

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

D.M., Appellant	)	
	)	
and	)	Docket No. 21-0905
	)	Issued: February 15, 2022
U.S. POSTAL SERVICE, GRANBURY POST OFFICE, Granbury, TX, Employer	)	
	)	

*Appearances:*  
Stanley Buchanan, for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 5, 2021 appellant, through her representative, filed a timely appeal from a November 16, 2020 merit decision and a January 12, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the January 12, 2021 decision, OWCP received additional evidence. 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.*

## **ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$25,534.45 for which she was without fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation for the period October 1, 2015 through September 20, 2020 without appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; (3) whether OWCP properly required recovery of the overpayment by deducting \$800.00 every 28 days from appellant's continuing compensation payments; and (4) whether OWCP properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b).

## **FACTUAL HISTORY**

On July 2, 2015 appellant, then a 63-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 18, 2015 she sustained a contusion of the right knee when she hit the ground on that date while in the performance of duty. OWCP accepted the claim for internal derangement of the right knee, derangement of the medial meniscus of the right knee, right knee effusion, contusion of the right lower leg, lumbar and pelvis sprain, contusions of the bilateral front wall of the thorax, and multiple fractures of the left ribs. It paid appellant wage-loss compensation on the supplemental rolls beginning August 7, 2015 and on the periodic rolls beginning March 6, 2016.

On the reverse side of the July 2, 2015 claim form and in a notification of personnel action (Standard Form (SF)-50) dated January 21, 2016, appellant's retirement plan was identified as under the Federal Employees Retirement System (FERS).

On November 6, 2018 OWCP provided SSA with a FERS/SSA dual benefits form, to obtain information regarding appellant's receipt of SSA age-related retirement benefits.

On November 20, 2018 SSA completed a dual benefits form, which indicated appellant's SSA benefit rates with a FERS offset and without a FERS offset from April 2017 through December 2018. Beginning April 2017, the SSA rate with FERS was \$960.00 and without FERS was \$778.00. Beginning December 2017, the SSA rate with FERS was \$980.00 and without FERS was \$793.00. Beginning January 2018, the SSA rate with FERS was \$1,008.00 and without FERS was \$793.00. Beginning December 2018, the SSA rate with FERS was \$1,036.00 and without FERS was \$816.00. OWCP received a second completed dual benefits form from SSA dated November 20, 2018 that indicated appellant's SSA benefit rates with a FERS offset and without a FERS offset from January 2016 through December 2018. Beginning January 2016, the SSA rate with FERS was \$1,179.00 and without FERS was \$766.00. Beginning December 2016, the SSA rate with FERS was \$1,183.00 and without FERS was \$768.00. Beginning August 2017, the SSA rate with FERS was \$1,183.00 and without FERS was \$783.00. Beginning October 2017, the SSA rate with FERS was \$1,206.00 and without FERS was \$783.00. Beginning December 2017, the SSA rate with FERS was \$1,230.00 and without FERS was \$799.00. Beginning December 2018, the SSA rate with FERS was \$1,263.50 and without FERS was \$821.50.

In an automated compensation payment system (ACPS) form dated December 13, 2018, OWCP noted that it had applied the FERS/SSA offset to appellant's compensation effective December 1, 2018.

OWCP completed a FERS offset overpayment calculation worksheet on December 13, 2018, using the effective dates and figures from the dual benefits calculation form received from SSA containing dates from November 2017 through December 2018, to calculate a total overpayment of \$5,046.66.

In a letter dated December 14, 2018, 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. Appellant's 28-day payment after SSA offset was listed as \$3,265.58.

OWCP completed a FERS offset calculation worksheet on April 26, 2019 using the effective dates and figures from the dual benefits form received from SSA, dated November 20, 2018, containing dates from January 2016 through December 2018, and calculated a total overpayment of \$14,843.54.

On May 22, 2019 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$14,843.54 had been created because appellant 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 November 1, 2017 through December 8, 2018. It explained that the overpayment occurred because her 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. OWCP attached the FERS offset calculation worksheet dated April 26, 2019. It afforded appellant 30 days to respond.

On June 14, 2019 appellant, through her representative, requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. Appellant contested the fact and amount of the overpayment, and requested waiver of recovery of the overpayment. In a Form OWCP-20 of even date, she listed her total monthly income as \$5,870.51, and her total monthly expenses as \$4,045.66. Appellant listed total assets of \$13,400.00. She submitted financial documentation to support her assets, certain expenses, assets, and debts.

By decision dated September 5, 2019, OWCP finalized its preliminary overpayment determination of May 22, 2019, finding that appellant received an overpayment of compensation in the amount of \$14,843.54 for the period November 1, 2017 through December 8, 2018, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for that period without appropriate offset. It found that she was without fault in the creation of the overpayment and required recovery by deducting \$313.00 from her continuing compensation payments every 28 days.

By decision dated October 18, 2019, OWCP vacated its September 5, 2019 decision, finding that a hearing request had been timely received prior to that decision's issuance.

By decision dated January 6, 2020, OWCP's hearing representative conducted a preliminary review and determined that the case was not in posture for a hearing at that time. The hearing representative found that OWCP did not properly explain how appellant's overpayment

was calculated in its May 22, 2019 preliminary overpayment determination and remanded that the case for reissuance of a preliminary overpayment determination, including an explanation as to how the overpayment was calculated.

On July 1, 2020 OWCP provided SSA with another FERS/SSA dual benefits form for its completion.

