

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

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<b>R.K., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-1193</b>
	)	<b>Issued: December 14, 2022</b>
<b>U.S. POSTAL SERVICE, NORTH LONG</b>	)	
<b>BEACH CARRIER ANNEX, Long Beach, CA,</b>	)	
<b>Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On August 4, 2022 appellant filed a timely appeal from a May 23, 2022 merit 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 \$83,824.35 for the period February 1, 2008 through July 17, 2021, 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 May 23, 2022 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.*

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; and (3) whether OWCP properly required recovery of the overpayment by deducting \$268.49 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On April 23, 2004 appellant, then a 62-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that on March 15, 2004 she experienced problems with her neck, right shoulder, low back, thigh, and right hip causally related to factors of her federal employment. OWCP accepted the claim, assigned OWCP File No. xxxxxx494, for right shoulder tendinitis. It subsequently expanded its acceptance of the claim to include a temporary aggravation of degenerative arthritis of the cervical and lumbar spine and a permanent aggravation of bilateral degenerative hip arthritis. OWCP paid appellant wage-loss compensation on the supplemental rolls from April 7, 2004 to August 5, 2006 and on the periodic rolls as of August 6, 2006.<sup>3</sup>

On August 20, 2020 the employing establishment advised that appellant was covered by the FERS retirement system and requested that OWCP contact SSA to determine whether it should offset her compensation due to her receipt of SSA retirement benefits.

OWCP received an April 3, 2007 notification of personnel action (PS Form 50), which indicated that appellant had retired, and that her last day in pay status was May 26, 2006. It provided that her retirement plan was the Federal Employees' Retirement System (FERS).

On August 25, 2020 OWCP sent a FERS/SSA dual benefits form to SSA for completion.

On October 8, 2020 SSA completed the FERS/SSA dual benefits form, reporting appellant's monthly SSA age-related retirement benefit rates with and without FERS for the period February 2008 through December 2019 as follows: effective February 2008, appellant's SSA rate with FERS was \$1,437.60 and without FERS was \$979.60; effective December 2008 through December 2010, her SSA rate with FERS was \$1,520.90 and without FERS was \$1,036.40; effective December 2011, her SSA rate with FERS was \$1,575.60 and without FERS was \$1,073.70; effective December 2012, her SSA rate with FERS was \$1,602.30 and without FERS was \$1,091.90; effective December 2013, her SSA rate with FERS was \$1,626.30 and without FERS was \$1,108.20; and effective December 2014 and 2015, her SSA rate with FERS was \$1,653.90 and without FERS was \$1,127.00; effective December 2016, her SSA rate with FERS was \$1,658.80 and without FERS was \$1,130.30; effective December 2017, her SSA rate with FERS was \$1,691.90 and without FERS was \$1,152.90; effective December 2018, her SSA rate with FERS was \$1,739.20 and without FERS was \$1,185.10; and effective December 2019, her SSA rate with FERS was \$1,767.00 and without FERS was \$1,204.00.

On March 24, 2021 OWCP again sent SSA a FERS/SSA dual benefits form for completion.

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<sup>3</sup> OWCP subsequently accepted appellant's March 14, 2007 occupational disease claim for bilateral carpal tunnel syndrome, assigned OWCP File No. xxxxxx611. It administratively combined OWCP File No. xxxxxx611 with OWCP File No. xxxxxx494, with the latter serving as the master file.

In a June 17, 2021 response, SSA provided the same monthly benefit rate figures for appellant with and without FERS from February 2008 through December 2019. It added, however, that her SSA age-retirement benefit rate with FERS was \$1,789.90 and without FERS was \$1,219.60, effective December 2020.

On July 23, 2021 OWCP completed a FERS offset overpayment calculation form. It calculated the amount that it should have offset from appellant's wage-loss compensation for each period from February 1, 2008 through July 17, 2021. OWCP found that, from February 1 through November 30, 2008, she received an overpayment of \$4,590.07, from December 1, 2008 through November 30, 2009, she received an overpayment of \$5,829.97, from December 1, 2009 through November 30, 2010, she received an overpayment of \$5,829.97, from December 1, 2010 through November 30, 2011, she received an overpayment of 5,829.97, from December 1, 2011 through November 30, 2012, she received an overpayment of \$6,059.51, from December 1, 2012 through November 30, 2013, she received an overpayment of \$6,141.63, from December 1, 2013 through November 30, 2014, she received an overpayment of \$6,234.28, from December 1, 2014 through November 30, 2015, she received an overpayment of \$6,340.17, from December 1, 2015 through November 30, 2016, she received an overpayment of \$6,357.54, from December 1, 2016 through November 30, 2017, she received an overpayment of \$6,359.42, from December 1, 2017 through November 30, 2018, she received an overpayment of \$6,485.77, from December 1, 2018 through November 30, 2019, she received an overpayment of \$6,667.47, from December 1, 2019 through November 30, 2020, she received an overpayment of \$6,793.12, and from December 1, 2020 through July 17, 2021, she received an overpayment of \$4,305.45. Based on these figures, OWCP calculated the total overpayment amount of \$83,824.35.

In correspondence dated July 23, 2021, OWCP advised appellant that it was reducing her wage-loss compensation effective July 18, 2021 by the portion of her SSA benefits attributable to her federal service. It indicated that her new net compensation payment every 28 days would be \$2,443.46.

