

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

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<b>W.W., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0745</b>
	)	<b>Issued: November 7, 2022</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Oakland, CA, Employer</b>	)	
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*Appearances:*  
*Eddie Reyna*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On March 30, 2022 appellant, through her representative, filed a timely appeal from an October 4, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from OWCP's October 4, 2021 decision was April 2, 2022. As this fell on a Saturday, the appeal was due the next business day, which was Monday, April 4, 2022, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(3).

Pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### **ISSUES**

The issues are: (1) whether OWCP properly found that appellant received an overpayment of compensation in the amount of \$58,146.99 during the periods November 1, 2013 through November 11, 2017 and May 28, 2018 through April 27, 2019 for which she was without fault, because she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss benefits, 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 \$441.49 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 11, 2005 appellant, then a 56-year-old processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained left shoulder, hand, and wrist conditions causally related to factors of her federal employment including lifting trays and working with machines. Her retirement coverage on the reverse side of the form was noted as Federal Employees Retirement System (FERS). OWCP accepted the claim for left shoulder, wrist, and hand strain on July 25, 2005. It later expanded the acceptance of appellant's claim to include left shoulder rotator cuff tendinitis and adhesive capsulitis, and left carpal tunnel syndrome. OWCP paid her compensation on the supplemental rolls from July 11, 2005 through January 19, 2008 and on the periodic rolls from January 20, 2008 through November 19, 2011. By decision dated November 16, 2011, it reduced appellant's compensation based upon her wage-earning capacity for the constructive position of an appointment clerk/reception clerk, and again paid her on the periodic rolls based upon her loss of wage-earning capacity (LWEC) determination.

By decision dated December 4, 2017, OWCP granted appellant a schedule award for nine percent permanent impairment of the left upper extremity, which ran for 28.08 weeks for the period from November 12, 2017 through May 27, 2018.

OWCP resumed appellant's payments on the periodic rolls for her LWEC determination as of May 28, 2018.

On April 11, 2019 OWCP provided SSA with a FERS/SSA dual benefits calculation form.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> Docket No. 20-0860 (issued March 23, 2021).

On April 15, 2019 SSA completed the dual benefits calculation form, which indicated appellant's SSA benefit rates with a FERS offset and without a FERS offset from November 2013 through December 2018.

In a May 16, 2019 letter, OWCP indicated that it determined that appellant had concurrently received both FECA and FERS/SSA benefits, resulting in a prohibited dual benefit. It explained that her FECA compensation would be calculated using an SSA offset beginning May 25, 2019.

A May 16, 2019 FERS offset calculation worksheet noted each alleged period of overpayment and provided calculations, which resulted in a total overpayment to appellant of \$64,598.71 during the period November 1, 2013 through April 27, 2019. For the periods December 1, 2016 through November 30, 2017 and for December 1, 2017 through November 30, 2018, the number of days of overpayment was noted to be 365 for each period.

In a preliminary overpayment determination dated May 31, 2019, OWCP informed appellant that she received an overpayment of compensation in the amount of \$64,598.71 because the SSA/FERS offset was not applied to payments for the period November 1, 2013 through April 27, 2019. It determined 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 fair repayment method and advised her that she could request waiver of recovery of the overpayment. It requested financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. It provided her with an appeal request form and further notified her that, within 30 days of the date of the letter, she could request a final decision based on the written evidence, or a precoupment hearing.

In a July 12, 2019 letter from appellant's representative, appellant requested waiver of recovery of the overpayment. In an attached Form OWCP-20 of even date, she indicated that her total monthly income included \$3,339.50 in SSA benefits, in addition to \$3,362.00 in income from her spouse's pension and interest. Appellant indicated that her total monthly expenses included \$326.00 in rent or mortgage payments, including property tax; \$2,100.00 for food; \$550.00 for clothing; \$760.00 for utilities; and \$2,375.00 in other expenses. She indicated that her funds included real estate with a market value of \$850,000.00 on a mortgage of \$450,000.00 under her spouse's and son's names; \$250.00 cash on hand; a balance of \$371,534.00 in a checking account; and a balance of \$13,311.00 in a savings account. Appellant provided tax returns and bank statements in support of the provided figures. She contended that she was without fault and that the offset had affected her health and daily life expenses.

