

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$26,208.18 during the period December 1, 2019 through September 11, 2021 for which she was without fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation 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 \$818.74 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On November 27, 2002 appellant, then a 48-year-old business service network operations manager, filed an occupational disease claim (Form CA-2) alleging that she sustained severe anxiety, stress, depression, and hypertension as a result of psychological abuse in the workplace. She first became aware of the conditions in February 2002 and its relationship to her employment in March 2002. Appellant stopped work on October 28, 2002. On the reverse side of the claim form, a box was checked indicating that her retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for recurring major depressive disorder, aggravation of hypertension, and aggravation of nonspecific dermatitis. It paid appellant wage-loss compensation on the supplemental rolls beginning April 21, 2003 and on the periodic rolls beginning September 7, 2003.

On September 16, 2021 OWCP provided SSA with a FERS/SSA dual benefits form.

On September 22, 2021 SSA completed the dual benefits form, which indicated appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from December 2019 through December 2020. Beginning December 2019, the SSA rate with FERS was \$2,037.80 and without FERS was \$823.50. Beginning December 2020, the SSA rate with FERS was \$2,064.20 and without FERS was \$834.20.

On September 30, 2021 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's overpayment from December 1, 2019 through September 11, 2021. It found that she had received an overpayment of compensation in the amount of \$14,651.66 for the period December 1, 2019 through November 30, 2020 and in the amount of \$11,556.59 for the period December 1, 2020 through September 11, 2021. The total overpayment was determined to be \$26,208.26.

An OWCP manual adjustment form dated October 1, 2021 found that the total overpayment amount for the period December 1, 2019 through September 11, 2021 was \$26,208.18.

By letter dated October 1, 2021, OWCP advised appellant that, effective September 12, 2021, her FECA wage-loss compensation benefits would be offset by her SSA age-related retirement benefits, every 28 days, in the amount of \$1,135.38. Appellant's new net wage-loss compensation payment every 28 days would be \$3,274.34.

On October 15, 2021 OWCP issued a preliminary determination, finding an overpayment of compensation in the amount of \$26,208.18 had been created for the period December 1, 2019

through September 11, 2021 because appellant concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It requested that he submit a completed overpayment recovery questionnaire Form OWCP-20 to determine a reasonable repayment method and advised him that he could request a waiver of the overpayment. OWCP further requested that appellant provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, it further provided an overpayment action request form and notified him that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing. No response was received.

By decision dated November 22, 2021, OWCP finalized its determination that appellant had received an overpayment of compensation in the amount of \$26,208.18 during the period December 1, 2019 through September 11, 2021 for which he was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It denied waiver of recovery of the overpayment as he had not requested waiver of the overpayment. OWCP required recovery of the overpayment by withholding \$818.74 from appellant's continuing compensation payments every 28 days.

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.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 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.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$26,208.18 as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period December 1, 2019 through September 11, 2021 without an appropriate offset.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

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

⁷ FECA Bulletin No. 97-09 (issued February 3, 1997).

As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA retirement benefits attributable to federal service for the same period.⁸ The information provided by SSA on September 22, 2021 accurately indicated that appellant had received SSA age-related retirement benefits that were attributable to her own federal service from December 1, 2019 through September 11, 2021. Thus, the record establishes that appellant received an overpayment of FECA wage-loss compensation.⁹

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of appellant's SSA age-related retirement benefits that were attributable to her federal service. SSA provided its benefit rates with FERS and without FERS. The Board finds that OWCP properly determined the amount of the overpayment. It found that, since SSA benefits were paid monthly and FECA benefits were paid every 28 days, the monthly offset had to be adjusted to a 28-day payment cycle amount. OWCP provided its calculations for each relevant time period based on the SSA worksheet and calculated that the lack of offset from December 1, 2019 through September 11, 2021 resulted in an overpayment total of \$26,208.18.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$26,208.18 for the period December 1, 2019 through September 11, 2021.

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 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.¹¹

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

⁸ *Supra* note 5. See also *N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁹ *Id.*

¹⁰ 5 U.S.C. § 8129.

¹¹ 20 C.F.R. § 10.438.

would defeat the purpose of FECA or be against equity and good conscience.¹² Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.¹³

In its preliminary determination dated October 15, 2021, OWCP requested a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Appellant, however, did not respond. As such, OWCP did not have the financial information and supporting documentation necessary for it to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁴

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.¹⁵ Section 10.441(a) of OWCP's implementing regulations¹⁶ provides that if 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.¹⁷

When an individual fails to provide requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines. The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.¹⁸

¹² *Id.* at § 10.436.

¹³ *Supra* note 11.

¹⁴ *See T.E.*, Docket No. 19-0348 (issued December 11, 2019).

¹⁵ *See C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

¹⁶ 20 C.F.R. § 10.441(a).

¹⁷ *Id.*

¹⁸ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.500.8(c)(1) (September 2020).

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$818.74 from appellant's continuing compensation payments every 28 days.

Along with the October 15, 2021 preliminary overpayment determination, OWCP requested that appellant complete a Form OWCP-20 and submit supporting financial documentation. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁹ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁰ As appellant did not submit the requested financial information and supporting documentation, the Board finds that OWCP properly required recovery of the \$26,208.18 overpayment at the rate of \$818.74 every 28 days from appellant's continuing compensation payments.²¹

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$26,208.18 for the period December 1, 2019 through September 11, 2021, for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an 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 \$818.74 from appellant's continuing compensation payments.

¹⁹ *Supra* note 11.

²⁰ *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); *supra* note 18 at Chapter 6.400.3 (September 2020).

²¹ *See E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

ORDER

IT IS HEREBY ORDERED THAT the November 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board