On March 17, 2022 OWCP notified appellant of its preliminary determination that she had received an \$83,824.35 overpayment of compensation from February 1, 2008 through July 17, 2021 because she 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. Additionally, it 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 prerecoupment hearing.

In an April 9, 2022 overpayment action request form, appellant requested waiver of recovery of the overpayment and a decision based on the written evidence. In a Form OWCP-20 of even date, appellant reported her total monthly income as \$6,062.27. She listed her monthly compensation from OWCP as \$482.75. Appellant also reported that her monthly expenses totaled \$6,039.50 and that she had funds of \$755.63. She submitted a mortgage statement showing a total monthly payment of \$2,510.40 and only the cover pages of bank statements merely showing the ending balances of \$2,972.80 in January 2022, \$52.57 in February 2022, and \$555.63 in March 2022.

By decision dated May 23, 2022, OWCP finalized its determination that appellant received an overpayment of compensation in the amount of \$83,824.35 for the period February 1, 2008 through July 17, 2021 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It found her without fault in the creation of the overpayment, but denied waiver of recovery. OWCP required recovery of the overpayment by deducting \$268.49 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.<sup>4</sup> 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.<sup>5</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 benefits that are attributable to the employee's federal service.<sup>6</sup> 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.<sup>7</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation in the amount of \$83,824.35 for the period February 1, 2008 through July 17, 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 on the periodic rolls beginning August 6, 2006. She received SSA age-related retirement benefits beginning February 1, 2008. As noted, a claimant cannot receive concurrent FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service without an appropriate offset.<sup>8</sup> Accordingly, the Board finds that fact of overpayment has been established.<sup>9</sup>

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<sup>4</sup> 5 U.S.C. § 8102.

<sup>5</sup> *Id.* at § 8116.

<sup>6</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

<sup>7</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>8</sup> *Supra* note 7. *See F.K.*, Docket No. 20-1609 (issued June 24, 2021); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>9</sup> *See L.K.*, Docket No. 20-1574 (issued June 23, 2021); *S.H.*, Docket No. 20-1157 (issued December 23, 2020).

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 appellant's SSA age-related retirement benefits that were attributable to her federal service. SSA provided appellant's SSA age-related retirement benefit rates with FERS and without FERS from February 2008 through December 2020. OWCP provided its calculations for each relevant period based on SSA's reported information and determined that appellant received an overpayment of compensation in the amount of \$83,824.35. The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period February 1, 2008 through July 17, 2021 and finds that an overpayment of compensation in the amount of \$83,824.35 was created.<sup>10</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup> 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 TSP or 401(k)), jewelry, and artwork.<sup>14</sup>

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

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<sup>10</sup> See *J.S.*, Docket No. 22-0369 (issued June 7, 2022); *N.B.*, Docket No. 20-0727 (issued January 26, 2021); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

<sup>11</sup> *Supra* note 1.

<sup>12</sup> *I.R.*, Docket No. 22-0088 (issued May 5, 2022); *G.L.*, Docket No. 19-0297 (issued October 23, 2019).

<sup>13</sup> 20 C.F.R. § 10.436. OWCP's 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 6.400.4(a)(2) and (3) (September 2020).

<sup>14</sup> *Id.* at Chapter 6.400.4b(3)(a), (b).

notice that such payments would be made, gives up a valuable right or changes her position for the worse.<sup>15</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>16</sup>

Appellant submitted a completed Form OWCP-20 providing her assets, monthly income, and monthly expenses. However, she did not submit sufficient supporting financial documentation. While appellant submitted a mortgage statement showing a total monthly payment of \$2,510.40, the only other financial documents received were the cover pages of bank statements merely showing the ending balances of \$2,972.80 in January 2022, \$52.57 in February 2022, and \$555.63 in March 2022. OWCP, therefore, did not have the necessary current 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.

### **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>17</sup>

Section 10.441 of OWCP's regulations<sup>18</sup> provides that, when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as the error is discovered or his or her attention is called to the same. If no refund is made, OWCP shall decrease later 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>19</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>20</sup>

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<sup>15</sup> 20 C.F.R. § 10.437(b)(1).

<sup>16</sup> *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

<sup>17</sup> *Id.* at § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

<sup>18</sup> *Id.* at § 10.441(a).

<sup>19</sup> *Id.*; *see L.G.*, Docket No. 19-1274 (issued July 10, 2020).

<sup>20</sup> *C.L.*, Docket No. 22-0349 (issued August 30, 2022); *R.O.*, Docket No. 18-0076 (issued August 3, 2018); *Gail M. Roe*, 47 ECAB 268 (1995).

### ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$268.49 from appellant's continuing compensation payments every 28 days.

OWCP's regulations provide that the overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>21</sup> When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>22</sup>

The record supports that, in requiring recovery of the overpayment by deducting \$268.49 from appellant's continuing 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 \$268.49 from appellant's continuing compensation payments every 28 days.<sup>23</sup>

### CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation in the amount of \$83,824.35 for the period February 1, 2008 through July 17, 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 and properly required recovery of the overpayment by deducting \$268.49 from appellant's continuing compensation payments every 28 days.

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<sup>21</sup> *Id.* at § 10.4381; *see also A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>22</sup> *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

<sup>23</sup> *C.L., id.; E.T.*, Docket No. 22-0234 (issued August 17, 2022); *N.G.*, Docket No. 22-0172 (issued August 15, 2022).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 23, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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