By decision dated September 5, 2019, OWCP finalized the May 31, 2019 preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$64,598.71 for the period November 1, 2013 through April 27, 2019 because it had failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to federal service. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose

of FECA or would be against equity and good conscience. OWCP requested payment in full within 30 days.

On March 3, 2020 appellant appealed the September 5, 2019 decision of OWCP to the Board.

By decision dated March 23, 2021, the Board affirmed in part and set aside in part the September 5, 2019 decision and remanded the case for further proceedings consistent with the Board's decision. The Board found that, as appellant was paid schedule award compensation for the period November 12, 2017 through May 27, 2018, no overpayment occurred for that period, as retirement benefits paid by the Office of Personnel Management or SSA can be paid concurrently with schedule award compensation under FECA without deduction from FECA benefits.<sup>5</sup>

Following the Board's remand, a June 21, 2021 FERS offset calculation worksheet listed appellant's monthly SSA age-related retirement benefit rates with FERS and without FERS for the periods November 1, 2013 through November 11, 2017 and May 28, 2018 through April 27, 2019. It reported that, beginning November 1, 2013, her SSA rate with FERS was \$1,038.80 and without FERS was \$96.30; beginning December 1, 2013, her rate with FERS was \$1,054.30 and without FERS was \$97.70; beginning December 1, 2014, her rate with FERS was \$1,072.20 and without FERS was \$99.30; beginning December 1, 2016, her rate with FERS was \$1,075.40 and without FERS was \$99.60; beginning May 28, 2018, her rate with FERS was \$1,096.80 and without FERS was \$101.50; and beginning December 1, 2018, her rate with FERS was \$1,127.50 and without FERS was \$104.40. It thereafter noted each alleged period of overpayment and provided calculations, which resulted in a total overpayment to appellant of \$58,146.99 during the periods November 1, 2013 through November 11, 2017 and May 28, 2018 through April 27, 2019.

In a preliminary overpayment determination dated June 21, 2021, OWCP informed appellant that she received an overpayment of compensation in the amount of \$58,146.99 because the SSA/FERS offset was not applied to payments for the periods November 1, 2013 through November 11, 2017 and May 28, 2018 through April 27, 2019. It determined 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 fair repayment method and advised her that she could request a waiver of recovery of the overpayment. It requested financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. It provided an appeal request form and further notified appellant that within 30 days of the date of the letter she could request a final decision based on the written evidence, or a precoupment hearing.

On July 20, 2021 appellant replied to OWCP's preliminary overpayment determination and requested waiver as she was found without fault in the creation of the overpayment. In an attached Form OWCP-20, she advised that her total monthly income included \$3,459.00 in SSA benefits and \$3,748.75 from other income. Appellant further advised that her monthly expenses included: \$242.00 for housing, \$3,300.00 for food, \$500.00 for clothing, \$810.00 for utilities, and \$2,800.00

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<sup>5</sup> *Id.*

in other expenses. She indicated that she had assets of cash on hand of \$175.00, a checking account balance of \$225,593.00, a savings account balance of \$13,800.00, and personal property and other funds in the amount of \$128,155.00, for total assets of \$367,723.00.

By decision dated October 4, 2021, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$58,146.99 for the periods November 1, 2013 through November 11, 2017 and May 28, 2018 through April 27, 2019. It provided calculation of the overpayment. OWCP further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, finding that her current ordinary and necessary living expenses were exceeded by more than \$50.00. It required repayment of the overpayment by deducting \$441.49 from her continuing compensation benefits beginning October 10, 2021.

