

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 \$107.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

This case has previously been before the Board regarding different issues.³ The facts and circumstances as presented in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On November 17, 1995 appellant, then a 42-year-old part-time rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that she was injured in a November 15, 1995 motor vehicle accident while in the performance of duty. She stopped work on the date of injury and did not return. OWCP accepted the claim for closed sacrum/coccyx fracture, closed pubis fracture, closed spleen hematoma, closed four rib fractures, closed lumbar vertebra fracture, post hemorrhage anemia, forehead open wound, and foot/toe abrasion.

OWCP paid appellant wage-loss compensation for total disability as of December 31, 1995. By decision dated June 9, 2008, it reduced her compensation, effective June 10, 2008, as the selected position of cashier/checker (retail trade) represented her wage-earning capacity. OWCP determined that appellant retained a 73 percent wage-earning capacity.

On December 11, 2020 OWCP forwarded to SSA a FERS/SSA dual benefits form to obtain information regarding appellant's receipt of SSA dual benefits.

On December 16, 2020 SSA completed the form and indicated that appellant had received SSA disability benefits from May 1996 until September 2019, and that she had received age-related retirement benefits effective October 2019. The FERS/SSA dual benefits form indicated that beginning October 2019 the SSA benefit rates with a FERS offset was \$955.40 and without a FERS offset was \$806.00; beginning December 2019 the SSA benefit rates with a FERS offset was \$970.60 and without a FERS offset was \$818.80; and beginning December 2020 the SSA benefit rates with a FERS offset was \$983.20 and without a FERS offset was \$829.40.

In a January 5, 2021 letter, OWCP notified appellant that her FECA wage-loss compensation had been adjusted based on the information provided by SSA regarding the amount of her age-related retirement benefits attributable to federal service. It advised that her new net FECA wage-loss compensation payments would be \$286.03, beginning with her payment covering the period January 3 through 30, 2021.

OWCP completed a FERS offset overpayment calculation worksheet on January 5, 2021. It calculated the overpayment amount by determining the daily FERS offset amount and multiplying that amount by the number of days for the period October 1, 2019 through January 2, 2021, for a total overpayment of \$2,299.34. The form indicated: from October 1 through

³ Docket No. 05-1315 (issued January 24, 2006); Docket No. 10-99 (issued July 21, 2010); Docket No. 11-1603 (issued March 6, 2012); Docket No. 15-1188 (issued November 6, 2015).

November 30, 2019, appellant received an overpayment of \$300.45; from December 1, 2019 through November 30, 2020, appellant received an overpayment of \$1,831.57; and from December 1, 2020 through January 2, 2021, appellant received an overpayment of \$167.32.

On January 5, 2021 OWCP issued a preliminary overpayment determination finding that an overpayment of compensation in the amount of \$2,299.34 had been created. It explained that the overpayment occurred because appellant's SSA age-related retirement benefits that she received from October 1, 2019 through January 2, 2021 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 appellant without fault in the creation of the overpayment and forwarded an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). It requested that she provide 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. OWCP afforded appellant 30 days to respond.

On February 8, 2021 OWCP received appellant's overpayment action request form, signed on February 3, 2021. Appellant related that she was requesting waiver of recovery of the overpayment as she was found to be without fault in its creation. She also related that she was drawing SSA benefits and that repayment would be a severe financial hardship. A completed Form OWCP-20 and financial documentation were not received.

By decision dated February 16, 2021, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$2,299.34, for the period October 1, 2019 through January 2, 2021, 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 \$107.00 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.⁴ 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.⁵ When an overpayment of compensation has been made to an individual because of an error of fact or law, adjustment shall be made under

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁶

Section 10.421(d) of FECA's 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.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,299.34, for the period October 1, 2019 through January 2, 2021, as she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

As noted, a claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service without an appropriate offset.⁹ The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to her federal service from October 1, 2019 through January 2, 2021. 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 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 during the specific period October 1, 2019 through January 2, 2021. OWCP provided its calculation for each relevant period based on SSA's worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period October 1, 2019 through January 2, 2021 and finds that an overpayment of compensation in the amount of \$2,299.34 has been established.

⁶ *Id.* at § 8129(a).

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

⁸ FECA Bulletin No. 97-09 (February 3, 1997); *see M.S.*, Docket No. 20-0068 (issued May 14, 2021).

⁹ *Id.*; *See D.W.*, Docket No. 20-1533 (issued May 27, 2021); *M.R.*, Docket No. 20-0427 (issued October 30, 2020); *N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

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

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.¹¹

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.¹² 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.¹³

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.¹⁴ 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.¹⁵

ANALYSIS -- ISSUE 2

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

¹⁰ 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).

¹¹ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

¹² 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 6.400.4(a)(2) (September 2020).

¹³ *Id.* at § 10.437(a)(b).

¹⁴ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁵ *Id.* at § 10.438(b).

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 the necessary supporting financial information. In its preliminary overpayment determination dated January 5, 2021, OWCP explained the importance of providing the completed overpayment questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income, expenses, and assets. Appellant, however, did not complete the Form OWCP-20 or provide any supporting documentation regarding her income, expenses, or assets. As appellant 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.¹⁷

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.¹⁸

Section 10.441(a) of OWCP's regulations¹⁹ 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.”²⁰

ANALYSIS -- ISSUE 3

The Board finds that OWCP improperly required recovery of the overpayment by deducting \$107.00 from appellant's continuing compensation payments every 28 days.

While appellant requested waiver of recovery of the overpayment, she did not complete the Form OWCP-20 or otherwise provide financial information. OWCP's regulations provide that

¹⁶ 20 C.F.R. § 10.436.

¹⁷ *D.C.*, Docket No. 19-0118 (issued January 15, 2020); *see S.B.*, Docket No. 16-1795 (issued March 2, 2017).

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

¹⁹ *Id.* at § 10.441(a).

²⁰ *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

the overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²¹

When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²² The Federal (FECA) Procedure Manual provides that, in these instances, 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.²³

The record reflects that on January 5, 2021, OWCP notified appellant that her FECA wage-loss compensation had been adjusted based on the information provided by SSA regarding the amount of her age-related retirement benefits attributable to her federal service. It advised that appellant's new net FECA wage-loss compensation payments would be \$286.03, beginning with her payment covering the period January 3 through 30, 2021. The Board notes that 25 percent of \$286.03 is \$71.51. The Board therefore finds that OWCP improperly required recovery of the overpayment by deducting \$107.00 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 \$2,299.34, for which she was without fault, for the period October 1, 2019 through January 2, 2021, 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. However, the Board finds that OWCP improperly required recovery of the overpayment by deducting \$107.00 from her continuing compensation payments every 28 days.

²¹ *Supra* note 14 at § 10.438. *See also* A.F., Docket No. 19-0054 (issued June 12, 2019).

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

²³ *Supra* note 12 at Chapter 6.500.8(c)(1) (September 2018); *M.S.*, *supra* note 14; *D.H.*, Docket No. 20-1064 (issued December 14, 2020).

ORDER

IT IS HEREBY ORDERED THAT the February 16, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part, and reversed in part.

Issued: February 23, 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