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G.K., Appellant)	
)	
and)	Docket No. 22-0024
)	Issued: June 7, 2022
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, PALM SPRINGS)	
INTERNATIONAL AIRPORT,)	
Palm Springs, CA, Employer)	
)	

Case Submitted on the Record

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

On October 5, 2021 appellant filed a timely appeal from a September 28, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$25,027.64, compromised to \$19,500.00, for

² The Board notes that following the September 28, 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.*

which she was without fault because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits, without an appropriate offset for the period February 1, 2015 through January 30, 2021; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$138.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On February 25, 2015 appellant, then a 63-year-old transportation security officer, filed an occupational disease claim (Form CA-2) alleging a bulging disc in her neck due to factors of her federal employment including lifting heavy bags repetitively. Her retirement coverage was noted on the claim form as Federal Employees Retirement System (FERS). OWCP accepted the claim for neck sprain and displacement of cervical intervertebral disc without myelopathy. It paid appellant wage-loss compensation on the supplemental rolls commencing May 11, 2017 and on the periodic rolls since May 28, 2017. OWCP paid her wage-loss compensation based upon her loss of wage-earning capacity as of June 6, 2019.

On August 8, 2019 OWCP forwarded a FERS/SSA dual benefits form to SSA.

On August 21, 2019 OWCP received a completed FERS/SSA dual benefits form from SSA setting forth appellant's SSA age-related retirement benefit rates with FERS and without FERS commencing February 2015. With FERS appellant was entitled to a monthly SSA rate of \$990.00 effective February 2015; \$991.00 effective January and June 2016; \$991.80 effective November 2016; \$994.00 effective December 2016; \$1,004.00 effective January 2017; \$1,024.00 effective December 2017; \$1,028.00 effective January 2018; and \$1,056.50 effective December 2018. Without FERS she was entitled to \$672.00 effective February 2015, and January and June 2016; \$672.80 effective November 2016; \$674.00 effective December 2016; \$688.00 effective December 2017; and \$707.50 effective December 2018.

On September 17, 2019 OWCP completed a FERS offset overpayment calculation form for the period May 11, 2017 until July 27, 2019. It determined the overpayment amount by multiplying the daily FERS offset amount by the number of days in each period. The total overpayment amount was found to be \$8,722.62.

On October 24, 2019 OWCP notified appellant that it had been advised that she had been receiving SSA age-related retirement benefits since June 1, 2017. It explained that her federal service increased her monthly SSA age-related retirement benefits by \$349.00, therefore her FECA benefits would be offset every 28 days in the amount of \$322.15.

On January 9, 2021 OWCP forwarded another FERS/SSA dual benefits calculation worksheet to SSA.

On January 21, 2021 OWCP received another completed FERS/SSA dual benefit calculation transmittal from SSA setting forth appellant's SSA age-related retirement benefit rates with FERS and without FERS commencing February 2015. With FERS, the monthly SSA rates were: \$990.70 effective February 2015, \$991.80 effective January 2016, \$994.70 effective December 2016, \$1,004.70 effective January 2017, \$1,024.70 effective December 2017, \$1,028.40 effective January 2018, \$1,057.20 effective December 2018, \$1,074.10 effective December 2019,

\$1,077.40 effective January 2020, \$1,091.30 effective December 2020. Without FERS, the monthly SSA rates were: \$662.30 effective February 2015, \$662.30 effective January 2016, \$664.20 effective December 2016, \$664.20 January 2017, \$677.40 effective December 2017, \$677.40 effective January 2018, \$696.40 effective December 2018, \$707.50 effective December 2019, \$714.30 effective January 2020, and \$723.50 effective December 2020.

On February 19, 2021 OWCP completed a FERS offset overpayment calculation form wherein it calculated an overpayment for the period February 1, 2015 to January 30, 2021. It determined the overpayment amount by multiplying the daily FERS offset amount by the number of days in each period. OWCP found that the overpayment totaled \$25,027.64.

In a preliminary overpayment determination dated February 19, 2021, OWCP advised appellant that she received a \$25,027.64 overpayment of compensation for the period February 1, 2015 through January 30, 2021 because her wage-loss compensation benefits had not been reduced by her SSA age-related retirement benefits attributable to her federal service. It also made a preliminary determination that she was without fault in the creation of this overpayment. OWCP advised appellant that she could submit evidence contesting the fact or amount of the overpayment. It instructed her to complete an overpayment recovery questionnaire (Form OWCP-20) to determine whether waiver should be granted, and if not, a reasonable repayment schedule. OWCP informed appellant that she should 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. 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 March 4, 2021 appellant disagreed that an overpayment occurred and stated that she did not receive FERS retirement benefits as she had not retired. She requested waiver of recovery of the overpayment, asserting that she had a financial hardship.

In a compromise memorandum dated September 24, 2021, OWCP reduced appellant's debt by \$5,527.46.

By decision dated September 28, 2021, OWCP finalized the preliminary overpayment determination finding that appellant received an overpayment of compensation in the amount of \$25,027.64, compromised to \$19,500.00 for the period February 1, 2015 through January 30, 2021, for which she was without fault. It denied waiver of recovery of the overpayment and required recovery of the overpayment by deducting \$138.00 from appellant's continuing compensation payments every 28 days.

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.³ Section 8116 limits the right of an employee to receive

³ 5 U.S.C. § 8102(a).

compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁴

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.⁵ 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.⁶

ANALYSIS -- ISSUE 1

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

The record establishes that OWCP paid appellant wage-loss compensation on the supplemental and periodic rolls. The record also establishes that appellant concurrently received SSA age-related retirement benefits. A claimant cannot receive both FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁷ The Board thus finds that fact of overpayment has been established.

The Board further finds that the period and amount of the overpayment are not in posture for decision.

As previously noted, the record indicates that appellant first received FECA wage-loss compensation on May 11, 2017. However, OWCP finalized an overpayment for the period February 1, 2015 through January 30, 2021. Furthermore, SSA reported differing benefit rates in its transmittals dated August 21, 2019 and January 21, 2021. Therefore, the period and amount of overpayment remain unclear. The case must, therefore, be remanded to OWCP for further development.⁸

On remand, OWCP shall make new findings clarifying the period and amount of the overpayment. It shall then issue a new preliminary overpayment determination with an overpayment action request form, a Form OWCP-20, and instructions for providing updated

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *L.D.*, Docket No. 21-0447 (issued September 28, 2021); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁶ FECA Bulletin No. 97-09 (issued February 3, 1997); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁷ 5 U.S.C. § 8116(d)(2); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

⁸ *See A.V.*, Docket No. 21-0887 (issued May 12, 2022).

supporting financial documentation. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.⁹

CONCLUSION

The Board finds that appellant has received an overpayment of compensation because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without appropriate offset. The Board further finds that the case is not in posture for decision regarding the period and amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part, set aside in part, and remanded for further proceedings consistent with this decision of the Board.

Issued: June 7, 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

⁹ Given the disposition of issue 1, issues 2 and 3 are moot.