

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

M.E., Appellant)	
)	
and)	Docket No. 20-0771
)	Issued: February 8, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Crossville, TN, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 24, 2020 appellant filed a timely appeal from a November 20, 2019 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

ISSUE

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$36,012.79 for the period October 1, 2016 through September 14, 2019 for which she was without fault, because she concurrently received FECA wage-loss compensation and Social

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 20, 2019 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*

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 it properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On December 6, 2002 appellant, then a 48-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging that she experienced shoulder pain due to factors of her federal employment. She indicated that she had pain for several years in her arms, hands, and shoulder. Appellant reported that she first became aware of her condition on December 3, 1999 and first realized its relation to her federal employment on May 16, 2002. She did not stop work, but worked in a limited-duty capacity. OWCP accepted appellant's claim for aggravation of right shoulder rotator cuff tendinitis with impingement. On June 5, 2006 it expanded the acceptance of her claim to include calcifying tendinitis of the right shoulder, right shoulder sprain, other symptoms referable to right shoulder, other disorder of the bursae and tendon of the right shoulder, and recurrent dislocation of the right shoulder region. Appellant underwent multiple surgeries³ and OWCP paid her wage-loss compensation on the supplemental rolls for intermittent periods of disability.

On August 3, 2010 appellant stopped work again. OWCP paid her wage-loss compensation and placed her on the periodic rolls, effective September 26, 2010.

On August 15, 2019 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits form. It listed the computation period as July 1, 2016 to the present.

On August 20, 2019 SSA provided OWCP with a completed dual benefits form, which listed appellant's monthly SSA age-related retirement benefit rates beginning October 2016 with and without appellant's FERS contributions. The form indicated that: beginning October 2016, her SSA rate with FERS was \$1,255.90 and without FERS was \$265.90; beginning December 2016, her SSA rate with FERS was \$1,260.00 and without FERS was \$267.00; beginning December 2017, her SSA rate with FERS was \$1,285.00 and without FERS was \$272.00; and beginning December 2018, her SSA rate with FERS was \$1,320.50 and without FERS was \$279.50.

On September 18, 2019 OWCP advised appellant that it was adjusting her wage-loss compensation, effective October 12, 2019, 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.

OWCP completed a FERS offset overpayment calculation worksheet dated September 17, 2019. It calculated the overpayment amount by determining the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$36,012.79. The form indicated that, from October 1 through November 30, 2016, appellant received an

³ Appellant underwent OWCP-authorized right shoulder surgery on September 13, 2004 and June 5, 2006.

overpayment in the amount of \$1,990.88; from December 1, 2016 through November 30, 2017, she received an overpayment in the amount of \$11,948.74; from December 1, 2017 through November 30, 2018, she received an overpayment in the amount of \$12,189.40; and from December 1, 2018 through September 14, 2019, she received an overpayment in the amount of \$9,883.78.

In a preliminary overpayment determination dated October 7, 2019, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$36,012.79, for the period October 1, 2016 through September 14, 2019, because it had failed to reduce her wage-loss compensation benefits by the portion of her SSA age-related retirement benefits that were attributable to federal service. 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), with supporting financial documentation, 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 teleconference, a final decision based on the written evidence, or a prerecoument hearing.

On November 4, 2019 OWCP received a completed Form OWCP-20 dated October 25, 2019. Appellant reported a total monthly income of \$1,085.00 net from SSA benefits and total monthly expenses of \$1,200.00. She also indicated that she had a checking account balance of \$183.66 and a savings account balance of \$5.27. Appellant provided a detailed list of her monthly bills. She listed expenses as \$289.00 for automobile loan, \$145.00 for automobile insurance, \$200.28 for life insurance, \$38.75 for cancer insurance, \$393.79 for auto expenses, \$220.00 for internet/telephone/cable and \$421.00 for various credit cards. Appellant explained that the overpayment was not her fault because she always attached her SSA earning statement to her yearly forms and she did not receive any money from a FERS account.

