

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

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<b>T.T., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 20-1257</b>
	)	<b>Issued: July 29, 2022</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, Houston, TX,</b>	)	
<b>Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On June 4, 2020 appellant filed a timely appeal from a May 14, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,419.63 during the period June 1, 2018 through May 25, 2019, for which she was without fault, as she concurrently received Social Security

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the May 14, 2020 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.*

Administration (SSA) age-related retirement benefits and FECA wage-loss compensation benefits, without 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 \$620.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On September 7, 2005 appellant, then a 47-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 4, 2005 she sustained muscle spasm and pain to the low back and right knee when she pulled a full container with another worker, while in the performance of duty. On the reverse side of the claim form, the employing establishment noted appellant's retirement system as Federal Employees Retirement System (FERS). OWCP initially accepted the claim for lumbar, thoracic, and right shoulder sprain/strain, and later expanded acceptance of the claim to include brachial neuritis or radiculitis, cervical spinal stenosis, and displacement of the cervical intervertebral disc without myelopathy. Appellant stopped work on September 5, 2005 and returned to work on September 16, 2005. OWCP paid her wage-loss compensation on the supplemental and periodic rolls.<sup>3</sup>

On April 3, 2019 OWCP forwarded a FERS/SSA dual benefits form to SSA requesting information from SSA regarding appellant's potential receipt of dual benefits.

On April 22, 2019 OWCP received a completed FERS/SSA dual benefits form from SSA dated April 17, 2019, wherein SSA reported appellant's SSA age-related retirement benefit rates with and without a FERS offset. The form indicated that the SSA rate with FERS was \$1,115.70 effective June 2018 and \$1,146.90 effective December 2018. The form further indicated that the SSA rate without FERS was \$163.90 effective June 2018 and \$168.40 effective December 2018.

OWCP completed a FERS offset overpayment calculation form on May 23, 2019. It determined the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$11,630.78. OWCP listed appellant's SSA rates with FERS as \$1,150.70 effective June 1, 2018 and \$1,146.90 effective December 1, 2018. The form indicated that from June 1 through November 30, 2018, appellant received an overpayment of compensation in the amount of \$5,953.33 and from December 1, 2018 through May 25, 2019, she received an overpayment of compensation in the amount of \$5,677.45.

On June 13, 2019 OWCP notified appellant of its preliminary overpayment determination that she received an overpayment of compensation in the amount of \$11,630.78 as she had received FECA wage-loss compensation benefits for the period June 1, 2018 through May 25, 2019 that had not been reduced by the portion of her SSA age-related retirement benefits attributable to her federal service, and that this portion of her SSA benefit was a prohibited dual benefit. It further advised her of its preliminary determination that she was at fault in the creation of the overpayment. OWCP 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

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<sup>3</sup> In a letter dated March 30, 2010, the Office of Personnel Management informed appellant that her application for disability retirement under FERS had been approved. Appellant elected to receive FECA benefits in lieu of FERS benefits on June 8, 2010.

to support her reported income and expenses. 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 telephone conference, a final decision based on the written evidence, or a precoupment hearing.

On June 19, 2019 appellant requested that OWCP render a decision based upon the written evidence regarding possible waiver of recovery of the overpayment. She contested the fact and amount of the overpayment as well as the determination that she was at fault in the creation of the overpayment. In an attached Form OWCP-20, appellant advised that her total monthly income included \$758.20 in SSA benefits. She further advised that her monthly expenses included: \$254.29 for housing, housing insurance, flood insurance, and car insurance; \$250.00 for food; \$100.00 for clothing; \$265.72 for utilities, and \$1,504.31 for other expenses, for a total of \$2,374.32 in monthly expenses. Appellant indicated that she had assets of cash on hand of \$128.00, as well as checking and savings account balances of \$7,135.86 and \$30,247.09, respectively, for total assets of \$37,510.85. She contended that SSA paid \$735.70 per month from June through December 2018 and \$758.20 per month from January through June 2019. Appellant enclosed a letter from SSA dated May 31, 2018 that noted her monthly benefit had been changed to \$1,115.70 as of June 2018. An undated letter from SSA informed her that her monthly payment before deductions would increase to \$1,146.50 in 2019 and that she would receive her next payment on January 9, 2019. Appellant submitted checking account statements dated November 21, 2018 through May 17, 2019, but did not otherwise document her income, assets, or expenses.

By decision dated May 14, 2020, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$11,419.63, for the period June 1, 2018 through May 25, 2019. It enclosed a FERS offset overpayment calculation form dated May 14, 2020 which indicated that as of June 1, 2018 appellant's SSA rate with FERS was \$1,115.70 and as of December 1, 2018 was \$1,146.90. OWCP further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, finding that "the overpayment cannot be waived because there is no evidence to support that this overpayment should be waived." It required repayment of the overpayment by deducting \$620.00 from appellant's continuing compensation benefits beginning May 24, 2020.

### **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 age-related retirement benefits that are attributable to

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<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8116.

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 has established that appellant received an overpayment of compensation in the amount of \$11,419.63 during the period June 1, 2018 through May 25, 2019, for which she without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits, without appropriate offset.

As previously noted, a claimant cannot receive both 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 federal service during the period June 1, 2018 through May 25, 2019. Consequently, the fact of overpayment has been established.<sup>9</sup>

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 June 1, 2018 through May 25, 2019. In the May 14, 2020 final decision, 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 June 1, 2018 through May 25, 2019 and finds that an overpayment of compensation in the amount of \$11,419.63 has been established. OWCP obtained documentation from SSA establishing that appellant's SSA rate with FERS was \$1,115.70 as of June 1, 2018, and \$1,146.90 as of December 1, 2018. Therefore, appellant received an overpayment of FECA compensation in the amount of \$11,419.63 during the period June 1, 2018 through May 25, 2019.

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<sup>6</sup> 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).

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

<sup>8</sup> *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> *See L.B.*, Docket No. 19-1322 (issued January 27, 2020).

## 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>10</sup>

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>11</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>12</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>13</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>14</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>15</sup>

## ANALYSIS -- ISSUE 2

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

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<sup>10</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).

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

<sup>12</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>13</sup> *Id.* at § 10.437(a)(b).

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

<sup>15</sup> *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.<sup>16</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 June 13, 2019, 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. While appellant completed the Form OWCP-20, and submitted checking account records, she did not provide other 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>17</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>18</sup>

Section 10.441(a) of OWCP's regulations<sup>19</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>20</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$620.00 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 \$2,480.32 every 28 days as of March 1, 2020. While she completed the

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<sup>16</sup> *Id.* at § 10.436.

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

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

<sup>19</sup> *Id.* at § 10.441(a).

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

Form OWCP-20, she did not provide sufficient 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>21</sup> The Board notes that 25 percent of \$2,480.32 is \$620.00. The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$620.00 every 28 days.

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation during the period June 1, 2018 through May 25, 2019, in the amount of \$11,419.63, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without appropriate offset. The Board further finds that OWCP properly denied waiver of the recovery of the overpayment, and properly required recovery of the overpayment by deducting \$620.00 from appellant's continuing compensation payments every 28 days.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 14, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2022  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>21</sup> *Supra* note 12 at Chapter 6.500.8(c)(1) (September 2018); *M.W.*, Docket No. 20-1107 (issued March 17, 2021).