

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

P.W., Appellant)	
)	
and)	Docket No. 21-1128
)	Issued: June 2, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Escondido, CA, Employer)	
)	

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 July 19, 2021 appellant filed a timely appeal from a May 19, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees'

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, appellant asserted that the amount of overpayment was incorrect and that waiver of recovery should have been granted. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$12,370.09 for the period March 1, 2018 through April 27, 2019, for which she was without fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation, without appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On September 24, 2007 appellant, then a 59-year-old modified carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a right upper extremity injury as a result of factors of her federal employment including fine manipulation and computer work. OWCP accepted the claim for right-sided cervical and thoracic strain/sprain, and lumbar sprain. A memorandum to the file dated February 11, 2008 noted that appellant's retirement system coverage was under the Federal Employees Retirement System (FERS). Appellant was in receipt of compensation for partial disability based upon her work restriction's limitation of her number of work hours. OWCP initially paid appellant wage-loss compensation on the supplemental rolls as of March 2, 2009. OWCP paid appellant compensation on the periodic rolls from June 7, 2009 until September 14, 2019.

On March 27, 2019 OWCP provided SSA with a FERS/SSA dual benefits form to obtain information regarding appellant's potential receipt of SSA age-related retirement benefits.

On April 2, 2019 SSA completed the dual benefits form, which indicated appellant's SSA benefit rates with a FERS offset and without a FERS offset from March to December 2018. Beginning March 2018, the SSA rate with FERS was \$2,488.80 and without FERS was \$1,595.80. Beginning December 2018, the SSA rate with FERS was \$2,558.40 and without FERS was \$1,640.40.

On April 25, 2019 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's SSA offset overpayment from March 1, 2018 through April 27, 2019. It found that she received an overpayment of compensation in the amount of \$8,095.88 for the period March 1 through November 30, 2018 and \$4,479.03 for the period December 1, 2018 through April 27, 2019. The total overpayment was determined to be \$12,574.91.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the May 19, 2021 decision, OWCP received additional evidence. 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.*

In a preliminary overpayment determination dated April 26, 2019, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$12,574.91 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 March 1, 2018 through April 27, 2019. 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 a 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 letter dated May 28, 2019, 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 \$1,737.42. However, appellant's federal service increased her monthly Social Security payment by \$847.38, 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 \$890.04 every 28 days.

On May 23, 2019 appellant requested a precoupment hearing before a representative of OWCP's Branch of Hearings and Review, contesting the amount of the overpayment and requesting waiver of recovery of the overpayment. In an attached Form OWCP-20, she listed her monthly income as consisting of \$2,578.00 in SSA benefits and \$1,932.00 in FECA benefits, noting that the figure for FECA benefits would be reduced by \$847.38. Her monthly expenses were listed as: \$925.00 for rent; \$600.00 for food; \$200.00 for clothing; \$350.00 for utilities; other expenses of \$1,300.00; and monthly installment payments of \$580.00 for a total of \$3,955.00 in monthly expenses. Her assets included \$40.00 in cash on hand; a checking account balance of \$1,900.00; a savings account balance of \$114,196.00; and stocks and bonds with a current value of \$110,000.00. Appellant submitted supporting financial information for her checking and savings accounts. She also noted that she had recently liquidated one of her investment accounts as she had entered into a contract to build a house.

The precoupment hearing was held on September 12, 2019.

Appellant submitted an undated letter from SSA noting that her monthly SSA benefits before deductions would be \$2,557.50 and after deductions \$2,422.00, and that she would receive this payment on or about January 16, 2019. She submitted another undated letter from SSA noting that her monthly SSA benefits beginning March 2018 would be \$2,354.00. In another undated letter from SSA, it noted that, after January 2018, her monthly SSA benefits before deductions would be \$1,646.00 and after deductions \$1,512.00. Appellant also submitted additional supporting financial documentation regarding her assets and expenses.

By decision dated December 9, 2019, OWCP's hearing representative vacated the April 26, 2019 preliminary overpayment determination and dated and remanded the case for additional development. She found that appellant had submitted evidence warranting clarification from SSA regarding the correctness of the information provided to OWCP, as the figures present

in her undated letters from SSA conflicted with the figures provided by SSA in its April 2, 2019 dual benefits form.

By letters dated December 11, 2019 and January 14, 2020, OWCP requested clarification from SSA regarding appellant's monthly SSA age-related retirement benefits with and without FERS.

