

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

R.S., Appellant

and

U.S. POSTAL SERVICE, JAMES A. FARLEY
POST OFFICE, New York, NY, Employer

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**Docket No. 20-0624
Issued: February 9, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 27, 2020 appellant filed a timely appeal from a November 25, 2019 merit decision and a January 9, 2020 nonmerit 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.

¹ With her appeal, appellant submitted a timely oral argument request 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). In support of her oral argument request, appellant asserted that she did not request waiver of recovery of the overpayment of compensation as OWCP had determined that she was without fault in the creation of the overpayment. She asserts that repaying the overpayment would cause a financial hardship. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. 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.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of wage-loss compensation in the amount of \$16,123.66 for the period October 1, 2018 through September 14, 2019 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; (2) whether it properly denied waiver of recovery of the overpayment; (3) whether OWCP properly required recovery of the overpayment by deducting \$369.00 from appellant's continuing compensation payments every 28 days; and (4) whether it properly denied appellant's request for a prerecoument hearing.

FACTUAL HISTORY

On February 25, 2005 appellant, then a 49-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained arthritis in both hips causally related to factors of her federal employment, including prolonged walking and heavy lifting, pushing, and pulling. OWCP accepted the claim for osteoarthritis of the hips and a right hip replacement. Appellant stopped work on April 7, 2005. OWCP paid her wage-loss compensation for total disability on the supplement rolls, effective March 4, 2005, and on the periodic rolls, effective June 11, 2006.

On August 26, 2019 OWCP sent a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form to SSA for completion.³

On September 5, 2019 SSA notified OWCP that, with FERS, appellant was entitled to a monthly payment of \$1,427.80, effective October 2018, and \$1,467.80, effective December 2018. Without her federal service contributions, she was entitled to a monthly payment rate of \$58.10, effective October 2018, and \$59.70, effective December 2018. SSA advised that appellant had become entitled to retirement benefits effective October 2018.

In an October 2, 2019 FERS offset calculation memorandum, OWCP calculated appellant's FERS/SSA offset for each period October 1, 2018 through September 14, 2019 and the amount of the overpayment for each period. It found that, from October 1 through November 30, 2018, appellant received an overpayment in the amount of \$2,754.45 and from December 1, 2018 through September 14, 2019, she received an overpayment in the amount of \$13,369.21. OWCP added the amounts to find a total overpayment of \$16,123.66.

In an October 2, 2019 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 noted that her FECA compensation, prior to the offset amount, was

³ The employing establishment indicated on an April 6, 2006 claim for compensation (Form CA-7) that appellant was covered by FERS.

\$2,776.30 and that the SSA offset amount was \$1,299.78. OWCP, thus, found that appellant was entitled to a net compensation after the SSA offset of \$1,476.52.⁴

On October 24, 2019 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$16,123.66 had been created because appellant received wage-loss compensation payments for the period October 1, 2018 through September 14, 2019 that had not been reduced to offset her SSA age-related retirement benefits attributable to her federal service. 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 which support 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. No response was received within the time allotted.

By decision dated November 25, 2019, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$16,123.66 for the period October 1, 2018 through September 14, 2019 because it failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to her federal service. It further found that she was without fault in the creation over the overpayment, but denied waiver of recovery of the overpayment, noting that she had not responded to the preliminary overpayment determination. OWCP required recovery of the overpayment by deducting \$369.00 from appellant's continuing compensation payments every 28 days.

On December 17, 2019 OWCP received appellant's overpayment action request form, which was postmarked December 11, 2019. Appellant requested a prerecoupment hearing and argued that she was without fault and, thus, was not responsible for the creation of the overpayment. She advised that repaying the overpayment would cause a financial hardship, noting that her benefits had been reduced due to the SSA offset.

By decision dated January 9, 2020, OWCP denied appellant's request for a prerecoupment hearing as it was made after the final overpayment determination and, thus, not subjected to the hearing provision of 5 U.S.C. § 8124(b).

⁴ OWCP indicated in its October 2, 2019 letter that it was offsetting the amount from appellant's net four-week compensation. A payment plate indicates that it was deducting the offset amount from her compensation benefits every 28 days.

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 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 wage-loss compensation in the amount of \$16,123.66 for the period October 1, 2018 through September 14, 2019, 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.

Appellant received SSA age-related retirement benefits beginning October 2018. OWCP paid her wage-loss compensation for total disability on the periodic rolls beginning June 11, 2006. 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 her 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 for

⁵ *Supra* note 2.

⁶ 5 U.S.C. § 8102.

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 8. *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).

specific periods from October 1 through December 2018. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$16,123.66. The Board has reviewed OWCP's calculation of dual benefits received by her for the period October 1 through September 14, 2019 and finds that an overpayment of compensation in the amount of \$16,123.66 was created.¹²

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA 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.¹³

Recovery of an overpayment will defeat the purpose of FECA when such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹⁴ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁵ Also, 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.¹⁶ An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.¹⁷

Recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁸

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

¹³ 5 U.S.C. § 8129.

¹⁴ 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400(2), (3) (September 2018).

¹⁵ *Id.* at Chapter 6.400.4(a)(3); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁶ See *supra* note 14 at Chapter 6.400.4(a)(2) (September 2018).

