

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

M.G., Appellant)	
)	
and)	Docket No. 21-0818
)	Issued: February 7, 2022
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS HEALTH ADMINISTRATION)	
MEDICAL CENTER, Pittsburgh, PA, 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 May 4, 2021 appellant filed a timely appeal from a March 18, 2021 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

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$75,644.11 during the period June 1, 2012 through December 5, 2020 for which she was without fault, as she concurrently received Social Security

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the March 18, 2021 decision, OWCP received additional evidence, and appellant submitted additional evidence upon appeal. 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.*

Administration (SSA) age-related retirement benefits and FECA wage-loss compensation without an appropriate offset; (2) whether it properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$363.50 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On June 1, 2001 appellant, then a 51-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on May 18, 2001 she sustained a massive herniated disc and possible rotator cuff tear when repetitively-lifting heavy magnetic resonance imaging (MRI) films while in the performance of duty. She stopped work on May 21, 2001. OWCP initially accepted the claim for cervical sprain, and later expanded the acceptance of the claim to include displacement of the cervical intervertebral disc without myelopathy. In a CA-7 form dated August 29, 2001, appellant's supervisor noted that appellant's retirement system coverage was under the Federal Employees Retirement System (FERS). Appellant was in receipt of compensation for temporary total disability since August 20, 2001 and OWCP paid appellant wage-loss compensation on the periodic rolls beginning June 16, 2002.

On November 18, 2020 OWCP provided SSA with a FERS/SSA dual benefits form to obtain information regarding appellant's receipt of SSA age-related retirement benefits.

On December 1, 2020 SSA completed the dual benefits form, which reported appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from June 2012 through December 2020. SSA noted that appellant received SSA disability benefits from October 2005 through May 2012 and from May 2015 through April 2016. Beginning June 2012, the SSA rate with FERS was \$827.30 and without FERS was \$198.80. Beginning December 2012, the SSA rate with FERS was \$841.30 and without FERS was \$202.10. Beginning May 2016, the SSA rate with FERS was \$1,151.50 and without FERS was \$219.20. Beginning December 2016, the SSA rate with FERS was \$1,154.90 and without FERS was \$219.80. Beginning December 2017, the SSA rate with FERS was \$1,177.90 and without FERS was \$224.20. Beginning December 2018, the SSA rate with FERS was \$1,210.80 and without FERS was \$230.40. Beginning December 2019, the SSA rate with FERS was \$1,230.10 and without FERS was \$234.00. Beginning December 2020, the SSA rate with FERS was \$1,246.00 and without FERS was \$237.10.

On December 9, 2020 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's SSA offset overpayment from June 1, 2012 through April 30, 2015 and May 1, 2016 through December 5, 2020. It found that she received an overpayment of compensation in the amount of \$3,791.72 for the period June 1 through November 30, 2012, \$18,564.90 for the period December 1, 2012 through April 30, 2015, \$6,577.33 for the period May 1 through November 30, 2016, \$11,252.03 for the period December 1, 2016 through November 30, 2017, \$11,475.84 for the period December 1, 2017 through November 30, 2018, \$11,797.12 for the period December 1, 2018 through November 30, 2019, \$12,018.88 for the period December 1, 2019 through November 30, 2020, and \$166.30 for the period December 1 through 5, 2020. The total overpayment was determined to be \$75,644.11.

In a letter dated December 9, 2020, OWCP notified appellant that, based on information provided by SSA regarding the amount of her age-related retirement benefits, which were

attributable to federal service, her FECA wage-loss compensation had been adjusted. It explained that she was in receipt of SSA age-related retirement benefits every four weeks amounting to \$1,246.00. However, appellant's federal service increased her monthly Social Security payment by \$1,008.90, which must be offset by the portion of her SSA retirement benefits attributable to her federal service on account of age, resulting in a new net FECA compensation payment of \$1,073.89, every 28 days. Appellant's wage-loss compensation benefits were adjusted, effective December 6, 2020.

In a preliminary overpayment determination dated January 21, 2021, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$75,644.11 because she had received SSA age-related retirement benefits based upon her federal service, without appropriate offset, at the same time she received FECA wage-loss compensation for the period June 1, 2012 through December 5, 2020. It explained that the overpayment occurred because appellant's compensation was not reduced by the FERS/SSA amount. 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.

In a Form OWCP-20 dated February 4, 2021, appellant requested waiver of recovery of the overpayment. She listed her monthly income as consisting of \$746.00 in SSA benefits. Appellant's monthly expenses were listed as: \$900.00 for rent; \$300.00 for food; \$200.00 for clothing; \$150.00 for gas; \$95.00 for electricity; and \$100.00 for water and other expenses of \$892.00. Her assets included \$4.00 in cash and \$48.00 in a savings account. OWCP did not receive supporting financial information along with her Form OWCP-20.

