



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; and (3) whether OWCP properly required recovery of the overpayment by deducting \$400.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On March 12, 2001 appellant, then a 47-year-old modified mail carrier, filed an occupational disease claim (Form CA-2) alleging that factors of her federal employment aggravated her knee osteoarthritis on or about February 14, 2000. OWCP accepted the claim for permanent aggravation of bilateral osteoarthritis of the lower legs. It paid appellant wage-loss compensation on the supplemental rolls as of June 25, 2002 and on the periodic rolls as of September 8, 2002. A notification of personnel action PS Form 50 dated March 3, 2003 indicated that her retirement system coverage was under the Federal Employees Retirement System (FERS).

On February 26 and April 29, 2020 OWCP forwarded a FERS/SSA dual benefits form to SSA to obtain information regarding appellant's receipt of SSA benefits.

On July 13, 2020 OWCP received a completed FERS/SSA dual benefits form from SSA, which reported that appellant had been in receipt of SSA age-related retirement benefits since April 2016. SSA reported that: beginning April 2016, appellant's monthly SSA benefit rate with FERS was \$1,265.00 and without FERS was \$148.90; beginning December 2016, appellant's monthly SSA benefit rate with FERS was \$1,269.00 and without FERS was \$149.20; beginning December 2017, appellant's monthly SSA benefit rate with FERS was \$1,294.00 and without FERS was \$152.20; beginning December 2018, appellant's monthly SSA benefit rate with FERS was \$1,331.00 and without FERS was \$156.40; beginning December 2019, appellant's monthly SSA benefit rate with FERS was \$1,352.00 and without FERS was \$158.90; and beginning January 2020, appellant's monthly SSA benefit rate with FERS was \$1,773.50 and without FERS was \$208.00.

The record reflects that as of September 13, 2020 appellant received a net compensation payment of \$1,363.96 every 28 days.

OWCP completed a FERS offset overpayment calculation worksheet on September 17, 2020. It calculated the overpayment amount by determining the daily FERS offset amount and multiplying that amount by the number of days for the period April 1, 2016 through September 12, 2020. The form indicated that, from April 16 through November 30, 2016, appellant received an overpayment of \$8,977.86, from December 1, 2016 through November 30, 2017, she received an overpayment of \$13,474.52, from December 1, 2017 through November 30, 2018, she received an overpayment of \$13,739.24, from December 1, 2018 through November 30, 2019, she received an overpayment of \$14,133.92, from December 1 through 31, 2019, she received an overpayment of \$1,219.32, and from January 1 through September 12, 2020, she received an overpayment of \$13,212.13, for a total overpayment of \$64,756.99.

On September 18, 2020 OWCP issued a preliminary overpayment determination finding that an overpayment of compensation in the amount of \$64,756.99 had been created. It explained that the overpayment occurred because appellant's SSA age-related retirement benefits that she

received from April 1, 2016 through September 12, 2020 were partially based on credits earned while working for the Federal Government, and that this portion of her SSA benefit constituted a prohibited dual benefit. OWCP found that she was without fault in the creation of the overpayment. It requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support her reported income and expenses. Additionally, OWCP provided an overpayment action request form and advised her that, within 30 days of the date of the letter, she could request a final decision based on the written record or request a precoupment hearing.

On the overpayment action request form dated October 4, 2020, appellant requested that OWCP make a decision based on the written evidence regarding possible waiver of the overpayment. She requested waiver of recovery of the overpayment, explaining that it would be very difficult for her to pay back any money. On a completed Form OWCP-20, appellant indicated that her total monthly income was \$3,920.00. She noted that her monthly expenses were \$3,550.00 for rent or mortgage, \$300.00 for food, \$100.00 for clothing, \$450.00 for utilities, and \$400.00 for other expenses. Appellant indicated that she also owned a rental house for which she paid a monthly mortgage of \$1,117.00, including insurance, taxes, and repairs. She also indicated that she had \$1,600.00 in assets. Supporting financial documentation was not received.

