

FECA wage-loss compensation benefits and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; (3) whether OWCP properly required recovery of the overpayment by deducting \$397.05 from appellant's continuing compensation payments every 28 days; and (4) whether OWCP properly denied appellant's request for a hearing before its Branch of Hearings and Review, pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On April 1, 2013 appellant, then a 57-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she experienced extensive damage to tendons in her right shoulder due to factors of her federal employment. She indicated that she first became aware of her condition and realized its relationship to her federal employment on March 18, 2013. Appellant stopped work on March 19, 2013. In a November 14, 2013 decision, OWCP accepted her claim for aggravation of right shoulder rotator cuff tear. It paid appellant wage-loss compensation on the supplemental rolls, effective March 19, 2013, and on the periodic rolls, effective December 15, 2013.³

On November 14, 2019 OWCP sent a Federal Employees Retirement System (FERS)/SSA dual benefits form to SSA for its completion. It listed the computation period as October 20, 2019 to the present.

On December 20, 2019 SSA provided OWCP with a completed FERS/SSA dual benefits form, which listed appellant's monthly SSA age-related retirement benefit rates with FERS and without FERS for the period November 2017 through December 2019. It reported that: beginning November 2017, her SSA rate with FERS was \$1,155.00 and without FERS was \$296.60; beginning December 2017, her SSA rate with FERS was \$1,178.00 and without FERS was \$302.50; beginning January 2018, her SSA rate with FERS was \$1,180.00 and without FERS was \$311.00; beginning December 2018, her SSA rate with FERS was \$1,213.00 and without FERS was \$319.70; beginning January 2019, her SSA rate with FERS was \$1,216.00 and without FERS was \$337.90; and beginning December 2019, her SSA rate with FERS was \$1,236.00 and without FERS was \$343.30.

In a December 11, 2020 letter, OWCP informed appellant that it would begin deducting the portion of SSA age-related retirement benefits attributable to her federal service from her FECA wage-loss compensation. It found that, with the SSA offset, she was entitled to net compensation payment of \$1,607.49.

On January 4, 2021 OWCP received a second FERS/SSA dual benefits form, which listed appellant's monthly SSA age-related retirement benefit rates with FERS and without FERS for the period November 2017 through December 2020. It reported that: beginning November 2017, [appellant's] SSA rate with FERS was \$1,155.80 and without FERS was \$296.60; beginning December 2017, [appellant's] SSA rate with FERS was \$1,178.80 and without FERS was \$302.50;

³ On April 4, 2017 appellant accepted a part-time position as a pharmacy technician. By decision dated February 12, 2018, OWCP issued a formal loss of wage-earning capacity determination finding that her actual earnings as a pharmacy technician fairly and reasonably represented her wage-earning capacity.

beginning December 2018, [appellant's] SSA rate with FERS was \$1,213.40 and without FERS was \$310.90; beginning December 2019, [appellant's] SSA rate with FERS was \$1,236.30 and without FERS was \$315.80; and beginning December 2020, [appellant's] SSA rate with FERS was \$1,258.70 and without FERS was \$319.90.

OWCP completed a FERS offset overpayment calculation form on February 1, 2021. It calculated the overpayment amount by determining the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$33,514.24. OWCP found that, from November 1 through 30, 2017, appellant received an overpayment in the amount of \$849.76, from December 1, 2017 through November 30, 2018, she received an overpayment in the amount of \$10,543.29, from December 1, 2018 through November 30, 2019, she received an overpayment in the amount of \$10,859.75, from December 1, 2019 through November 30, 2020, she received an overpayment in the amount of \$11,106.69, and from December 1 through 5, 2020, she received an overpayment in the amount of \$154.75.

In a March 10, 2021 letter, OWCP informed appellant that it would begin deducting the portion of SSA age-related retirement benefits attributable to her federal service from her compensation benefits. It found that with the SSA offset she was entitled to a new net compensation payment of \$1,538.18.

OWCP completed a second FERS offset overpayment calculation form on March 10, 2021. It calculated the overpayment amount by determining the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$36,113.99. OWCP found that, from November 1 through 30, 2017, appellant received an overpayment in the amount of \$849.76, from December 1, 2017 through November 30, 2018, she received an overpayment in the amount of \$10,543.29, from December 1, 2018 through November 30, 2019, she received an overpayment in the amount of \$10,859.75, from December 1, 2019 through November 30, 2020, she received an overpayment in the amount of \$11,106.69, and from December 1, 2020 through February 27, 2021, she received an overpayment in the amount of \$2,754.50.