By decision dated March 18, 2021, OWCP finalized the preliminary overpayment determination of January 21, 2021, finding that appellant received an overpayment of compensation in the amount of \$75,644.11 for the period June 1, 2012 through December 5, 2020 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for that period without appropriate offset. It found that the FERS offset form that OWCP received on December 1, 2020 indicated that, contrary to appellant's figure on the Form OWCP-20, her monthly SSA payment as of that date was \$1,246.00. OWCP noted that she also received a compensation payment from OWCP in the amount of \$1,454.60 as of February 28, 2021. Therefore, it found that appellant's total monthly income was \$2,700.60. With regard to the figures for her monthly expenses, OWCP noted that she did not detail what her \$892.00 in "miscellaneous" expenses covered, and as such OWCP could not determine whether they were for necessities or not, and that the figure of \$200.00 per month for clothing appeared to be excessive. It denied waiver of recovery of the overpayment because there was no evidence of record that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery by deducting \$363.50 every 28 days from appellant's continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 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

duty.³ 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.⁴

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related retirement benefits that are attributable to federal service of the employee.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$75,644.11 for the period June 1, 2012 through December 5, 2020 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for that period without appropriate offset.

The record indicates that, while appellant was receiving wage-loss compensation under FECA, she also received SSA age-related retirement benefits attributable to her federal service during the relevant period. A claimant cannot receive both compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.⁷ Consequently, the fact of the overpayment has been established.

To determine the amount of the overpayment, the portion of SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA on December 1, 2020 with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. The SSA provided the SSA rate with FERS and without FERS for specific periods from June 2012 through December 2020. The SSA also noted that appellant received SSA disability benefits, as opposed to age-related retirement benefits, for the periods October 2005 through May 2012 and May 2015 through April 2016.⁸

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁶ FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁷ *See D.M.*, Docket No. 19-1369 (issued June 30, 2020).

⁸ The Board notes that OWCP properly omitted the period May 1, 2015 through April 30, 2016 from its calculation of the amount and period of appellant's overpayment, as SSA indicated that appellant was not in receipt of age-related retirement benefits for this period.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period June 1, 2012 through December 5, 2020 and finds that an overpayment of compensation in the amount of \$75,644.11 was created.⁹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP 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.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

The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.436 to 10.438 of OWCP's regulations.¹² Section 10.436 provides that 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 expense, 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.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

⁹ See *L.W. supra* note 5; *L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹⁰ 5 U.S.C. § 8129.

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

¹² 20 C.F.R. at §§ 10.436-10.438.

¹³ *Id.* at § 10.436. OWCP's procedures provide that a claimant is deemed to need substantially all of 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020). OWCP's 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. *Id.* at Chapter 6.400.4a(2).

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

¹⁵ Federal (FECA) Procedure Manual, *supra* note 13 at Chapter 6.400.4(c)(3) (September 2020).

Section 10.438 of OWCP's regulations provides 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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.¹⁶

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.¹⁷ It considered her financial information, as presented in her completed Form OWCP-20 to determine if recovery of the overpayment would defeat the purpose of FECA.

OWCP determined that appellant did not require substantially all of her income to meet ordinary living expenses. It found that, after its review of the documents of record, she had total current monthly income of \$2,700.60, including \$1,246.00 in SSA age-related retirement benefits and wage-loss compensation from OWCP in the net amount of \$1,454.60. OWCP found that appellant's total monthly expenses were, at maximum, \$2,637.00 based on appellant's Form OWCP-20, but that the amount of \$200.00 per month for clothing appeared to be excessive, and \$892.00 in miscellaneous expenses were not explained with regard to whether they were for necessities. Deducting these latter expenses resulted in total monthly expenses of \$1,545.00, which left \$1,155.60 of disposable income with which to repay the debt. As appellant's monthly income exceeded her ordinary and necessary living expenses by more than \$50.00, OWCP found that she did not need substantially all of her income for ordinary and necessary living expenses.¹⁸ The Board also notes that, although appellant was advised by OWCP to submit documentation to establish her purported income and expenses, she did not submit supporting financial documentation as required by section 10.438 of its regulations. OWCP was, therefore, required by regulation to deny appellant's request for waiver as it 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.¹⁹

Appellant also did not establish that she was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience. She did not provide any 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

¹⁶ 20 C.F.R. § 10.438.

¹⁷ *Id.* at § 10.436.

¹⁸ *See M.C.*, Docket No. 19-0699 (issued February 12, 2020).

¹⁹ *Supra* note 15.

benefits. Appellant, therefore, did not establish that recovery of the overpayment was against equity and good conscience.²⁰

As appellant failed to establish that recovery of the overpayment of compensation would either defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP did not abuse its discretion in denying waiver of recovery of the overpayment.²¹

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.²²

Section 10.441 of OWCP's regulations provides that, when an overpayment of compensation 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 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 hardship.²³

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$363.50 every 28 days from appellant's continuing compensation.

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 should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁵ OWCP took into consideration the financial information she submitted as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize resulting hardship. Therefore, it properly required recovery of the overpayment by deducting \$363.50 from appellant's continuing compensation every 28 days.²⁶

²⁰ *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

²¹ *See supra* note 11.

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

²³ *Id.*

²⁴ *Id.* at § 10.438; *see also A.F.*, Docket No. 19-0054 (issued June 12, 2019).

²⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.5002 (September 2018).

²⁶ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.G.*, Docket No. 19-1274 (issued July 10, 2020).

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$75,644.11 during the period June 1, 2012 through December 5, 2020, for which she was without fault, as she concurrently received SSA age-related retirement benefits while receiving FECA wage-loss compensation benefits without 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 \$363.50 from her continuing compensation every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 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