By decision dated November 20, 2019, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$36,012.79 for the period October 1, 2016 through September 14, 2019 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It also found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP determined that recovery of the overpayment would require deducting \$200.00 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.⁴ Section 8116 limits the right of an employee to receive

⁴ 5 U.S.C. § 8102(a).

compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁵

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$36,012.79 for the period October 1, 2016 through September 14, 2019, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without appropriate offset.⁸

The evidence of record indicates that, while appellant was receiving compensation for wage-loss compensation benefits under FECA, she was also receiving SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period.⁹ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service during the period October 1, 2016 through September 14, 2019. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA's benefits that were 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 appellant's age-related retirement benefit rates with FERS and without FERS for specific periods October 1, 2016 through September 14, 2019. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$36,012.79. The Board, thus, finds that she received prohibited dual benefits for the period October 1, 2016 through September 14, 2019 totaling \$36,012.79.

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

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

⁸ *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

⁹ *Supra* notes 6 and 7.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁰ Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹¹

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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, 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.¹² 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 \$50.00.¹³

Section 10.437 of OWCP's implementing regulations provides that 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 attempting to repay the debt, and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁴ OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

¹⁰ 5 U.S.C. § 8129(a)-(b).

¹¹ *L.S.*, 59 ECAB 350 (2008).

¹² 20 C.F.R. § 10.436. OWCP's procedures provide that the 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 6.400.4a(2) (September 2018).

¹³ *Id.* at Chapter 6.400.4(a)(3) (September 2018).

¹⁴ 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁵ *Supra* note 12 at Chapter 6.400.4(c)(3) (September 2020).

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.¹⁶

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not provided supporting financial information. Appellant completed a Form OWCP-20 on October 25, 2019 and noted a total monthly income of \$1,085.00 from SSA benefits, total monthly expenses of \$1,200.00, a checking account balance of \$183.66, and a savings account balance of \$5.27. She listed expenses as \$289.00 for automobile loan, \$145.00 for automobile insurance, \$200.28 for life insurance, \$38.75 for cancer insurance, \$393.79 for automobile expenses, \$220.00 for internet/telephone/cable and \$421.00 for various credit cards. Appellant did not, however, provide sufficient supporting financial documentation to establish her purported income or expenses. Although she had been advised to submit documentation substantiating her income and expenses, she failed to provide sufficient documentation of her income and expenses as required by section 10.438 of its regulations.¹⁷ 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.¹⁸

The Board also finds that 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. Appellant did not provide sufficient financial information to show that she would experience severe financial hardship in attempting to repay the debt or that she gave up a valuable right in reliance on her wage-loss compensation benefits. She, therefore, did not establish that recovery of the overpayment was against equity and good conscience.¹⁹

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.²⁰

Section 10.441(a) of OWCP's regulations²¹ 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

¹⁶ 20 C.F.R. § 10.436.

¹⁷ See *P.B.*, Docket No. 20-0862 (issued November 25, 2020); see also *R.W.*, Docket No. 18-1059 (issued February 6, 2019).

¹⁸ *Supra* notes 12 and 13.

¹⁹ *R.C.*, *supra* note 8; *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

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

²¹ *Id.* at § 10.441(a).

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.”²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$200.00 from appellant’s continuing compensation payments every 28 days.

OWCP provided appellant a Form OWCP-20 with its October 7, 2019 preliminary overpayment determination. It afforded her the opportunity to provide appropriate financial information and documentation to OWCP.²³ Although appellant completed the Form OWCP-20 overpayment recovery questionnaire she did not provide sufficient financial documentation to support her income and expenses prior to the final November 20, 2019 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²⁴ When an individual fails to provide requested financial information, OWCP shall follow minimum collection guidelines designed to collect the debt promptly and in full.²⁵ The Board, therefore, finds that OWCP properly required recovery of the \$36,012.79 overpayment at the rate of \$200.00 every 28 days from appellant’s continuing compensation payments.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$36,012.79 for the period October 1, 2016 through September 14, 2019 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 that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$200.00 from her continuing compensation payments every 28 days.

²² *Id.*; see *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²³ 20 C.F.R. § 10.438.

²⁴ *Id.* at § 10.438(a); see *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²⁵ See *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); *supra* note 12 at Chapter 6.400.3 (September 2018).

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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