In a preliminary overpayment determination dated May 17, 2021, OWCP notified appellant of its preliminary finding that she had received an overpayment of compensation in the amount of \$33,514.24 for the period November 1, 2017 through December 5, 2020, because it had failed to reduce her wage-loss compensation benefits by the portion of her SSA age-related retirement benefits that were attributable to federal service. It further advised her of its preliminary determination that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20), to determine a reasonable payment method, and advised her that she could request waiver of recovery of the overpayment. It further requested that she submit supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records supporting income and expenses. Additionally, OWCP provided an overpayment action request form and notified appellant 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 prerecoumment hearing. No response was received.

By decision dated June 24, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount

of \$33,514.24 for the period November 1, 2017 through December 5, 2020 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It also found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP determined that recovery of the overpayment would require deducting \$397.05 from appellant's continuing compensation payments every 28 days.

On June 30, 2021 OWCP received an overpayment action request form and letter dated June 23, 2021 from appellant requesting an extension to submit her response that it interpreted as her request for a hearing before a representative of OWCP's Branch of Hearings and Review regarding OWCP's overpayment determination.

By decision dated July 22, 2021, OWCP denied appellant's hearing request. It found that she was allowed 30 days from the May 17, 2021 preliminary overpayment determination to request a hearing before a representative of OWCP's Branch of Hearings and Review, but that she did not request such a hearing regarding the preliminary overpayment determination. OWCP advised that on June 24, 2021 it issued a final overpayment decision, and further noted, "The final decision concerning an overpayment is not subject to the hearing provision of 5 U.S.C. § 8124(b)." It also noted that appellant could file an appeal with the Board.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.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

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁶ FECA Bulletin No. 97-09 states 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.⁷

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

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

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset.

As noted, a claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period. The receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁸ In this case, OWCP was notified by SSA in a form received by OWCP on December 20, 2019 and January 4, 2021 that appellant had concurrently received FECA benefits and SSA age-related retirement benefits attributable to her federal service without an appropriate offset beginning November 1, 2017. The Board finds that fact of overpayment is, therefore, established.

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

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 with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service and provided its rate with FERS and without FERS for the period beginning November 1, 2017. However, it received two FERS/SSA dual calculation transmittal forms, the first dated December 20, 2019 and the second dated January 4, 2021, with differing amounts of SSA benefits with FERS and without FERS. In addition, the evidence of record also contains two FERS offset overpayment calculation worksheets, which cover two different periods of overpayment. The first calculation worksheet dated February 1, 2021 provided the overpayment amount for the period November 1, 2017 through December 5, 2020. The second calculation worksheet dated March 10, 2021 provided the overpayment amount for the period November 1, 2017 through February 27, 2021. The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated.⁹ In this case, however, the Board finds that OWCP has not adequately explained how the overpayment was determined in light of the discrepancies in the evidence provided by SSA regarding the different amounts of appellant's monthly SSA rates with and without the FERS offset. The evidence of record is also unclear regarding the period of overpayment and when OWCP began to properly offset her FECA compensation benefits. As such, the Board is unable to verify that appellant received an overpayment of compensation in the amount of \$33,514.24.¹⁰

⁸ *Id.* See also *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁹ *A.P.*, Docket No. 19-1671 (issued February 22, 2021); *J.M.*, Docket No. 18-1505 (issued June 21, 2019); *Teresa A. Ripley*, 56 ECAB 528 (2005).

¹⁰ See *G.R.*, Docket No. 21-0209 (issued December 20, 2021); see also *S.H.*, Docket No. 20-1189 (issued January 27, 2021).

Accordingly, the Board finds that the case must be remanded to OWCP. On remand OWCP shall clarify the discrepancy between the figures provided by SSA to OWCP and when OWCP began to properly offset appellant's FECA compensation benefits. It shall then determine the proper amount of the overpayment of compensation based on the correct rates provided by SSA and issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, and instructions for her to provide supporting financial information. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹¹

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset. The Board further finds that the case is not in posture for decision with respect to the period and amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The July 22, 2021 decision of

¹¹ Given the Board's disposition regarding Issue 1, Issues 2, 3, and 4 are rendered moot.

the Office of Workers' Compensation Programs is set aside as moot. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: July 29, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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