By decision dated January 7, 2021, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$64,756.00, for the period April 1, 2016 through September 12, 2020, because it had failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to federal service. 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 was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$400.00 every 28 days from appellant's continuing compensation payments.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.<sup>3</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>4</sup> When an overpayment of compensation has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.<sup>5</sup>

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8116.

<sup>5</sup> *Id.* at § 8129(a).

Section 10.421(d) of FECA implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-based benefits that are attributable to federal service of the employee.<sup>6</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>7</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$64,756.00, for the period April 1, 2016 through September 12, 2020, as she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

As noted, a claimant cannot receive concurrent FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>8</sup> The evidence of record establishes that appellant had concurrently received wage-loss compensation benefits and SSA age-related retirement benefits that were attributable to her federal service from April 1, 2016 through September 12, 2020. Consequently, the fact of the overpayment has been established.

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amounts of SSA age-related retirement benefits that were attributable to federal service. SSA provided its rate with FERS and without FERS during the specific period April 1, 2016 through September 12, 2020. OWCP provided its calculations for each relevant period based on SSA's worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period April 1, 2016 through September 12, 2020 and finds that an overpayment of compensation in the amount of \$64,756.00 has been established.

### **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.<sup>9</sup>

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<sup>6</sup> 20 C.F.R. § 10.421(d); *see T.B.*, Docket No. 18-1449 (issued March 19, 2019); *L.J.*, 59 ECAB 264 (2007).

<sup>7</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see M.S.*, Docket No. 20-0068 (issued May 14, 2021).

<sup>8</sup> *Supra* note 6; *see D.W.*, Docket No. 20-1533 (issued May 27, 2021); *M.R.*, Docket No. 20-0427 (issued October 30, 2020); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>9</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see M.C.*, Docket No. 19-0699 (issued February 12, 2020).

The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.<sup>10</sup>

Recovery of an overpayment will defeat the purpose of FECA if 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.<sup>11</sup> Additionally, 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.<sup>12</sup>

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. 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.<sup>13</sup> Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.<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>

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience because she did not provide any necessary supporting financial information. In its preliminary overpayment determination dated September 18, 2020, OWCP explained the importance of providing the completed overpayment questionnaire and supporting financial documentation, including copies of income

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<sup>10</sup> A.C., Docket No. 18-1550 (issued February 21, 2019); see *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>11</sup> 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 6.400.4a.(2) (September 2020).

<sup>12</sup> *Id.* at § 10.437(a)(b).

<sup>13</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>14</sup> *Id.* at § 10.438(b).

<sup>15</sup> *Id.* at § 10.436.

tax returns, bank account statements, bills, pay slips, and any other records to support income, expenses, and assets. While appellant completed the Form OWCP-20, she did not provide documentation supporting her reported income, expenses, or assets. As she did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.<sup>16</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>17</sup>

Section 10.441(a) of OWCP's regulations<sup>18</sup> 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."<sup>19</sup>

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

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

The record reflects that appellant received FECA compensation benefits on the periodic rolls in the net amount of \$1,363.96 every 28 days as of September 13, 2020. While she completed the Form OWCP-20, she did not provide documentation supporting her reported income, expenses, or assets.

OWCP's procedures provide that, if no response to the preliminary overpayment determination is received, which provides supporting financial documentation, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.<sup>20</sup> The Board notes that 25 percent of \$1,363.96 is \$341.00. The Board therefore finds that OWCP abused its discretion by deducting \$400.00 from appellant's continuing compensation payments, every 28 days.

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<sup>16</sup> *D.C.*, Docket No. 19-0118 (issued January 15, 2020); *see S.B.*, Docket No. 16-1795 (issued March 2, 2017).

<sup>17</sup> 20 C.F.R. § 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 C.M.*, Docket No. 19-1451 (issued March 4, 2020).

<sup>20</sup> *Supra* note 11 at Chapter 6.500.8(c)(1) (September 2018); *M.W.*, Docket No. 20-1107 (issued March 17, 2021).

**CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$64,756.99, for the period April 1, 2016 through September 18, 2020, as 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. The Board also finds that OWCP improperly required recovery of the overpayment by deducting \$400.00 from appellant's continuing compensation payments every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 7, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: February 28, 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