

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

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<b>P.P., Appellant</b> )	
)	
<b>and</b> )	<b>Docket No. 22-0819</b>
)	<b>Issued: November 23, 2022</b>
<b>U.S. POSTAL SERVICE, ROCKEFELLER</b> )	
<b>CENTER POST OFFICE, New York, NY,</b> )	
<b>Employer</b> )	
_____ )	

*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 May 2, 2022 appellant filed a timely appeal from a April 18, 2022 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 to consider 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 \$43,325.83 for the period March 1, 2019 through September 11, 2021 for which she was without fault, because she concurrently received FECA

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

<sup>2</sup> The Board notes that, following the April 18, 2022 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

wage-loss compensation benefits and Social Security Administration (SSA) age-related retirement 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 \$40.00 every 28 days from appellant's continuing compensation payments.

### **FACTUAL HISTORY**

On April 7, 2000 appellant then a 47-year-old distribution window clerk, filed a traumatic injury claim (Form CA-1) alleging that on that same date she injured her left knee when she tripped and fell while in the performance of duty. OWCP accepted appellant's claim for sprain of the left shoulder and upper arm, sprain of the left knee and leg, lumbosacral sprain and later expanded acceptance of her claim to include localized primary osteoarthritis of the left lower leg. It paid her wage-loss compensation on the supplemental rolls from June 27 through July 7, 2000 and on the periodic rolls, commencing June 16, 2002.

A December 31, 2008 notification of personnel action PS Form 50 listed appellant's retirement plan as Federal Employees Retirement System (FERS).

On May 18, 2021 OWCP sent a FERS/SSA dual benefits calculation form to SSA.

On June 2, 2021 OWCP received a completed FERS/SSA dual benefits calculation form from SSA, which reported appellant's SSA age-related retirement benefit rate for March 2019 through December 2020. The form listed appellant's SSA age-related retirement benefit rate without a FERS offset. Beginning March 1, 2019, the SSA rate with FERS was \$1,397.90 and without FERS was zero. Beginning December 1, 2019, the SSA rate with FERS was \$1,420.20 and without FERS was zero. Beginning December 1, 2020, the SSA rate with FERS was \$1,438.60 and without FERS was zero.

On October 13, 2021 OWCP prepared a FERS offset overpayment calculation worksheet wherein it found a total overpayment of compensation for the period March 1 through September 11, 2021 in the amount of \$43,325.83. This form indicated that from March 1 through November 30, 2019, appellant received an overpayment in the amount of \$12,673.27. From December 1, 2019 through November 30, 2020, she received an overpayment in the amount of \$17,136.04. From December 1, 2020 through September 11, 2021, she received an overpayment in the amount of \$13,516.52.

On October 13, 2021 OWCP notified appellant of its preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$43,325.83 for the period March 1, 2019 through September 11, 2021, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset. 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 reasonable payment 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 that support income and expenses. Additionally, OWCP provided an overpayment action 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 precouplement hearing.

In a completed overpayment action request form dated November 5, 2021, appellant requested waiver of recovery of the overpayment. In an undated statement, appellant indicated that she was unaware of 5 U.S.C. § 8116(d) and its application. She noted that the overpayment occurred due to an administrative mistake by OWCP. Appellant indicated that this oversight and misinformation caused significant confusion and she was unclear as to what financial compensation she was entitled. She asserted that, due to these circumstances, liability related to this oversight should be waived. Appellant noted that further education should be provided to employees who are entitled to workers' compensation benefits or retirement benefits.

By decision dated April 18, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$43,325.83 for the period March 1, 2019 through September 11, 2021, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. 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 be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$40.00 every 28 days from appellant's continuing compensation payments.

#### **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.<sup>3</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>4</sup>

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.<sup>5</sup> FECA Bulletin No. 97-09 states that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA age-related retirement benefits 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>6</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$43,325.83, for the period March 1, 2019 through September 11,

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8116.

<sup>5</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

2021, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset.

OWCP paid appellant FECA wage-loss compensation on the periodic rolls beginning June 16, 2002. Appellant received SSA age-related retirement benefits beginning March 1, 2019. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.<sup>7</sup> The information provided by SSA established that a portion of appellant's benefits were attributable to her federal service. Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.<sup>8</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 appellant's specific SSA age-related retirement benefits that were attributable to federal service. SSA provided its rates with FERS and without FERS for specific periods March 1, 2019 through September 11, 2021. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$43,325.83.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$43,325.83 for the period March 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.<sup>9</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 not exceed a specified amount as determined by OWCP.<sup>10</sup> An individual is deemed to meet current

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<sup>7</sup> 20 C.F.R. § 10.421(d); *id.*; *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *S.M.*, *supra* note 5.

<sup>8</sup> *Id.*

<sup>9</sup> 5 U.S.C. § 8129.

<sup>10</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).

ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>11</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>12</sup>

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. The information is also used to determine the repayment schedule, if necessary.<sup>13</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 of recovery of the overpayment 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>14</sup> However, appellant had the responsibility to provide financial information and documentation to OWCP, but failed to do so.<sup>15</sup>

In its preliminary overpayment determination, dated October 13, 2021, OWCP requested that appellant provide a completed Form OWCP-20 with supporting financial documentation, including copies of income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support income and expenses. It advised her that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant did not provide the requested Form OWCP-20 or submit any financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

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

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<sup>11</sup> *Id.* at Chapter 6.400.4.a(3); *see also N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

<sup>12</sup> 20 C.F.R. § 10.437(a)(b).

<sup>13</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>14</sup> *Id.* at § 10.436.

<sup>15</sup> *Id.* at § 10.438; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

### LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides in pertinent part that, 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 the 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>16</sup>

### ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$40.00 every 28 days from appellant's continuing compensation payments.

OWCP provided appellant a Form OWCP-20 with its October 13, 2021 preliminary overpayment determination. It afforded her the opportunity to provide appropriate financial information and documentation to OWCP. However, appellant did not complete the Form OWCP-20 or provide financial documentation to support her income and expenses prior to the final April 18, 2022 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>17</sup> When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>18</sup> As appellant did not submit supporting financial documentation to OWCP as requested, the Board finds that OWCP properly required recovery of the \$43,325.83 overpayment at the rate of \$40.00 every 28 days from appellant's continuing compensation payments.<sup>19</sup>

### CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$43,325.83, for the period March 1, 2019 through September 11, 2021, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and

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<sup>16</sup> *Id.* at § 10.441(a); A.S., Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>17</sup> *Id.* at § 10.438(a).

<sup>18</sup> *See J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Liquidation, *Responsibility for the Collection and Settlement of Debts*, Chapter 6.500.3 (September 2020). *Id.* at § 10.436; *id.* at Chapter 6.400.4a(2).

<sup>19</sup> *See J.A.*, *id.*; *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

properly required recovery of the overpayment by deducting \$40.00 every 28 days from her continuing compensation payments.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 18, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 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