¹⁷ *Id.* at Chapter 6.400.4(b)(3).

¹⁸ 20 C.F.R. § 10.437(a)(b).

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.¹⁹ 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.²⁰ Failure to submit the requested information 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.²¹

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.²²

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA as she did not provide a completed Form OWCP-20 and documentation supporting her income or expenses. Although OWCP advised appellant to submit Form OWCP-20 and documentation substantiating her income and expenses, she failed to do so, as required by section 10.438 of OWCP's regulations.²³

OWCP, therefore, did not have the financial information necessary to determine if appellant needed substantially all of her current income to meet current ordinary and necessary living expenses and, also, if her assets exceeded a specified amount as determined by OWCP.²⁴ As appellant did not establish that she was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience, the Board, thus, finds that OWCP properly denied waiver of recovery of the overpayment.

On appeal appellant contends that she was without fault in the creation of the overpayment and that repayment would cause financial hardship. However, the fact that she was not at fault in the creation of the overpayment does not relieve her from liability for repayment of the

¹⁹ *Id.* at 10.438(a).

²⁰ *Id.*; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²¹ *Id.* at § 10.438(b).

²² *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

²³ 20 C.F.R. § 10.438. *See R.M.*, Docket No. 19-1570 (issued June 1, 2020).

²⁴ *B.G.*, Docket No. 20-0541 (issued April 28, 2021); *G.G.*, Docket No. 19-0684 (issued December 23, 2019).

overpayment of compensation.²⁵ Appellant has not submitted supporting financial evidence and, thus, as noted, OWCP properly denied waiver of recovery of the overpayment.²⁶

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.²⁷

Section 10.441(a) of OWCP's regulations²⁸ provides in pertinent part:

“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 soon as the error is discovered or his or her attention is called to 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.”²⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$369.00 every 28 days from appellant's continuing compensation payments.

OWCP provided appellant a Form OWCP-20 with its October 24, 2019 preliminary overpayment determination and requested that she provide appropriate financial information and documentation to OWCP.³⁰ Appellant did not complete Form OWCP-20 nor provide the necessary financial documentation to support her income and expenses prior to the November 25, 2019 final overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.³¹ When an individual fails to provide requested financial information, OWCP shall follow minimum collection guidelines designed to collect the debt promptly and in full.³² The Board, therefore, finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$369.00 every 28 days.

²⁵ See *R.L.*, Docket No. 19-1786 (issued July 6, 2020); *M.G.*, Docket No. 19-0424 (issued July 1, 2019).

²⁶ *Supra* note 24.

²⁷ 20 C.F.R. § 10.441; see *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²⁸ *Id.* at § 10.441(a).

²⁹ *Id.*

³⁰ 20 C.F.R. § 10.438.

³¹ *Id.* at § 10.438(a); see *M.S.*, Docket No. 20-1261 (issued June 10, 2021); *M.S.*, *supra* note 20.

³² See *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *supra* note 14 at Chapter 6.400.3 (September 2018).

LEGAL PRECEDENT -- ISSUE 4

OWCP' regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.³³ The date of the request is determined by the postmark or other carrier's date marking.³⁴ Failure to request the prerecoupment hearing within 30 days shall constitute a waiver of the right to a hearing.³⁵ The only right to a review of a final overpayment decision is with the Board.³⁶ The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.³⁷

ANALYSIS -- ISSUE 4

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

OWCP issued a preliminary overpayment determination on October 24, 2019. It advised appellant that she had 30 days from that date to request a prerecoupment hearing. The record indicates that OWCP properly mailed its preliminary overpayment determination to her last known address of record. Appellant did not respond to the preliminary overpayment determination within the time allotted. By decision dated November 25, 2019, OWCP finalized its preliminary overpayment determination.

By request postmarked December 11, 2019, received December 17, 2019, appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. As noted, the hearing provisions of section 8124(b) are not applicable to final overpayment decisions. OWCP's regulations provide that, when a final overpayment decision is issued, there is no right to a hearing or a review of the written record, and OWCP does not have discretion to grant such a request.³⁸ The only right to appeal is with the Board.³⁹ As appellant's December 11, 2019 request for a prerecoupment hearing was made after the final overpayment determination, the Board finds that OWCP properly denied her request for a hearing after issuance of the final overpayment determination.⁴⁰

³³ 20 C.F.R. § 10.432.

³⁴ See *E.G.*, Docket No. 19-0176 (issued February 23, 2021); *P.Y.*, Docket No. 20-0824 (issued May 24, 2021).

³⁵ *Id.*; see also *P.C.*, Docket No. 20-1216 (issued June 25, 2021); *Willie C. Howard*, 55 ECAB 564 (2004).

³⁶ 20 C.F.R. § 10.440(b).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*; see *A.B.*, Docket No. 18-1172 (issued January 15, 2019).

⁴⁰ *J.R.*, Docket No. 20-1215 (issued June 17, 2021).

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation in the amount of \$16,123.66 for the period October 1, 2018 through September 14, 2019 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 \$369.00 from her continuing compensation payments every 28 days. The Board finds that OWCP properly denied appellant's request for a prerecoupment hearing.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2020 and November 25, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 9, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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