January 2006 through December 2018. In a memorandum dated November 6, 2019, OWCP calculated the amount that it should have offset for each relevant period based on the SSA worksheet and adding these amounts together, OWCP concluded that appellant had received an overpayment of \$63,100.05 for the period of February 1, 2006 through October 12, 2019. It then noted in an amended memorandum dated October 28, 2020, however, that the overpayment period was from March 19 through June 30, 2006 and August 28, 2006 to the "present." In the October 28, 2020 preliminary

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

⁸ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁹ *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹⁰ *Id.*

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

overpayment determination OWCP noted in the overpayment memorandum section of the decision an overpayment period of March 29 through June 30, 2006 and August 28, 2006 through October 12, 2019. However, in the final overpayment decision of March 16, 2022, it noted an overpayment period of March 19 through June 30, 2006 and August 28, 2006 through October 12, 2019. OWCP did not, however, address the issue of why OWCP had determined that the overpayment period commenced on March 19, 2006 rather than March 29, 2006. A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.¹² The Board will therefore remand the case for OWCP to further explain its calculation of the period and amount of the overpayment.

On remand, OWCP shall determine the exact period and amount of the overpayment of compensation. It shall then issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, and instructions for appellant to provide supporting financial information.¹³ After this and other such further development as deemed necessary, it shall issue a *de novo* decision.¹⁴

CONCLUSION

The Board finds that appellant received an overpayment of compensation 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 further finds, however, that the case is not in posture for decision regarding the period and amount of the overpayment.

¹² *R.B.*, Docket No. 20-0022 (issued October 28, 2020); *O.R.*, 59 ECAB 432 (2008).

¹³ *See L.K.*, Docket No. 20-0416 (issued November 12, 2020).

¹⁴ In light of the Board's disposition regarding the period and amount of the overpayment, the issues of waiver of recovery of the overpayment are rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2022 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 6, 2022
Washington, DC

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

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

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