On July 20, 2020 SSA completed a dual benefits form, which reported appellant's SSA benefit rates with a FERS offset and without a FERS offset from October 2015 through December 2019. Beginning October and December 2015, the SSA rate with FERS was \$1,162.00 and without FERS was \$766.00. Beginning January 2016, the SSA rate with FERS was \$1,179.00 and without FERS was \$766.00. Beginning December 2016 and August 2017, the SSA rate with FERS was \$1,183.00 and without FERS was \$768.00. Beginning October 2017, the SSA rate with FERS was \$1,206.00 and without FERS was \$783.00. Beginning December 2017, the SSA rate with FERS was \$1,230.00 and without FERS was \$799.00. Beginning December 2018, the SSA rate with FERS was \$1,263.50 and without FERS was \$821.50. Beginning December 2019, the SSA rate with FERS was \$1,284.60 and without FERS was \$834.60. SSA noted that appellant had been originally paid October through December 2015 and that an overpayment had been recovered, resulting in an increase in October 2017.

OWCP completed a FERS offset calculation worksheet on September 17, 2020, using the effective dates and figures from the July 20, 2020 dual benefits calculation form received from SSA, to find a total overpayment in the amount of \$25,534.45 had been created during the period October 1, 2015 through September 12, 2020.

On September 18, 2020 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$25,534.45 had been created because appellant 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 October 1, 2015 through September 12, 2020. It explained that the overpayment occurred because her 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 a Form OWCP-20. It again 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. No response was received.

By decision dated November 16, 2020, OWCP finalized its preliminary overpayment determination of September 18, 2020, finding that appellant received an overpayment of compensation in the amount of \$25,534.45 for the period October 1, 2015 through September 20, 2020 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for that period without appropriate offset. It denied waiver of recovery of the overpayment and required recovery by deducting \$800.00 from her continuing compensation payments.

On November 11, 2020 appellant, through her representative, requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review regarding possible waiver of recovery of the overpayment.

By decision dated January 12, 2021, OWCP denied appellant's request for a hearing finding that her November 11, 2020 request for a precoupment hearing was untimely.

### **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.<sup>4</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>5</sup>

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA 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 appellant received an overpayment of compensation for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period October 1, 2015 through September 20, 2020 without appropriate offset.

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 wage-loss compensation under FECA and SSA age-related retirement benefits attributable to federal service for the same period.<sup>8</sup> The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service, without appropriate offset for the period October 1, 2015 through September 20, 2020. Thus, the Board finds that the fact and period of overpayment have been established.

The Board further finds, however, that this case is not in posture for decision with regard to the amount of the overpayment.

To determine the amount of the overpayment, the portion of SSA's age-related retirement benefits that were attributable to federal service must be calculated. OWCP received conflicting

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<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8116.

<sup>6</sup> 20 C.F.R. § 10.421(d); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>7</sup> FECA Bulletin No. 97-09 (February 3, 1997).

<sup>8</sup> *Id.* *See also T.S.*, Docket No. 21-0028 (issued September 3, 2021); *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

dual benefits worksheets from SSA with respect to the specific amount of appellant's SSA age-related retirement benefits that were attributable to federal service.

On November 20, 2018 SSA completed a dual benefits form, which reported appellant's SSA benefit rates with a FERS offset and without a FERS offset from April 2017 through December 2018. Beginning April 2017, the SSA rate with FERS was \$960.00 and without FERS was \$778.00. Beginning December 2017, the SSA rate with FERS was \$980.00 and without FERS was \$793.00. Beginning January 2018, the SSA rate with FERS was \$1,008.00 and without FERS was \$793.00. Beginning December 2018, the SSA rate with FERS was \$1,036.00 and without FERS was \$816.00.

OWCP received a second completed dual benefits form from SSA dated November 20, 2018 that reported appellant's SSA benefit rates with a FERS offset and without a FERS offset from January 2016 through December 2018. Beginning January 2016, the SSA rate with FERS was \$1,179.00 and without FERS was \$766.00. Beginning December 2016, the SSA rate with FERS was \$1,183.00 and without FERS was \$768.00. Beginning August 2017, the SSA rate with FERS was \$1,183.00 and without FERS was \$783.00. Beginning October 2017, the SSA rate with FERS was \$1,206.00 and without FERS was \$783.00. Beginning December 2018, the SSA rate with FERS was \$1,263.50 and without FERS was \$821.50.

On July 20, 2020 SSA completed a dual benefits form, which reported appellant's SSA benefit rates with a FERS offset and without a FERS offset from October 2015 through December 2019. Beginning October and December 2015, the SSA rate with FERS was \$1,162.00 and without FERS was \$766.00. Beginning January 2016, the SSA rate with FERS was \$1,179.00 and without FERS was \$766.00. Beginning December 2016 and August 2017, the SSA rate with FERS was \$1,183.00 and without FERS was \$768.00. Beginning October 2017, the SSA rate with FERS was \$1,206.00 and without FERS was \$783.00. Beginning December 2017, the SSA rate with FERS was \$1,230.00 and without FERS was \$799.00. Beginning December 2018, the SSA rate with FERS was \$1,263.50 and without FERS was \$821.50. Beginning December 2019, the SSA rate with FERS was \$1,284.60 and without FERS was \$834.60.

The SSA dual benefits forms differed regarding the amounts of appellant's SSA benefit rates without FERS, but OWCP did not seek clarification from SSA as to which figures were correct or why they differed. The case must, therefore, be remanded for clarification from SSA regarding appellant's age-related retirement benefit rate. It shall then issue a new preliminary overpayment determination with a new overpayment action request form, a new Form OWCP-20, and instructions for her to provide supporting financial information. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>9</sup>

### CONCLUSION

The Board finds that appellant received an overpayment of compensation for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period October 1, 2015 through September 20, 2020 without appropriate offset. The Board further finds that this case is not in posture for decision regarding the amount of the overpayment.

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<sup>9</sup> In light of the Board's disposition of Issue 1, the remaining issues are rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 16, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 15, 2022  
Washington, DC

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

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

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