On June 27, 2020 SSA submitted another dual benefits form, which reported appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from March 2018 through December 2019. Beginning March 2018, the SSA rate with FERS was \$2,488.80 and without FERS was \$1,610.40. Beginning December 2018, the SSA rate with FERS was \$2,558.40 and without FERS was \$1,655.40. Beginning December 2019, the SSA rate with FERS was \$2,599.30 and without FERS was \$1,681.80.

In a letter dated August 13, 2020, appellant disagreed with the figures provided by SSA in its June 27, 2020 dual benefits form. She stated that, while she understood that SSA only paid in whole dollars and rounded down to the nearest dollar, she felt that the same rounded amount should be used when reporting earnings and calculating FERS offset. Appellant stated that the amount she was paid by SSA beginning March 2018 was \$2,488.00, not \$2,488.80; and beginning January 2019 was \$2,557.50 and not \$2,558.40.

On August 25, 2020 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's SSA offset overpayment from March 1, 2018 through April 27, 2019. It found that she received an overpayment of compensation in the amount of \$7,064.24 for the period March 1 through November 30, 2018 and \$4,405.85 for the period December 1, 2018 through April 27, 2019. The total overpayment was determined to be \$12,370.09.

In a preliminary overpayment determination dated August 26, 2020, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$12,370.09 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 March 1, 2018 through April 27, 2019. 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 a 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.

On September 23, 2020 appellant requested a prerecoumpment hearing before a representative of OWCP's Branch of Hearings and Review. She disputed the amount of the overpayment and requested waiver. In an attached letter, appellant again disputed the figures supplied by SSA and stated that, as she was found without fault, the overpayment should be waived.

The prerecoumpment hearing was held on March 11, 2021.

By decision dated May 19, 2021, OWCP's hearing representative finalized the preliminary overpayment determination of August 26, 2020, finding that appellant received an overpayment of compensation in the amount of \$12,370.09 for the period March 1, 2018 through April 27, 2019 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for that period without appropriate offset. She found that appellant's total monthly income was \$4,541.50 by herself or \$5,408.17 including her son's income, and total listed monthly expenses were \$4,316.00. The hearing representative noted that, as appellant used credit to pay for food and clothing, the expenses were reduced by \$90.00. She further noted that appellant had submitted a credit card statement for two months that contained food expenses totaling \$2,140.44, including charges from a wholesale warehouse and a shared expense with her daughter. Clothing expenditures were marked to show a total expenditure of \$342.36. By contrast, the hearing representative noted that, according to the Bureau of Labor Statistics, the average yearly expenditure for clothing was \$1,883.00 and for food was \$8,169.00; whereas appellant's listed expenses were \$4,140.00 for clothing and \$12,248.00 for food. The hearing representative observed that appellant provided expenses only for two months and that the large expenditures did not clearly indicate that they were solely for food and noted that, even excluding her son's income, appellant's income and expenses did not support waiver. Furthermore, appellant had \$35,000.00 in savings. As such, the hearing representative found that waiver of recovery of the overpayment was not warranted and required repayment at \$300.00 per month.

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 age-related retirement 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 appellant received an overpayment of compensation in the amount of \$12,370.09 for the period March 1, 2018 through April 27, 2020 because she concurrently received

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 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).

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

SSA age-related retirement benefits and FECA wage-loss compensation, 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.⁸ 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 dated June 27, 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 March 2018 through December 2019.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period March 1, 2018 through April 27, 2019 and finds that an overpayment of compensation in the amount of \$12,370.09 was created.⁹

On appeal appellant disputes the overpayment calculation noting that SSA rounded compensation calculations; however, she has not submitted evidence that establishes that she received less than the benefit rates clarified by SSA.

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

⁸ See *D.M.*, Docket No. 19-1369 (issued June 30, 2020).

⁹ See *L.W. supra* note 6; *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.

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

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 total monthly income of \$4,541.50. OWCP found that appellant's total monthly expenses

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).

¹⁶ 20 C.F.R. § 10.438.

¹⁷ *Id.* at § 10.436.

were, at maximum, \$4,316.00, although her clothing and food expenses appeared to be excessive. 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 appellant's listed assets of \$35,000.00 exceed the asset base.

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 benefits. Appellant, therefore, did not establish that recovery of the overpayment was against equity and good conscience.¹⁹

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.²⁰

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$12,370.09 during the period March 1, 2018 through April 27, 2019 for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits, without appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

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

¹⁹ *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

²⁰ See *supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 2, 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