

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

P.W., widow of A.W., Appellant	)	
	)	
and	)	Docket No. 20-1131
	)	Issued: November 30, 2022
DEPARTMENT OF THE NAVY, NORFOLK	)	
NAVAL SHIPYARD, Portsmouth, VA, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On May 7, 2020 appellant filed a timely appeal from an April 24, 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 \$84,820.09 for which she was without fault, as she concurrently received Social Security Administration (SSA) survivor benefits and FECA survivor

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

<sup>2</sup> The Board notes that, following the April 24, 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.*

benefits during the period August 1, 2004 through January 4, 2020 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 \$299.00 every 28 days from appellant's continuing compensation payments.

### **FACTUAL HISTORY**

Appellant filed a claim for compensation by widow, widower, and/or children (Form CA-5) on March 26, 1999. She alleged that the employee, then a 44-year-old marine machinery mechanic, sustained severe steam burns to over 70 percent of his body on March 13, 1999 when he was exposed to residual hot water and steam while working on a low-pressure steam piping system while in the performance of duty and that he subsequently passed away as a result of this injury on March 15, 1999.

By decision dated April 29, 1999, OWCP accepted appellant's claim for survivor benefits. It paid appellant survivor benefits on the periodic compensation rolls beginning April 25, 1999.

The employee's retirement coverage was indicated as under the Federal Employees Retirement System (FERS) in a checklist for disability roll cases dated October 25, 1999.

On December 13, 2019 SSA forwarded a completed Federal Employees Retirement System (FERS)/SSA dual benefits form to OWCP. This form indicated SSA benefit rates with and without FERS for effective dates from August 2004 through December 2019. SSA noted on the form that appellant received "disabled benefits" from August 2004 through June 2016 and began to receive "widow's benefits" in July 2016.

In a FERS offset overpayment calculation form dated January 10, 2020, OWCP found that during the period August 1 to November 30, 2004 the overpayment amount was \$1,608.79, from December 1, 2004 to November 30, 2005 \$4,957.58, from December 1, 2005 to November 30, 2006 \$5,150.11, from December 1, 2006 to June 30, 2007 \$3,089.14, from July 1, 2007 to November 30, 2007 \$2,062.98, from December 1, 2007 to November 30, 2008 \$5,055.63, from December 1, 2008 to November 30, 2011 \$15,991.81, from December 1, 2011 to November 30, 2012 \$5,538.26, from December 1, 2012 to November 30, 2013 \$5,619.40, from December 1, 2013 to November 30, 2014 \$5,703.63, from December 1, 2014 to May 31, 2015 \$2,892.00, from June 1, 2015 to November 30, 2016 \$8,723.67, from December 1, 2016 to November 30, 2017 \$5,811.92, from December 1, 2017 to November 30, 2018 \$5,932.25, from December 1, 2018 to November 30, 2019 \$6,088.68, and from December 1, 2019 until January 4, 2020 \$594.23.

On January 30, 2020 OWCP issued a preliminary finding that an overpayment of compensation in the amount of \$84,820.09 had been created. It explained that the overpayment occurred because appellant received SSA benefits from the employee's FERS retirement annuity during the period August 1, 2004 through January 4, 2020, based on credits the employee earned while working for the Federal Government, and that this portion of his SSA benefits was a prohibited dual benefit. OWCP provided appellant a copy of the overpayment calculation worksheet. It found appellant not at fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable recovery method and advised her that she could request waiver of recovery

of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records, which support income and expenses. Additionally, OWCP further 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 precoupment hearing. No response was received.

By decision dated March 3, 2020, OWCP finalized the preliminary determination of an \$84,820.09 overpayment of compensation. It determined that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because no financial information had been submitted. OWCP advised that \$299.00 would be withheld from appellant's continuing compensation benefits every 28 days beginning March 29, 2020. It reissued this final decision to appellant on April 24, 2020.

### **LEGAL PRECEDENT**

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>3</sup> Section 8116(d) of FECA requires that compensation benefits be reduced by the portion of SSA benefits based on age or death that are attributable to federal service.<sup>4</sup>

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related or death benefits that are attributable to federal service of the employee.<sup>5</sup>

### **ANALYSIS**

The record establishes that appellant concurrently received FECA survivor benefits and SSA survivor benefits attributable to the employee's federal service, without an appropriate offset. The portion of the SSA survivor benefits earned through federal employment was part of the employee's FERS retirement package, and the widow's receipt of benefits under FECA and SSA benefits based on death concurrently, without an appropriate offset, was a prohibited dual benefit.<sup>6</sup> Thus, the Board finds that OWCP properly determined that appellant received an overpayment of compensation.<sup>7</sup>

The Board further finds, however, that the case is not in posture for decision with regard to the period and amount of the overpayment. SSA provided a dual benefits form reporting SSA

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8116(d); *E.H.*, Docket No. 16-1465 (issued December 19, 2016); *see also Janet K. George (Angelos George)*, 54 ECAB 201 (2002).

<sup>5</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>6</sup> *See L.A.*, Docket No. 19-0708 (issued August 12, 2019); *P.G.*, Docket No. 13-0589 (issued July 9, 2013).

<sup>7</sup> *See W.D.*, Docket No. 13-1974 (issued May 15, 2014).

rates with and without FERS for effective dates from August 2004 through December 2019. SSA noted on the form that appellant received “disabled benefits” from August 2004 through June 2016 and began to receive “widow’s benefits” in July 2016. It remains unclear whether the reported benefit rates represent the SSA survivor benefit rates received by appellant or the employee’s SSA age-related retirement benefits. It also remains unclear whether appellant’s own SSA disability benefits were incorporated in the reported rates. Furthermore, OWCP calculated that appellant received an overpayment of compensation from August 1, 2004 through January 4, 2020. It appears from the record, however, that appellant was not in receipt of SSA survivor benefits based on the employee’s FERS retirement account until on or about July 2016. SSA has indicated that appellant first received survivor benefits after June 2016.

Accordingly, the Board finds that the case must be remanded to OWCP. On remand OWCP shall recalculate the period and amount of the overpayment of compensation and issue a new preliminary overpayment determination, with an overpayment action request form, a new Form OWCP-20, and instructions for appellant to provide updated supporting documentation. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>8</sup>

### CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for which she was without fault, as she concurrently received SSA survivor benefits and FECA survivor benefits without an appropriate offset. The Board further finds, however, that the case is not in posture for decision with regard to the period and amount of the overpayment.

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<sup>8</sup> In light of the Board’s disposition of Issue 1, Issues 2 and 3 are rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 24, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 30, 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