### **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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP has established that appellant received an overpayment of compensation in the amount of \$58,146.99 during the periods November 1, 2013 through November 11, 2017 and May 28, 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.

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<sup>6</sup> 5 U.S.C. § 8102(a).

<sup>7</sup> *Id.* at § 8116.

<sup>8</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>9</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

As previously noted, a claimant cannot receive both FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>10</sup> The evidence of record establishes that appellant had concurrently received wage-loss compensation benefits and SSA age-related retirement benefits that were attributable to federal service during the periods November 1, 2013 through November 11, 2017 and May 28, 2018 through April 27, 2019. Consequently, the fact of overpayment has been established.<sup>11</sup>

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amounts of SSA age-related retirement benefits that were attributable to federal service. SSA provided its rate with FERS and without FERS during the period November 1, 2013 through April 27, 2019. In the October 4, 2021 final decision, OWCP provided its calculations for each relevant period based on SSA's worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the periods November 1, 2013 through April 27, 2019 and finds that an overpayment of compensation in the amount of \$58,146.99 has been established. OWCP obtained documentation from SSA establishing her SSA rates with and without FERS during the periods November 1, 2013 through November 11, 2017 and May 28, 2018 through April 27, 2019. Therefore, the Board finds that appellant received an overpayment of FECA compensation in the amount of \$58,146.99 during the periods November 1, 2013 through November 11, 2017 and May 28, 2018 through April 27, 2019.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>12</sup>

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.<sup>13</sup>

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do

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<sup>10</sup> *D.W.*, Docket No. 20-1533 (issued May 27, 2021); *M.R.*, Docket No. 20-0427 (issued October 30, 2020); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>11</sup> *See L.B.*, Docket No. 19-1322 (issued January 27, 2020).

<sup>12</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see M.C.* Docket No. 19-0699 (issued February 12, 2020).

<sup>13</sup> *A.C.*, *supra* note 10; *see Robert Atchison*, 41 ECAB 83, 87 (1989).

not exceed a specified amount as determined by OWCP.<sup>14</sup> Additionally, 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 in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>15</sup>

OWCP's regulations provide 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. The information is also used to determine the repayment schedule, if necessary.<sup>16</sup> Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.<sup>17</sup>

### 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.<sup>18</sup> 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 \$7,207.75. OWCP found that appellant's total monthly expenses were \$4,773.65. 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.<sup>19</sup>

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

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<sup>14</sup> 20 C.F.R. § 10.436(a)-(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a.(2) (September 2020).

<sup>15</sup> *Id.* at § 10.437(a)(b).

<sup>16</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>17</sup> *Id.* at § 10.438(b).

<sup>18</sup> *Id.* at § 10.436.

<sup>19</sup> *See M.C.*, Docket No. 19-0699 (issued February 12, 2020).

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.<sup>20</sup>

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.<sup>21</sup>

### **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.<sup>22</sup>

Section 10.441(a) of OWCP's regulations<sup>23</sup> provides in pertinent part:

“When 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.”<sup>24</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$441.49 every 28 days from appellant's continuing compensation.

The record supports that, in requiring repayment of the overpayment by deducting \$441.49 from appellant's compensation payments every 28 days, OWCP took into consideration the financial information she submitted as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize resulting hardship. Therefore, OWCP properly required recovery of the overpayment by deducting \$441.49 every 28 days from appellant's continuing compensation.<sup>25</sup>

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<sup>20</sup> *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

<sup>21</sup> *See supra* note 15.

<sup>22</sup> 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

<sup>23</sup> *Id.* at § 10.441(a).

<sup>24</sup> *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

<sup>25</sup> *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.G.*, Docket No. 19-1274 (issued July 10, 2020).



**CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$58,146.99 for the period November 1, 2013 through November 11, 2017 and May 28, 2018 through April 27, 2019 for which she was without fault, because she concurrently received SSA age-related retirement benefits and FECA wage-loss benefits, without 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 \$441.49 from her continuing compensation payments every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 4, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board