

overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$250.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On August 6, 2010 appellant, then a 55-year-old correspondence examining technician, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries to the right hip, knee, ankle, and foot when she fell after slipping on a puddle while in the performance of duty. Appellant's supervisor noted on the claim form that appellant's retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for lumbar sprain, right ankle sprain, sacroiliitis, rupture of the tendons of the right foot and ankle, right knee and leg sprain, bone cyst, left rotator cuff sprain, right knee tear of the medial meniscus, and left shoulder primary osteoarthritis. It paid appellant wage-loss compensation on the supplemental rolls beginning September 27, 2010 and on the periodic rolls beginning October 24, 2010.

On August 4, 2021 OWCP provided SSA with a FERS/SSA dual benefits form. It resent the form on October 8, 2021.

On October 15, 2021 SSA completed the dual benefits form, which reported appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from August 2017 through September 2021. Beginning August 2017, the SSA rate with FERS was \$747.50 and without FERS was \$543.10. Beginning December 2017, the SSA rate with FERS was \$762.40 and without FERS was \$553.90. Beginning December 2018, the SSA rate with FERS was \$783.70 and without FERS was \$569.30. Beginning December 2019, the SSA rate with FERS was \$796.30 and without FERS was \$578.40. Beginning December 2020, the SSA rate with FERS was \$806.60 and without FERS was \$585.90. Beginning September 2021, the SSA rate with FERS was \$1,081.50 and without FERS was \$785.60.

On October 15, 2021 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's overpayment from August 1, 2017 through October 9, 2021. It found that she had received an overpayment of compensation in the amount of \$11,106.50 for that period.

By letter dated October 15, 2021, OWCP advised appellant that, effective November 5, 2021, her FECA wage-loss compensation payment rate every 28 days would be offset by her SSA age-related retirement benefits, in the amount of \$273.14. Appellant's new net wage-loss compensation payment rate every 28 days would be \$1,475.34.

On October 15, 2021 OWCP issued appellant a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$11,106.50 had been created for the period August 1, 2017 through October 9, 2021, for which she was without fault, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It requested that she submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised her that she could request waiver of recovery of the overpayment. OWCP further requested that appellant provide financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income and expenses. Additionally,

it further 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.

In an October 22, 2021 response, received by OWCP on November 3, 2021, appellant requested that OWCP make a decision based on the written evidence regarding possible waiver of recovery of this overpayment and requested waiver as she was found to be without fault in the creation of the overpayment. In an attached Form OWCP-20, she detailed her monthly income, expenses, and assets. No additional evidence was received.

By decision dated March 22, 2022, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$10,914.04 for the period August 1, 2017 through October 9, 2021. OWCP further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, noting that, “As of this date, no response has been received to the Preliminary Overpayment Determination. You have not requested a waiver of the overpayment and it should be finalized for the reasons set forth in the preliminary decision.” OWCP required recovery of the overpayment by deducting \$250.00 every 28 days from appellant’s continuing compensation payments.

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.² 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.³

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.⁴ 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.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP has established that appellant received an overpayment of compensation in the amount of \$10,914.04 during the period August 1, 2017 through October 9,

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116.

⁴ 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).

⁵ 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, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without an appropriate offset.

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.⁶ The evidence of record establishes that appellant concurrently received wage-loss compensation benefits and SSA age-related retirement benefits attributable to her federal service during the period August 1, 2017 through October 9, 2021. Consequently, the fact of overpayment has been established.⁷

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits attributable to appellant's federal service must be calculated. OWCP received documentation from SSA with respect to the specific amounts of SSA age-related retirement benefits received by her that were attributable to her federal service. SSA provided its age-related retirement benefit rates with FERS and without FERS during the period August 1, 2017 through October 9, 2021. In the March 22, 2022 final decision, OWCP provided its calculations for the relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$10,914.04. The Board has reviewed OWCP's calculation of dual benefits received by her for the period August 1, 2017 through October 9, 2021 and finds that an overpayment of compensation in the amount of \$10,914.04 was created.

The Board thus finds that appellant received an overpayment of FECA compensation in the amount of \$10,914.04 during the period August 1, 2017 through October 9, 2021.

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.⁸

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.⁹

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

⁶ *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).

⁷ *See L.B.*, Docket No. 19-1322 (issued January 27, 2020).

⁸ 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).

⁹ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

not exceed a specified amount as determined by OWCP.¹⁰ 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.¹¹

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.¹² 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.¹³

ANALYSIS -- ISSUE 2

The Board finds that this case is not in posture for decision with regard to waiver of recovery of the overpayment.

In the case of *William A. Couch*,¹⁴ the Board held that when adjudicating a claim OWCP is obligated to consider and address all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. On November 3, 2021 OWCP received appellant's October 22, 2021 response to its preliminary overpayment determination, by which she requested waiver of recovery of the overpayment and submitted a completed Form OWCP-20. In its March 22, 2022 decision, however, OWCP stated that "As of this date, no response has been received to the Preliminary Overpayment Determination. You have not requested a waiver of the overpayment and it should be finalized for the reasons set forth in the preliminary decision." It, thus, failed to follow its procedures by not considering and addressing all of the relevant evidence of record.¹⁵

¹⁰ 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).

¹¹ *Id.* at § 10.437(a)(b).

¹² *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹³ *Id.* at § 10.438(b).

¹⁴ 41 ECAB 548 (1990); *see also K.B.*, Docket No. 20-1320 (issued February 8, 2021); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

¹⁵ OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value also should be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5b(2) (November 2012).

As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.¹⁶ On remand, OWCP shall consider waiver of recovery of the overpayment based upon appellant's response to the preliminary overpayment determination. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁷

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$10,914.04 during the period August 1, 2017 through October 9, 2021, for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. The Board further finds, however, that this case is not in posture for decision regarding waiver of recovery of the overpayment.

¹⁶ *E.D.*, Docket No. 20-0620 (issued November 18, 2020); *see also L.B.*, Docket No. 21-0140 (issued August 25, 2021); *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *William A. Couch*, *supra* note 14.

¹⁷ In light of the Board's disposition of Issue 2, Issue 3 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2022 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 21, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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