



Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation, 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 \$207.08 every 28 days from appellant's continuing compensation payments.

### **FACTUAL HISTORY**

On December 21, 2017 appellant, then a 64-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 19, 2017 she was involved in a motor vehicle accident while in the performance of duty, sustaining an open wound to the right side of her head. OWCP accepted the claim for a left displaced fracture of the first metacarpal bone, multiple right-sided fractures of the ribs, right maxillary fracture, concussion with loss of consciousness of 30 minutes or less, traumatic pneumothorax, benign paroxysmal vertigo of the left ear, post-traumatic stress disorder, lung contusion, cervical disc disorder at C5-6 and C6-7 with radiculopathy, cervical disc displacement mid-cervical area, traumatic lumbar facet syndrome, and aggravation of intervertebral disc degeneration of the lumbar region. It paid appellant wage-loss compensation on the supplemental rolls beginning February 3, 2018 and on the periodic rolls beginning July 22, 2018.

The reverse of the claim form, as well as an initial payment memorandum dated April 3, 2018 indicated that appellant's retirement coverage was under the Federal Employees Retirement System (FERS).

On January 7, 2021 OWCP provided SSA with a FERS/SSA dual benefits form.

On January 22, 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 November 2019 through December 2020. Beginning November 2019, the SSA rate with FERS was \$1,417.00 and without FERS was \$889.70. Beginning December 2019, the SSA rate with FERS was \$1,439.60 and without FERS was \$903.90. Beginning December 2020, the SSA rate with FERS was \$1,458.30 and without FERS was \$915.60.

On January 27, 2021 OWCP prepared a FERS offset overpayment calculation worksheet wherein it explained that, for the period November 1 through 30, 2019, appellant received an overpayment in the amount of \$521.51; for the period December 1, 2019 through November 30, 2020 appellant received an overpayment in the amount of \$6,463.72; and for the period December 1, 2020 through January 30, 2021 appellant received an overpayment in the amount of \$1,091.16. OWCP found that she had therefore received a total overpayment of compensation in the amount of \$8,076.39 for the period November 1, 2019 through January 30, 2021.

By letter dated January 28, 2021, OWCP advised appellant that, effective February 27, 2021, her FECA wage-loss compensation benefits would be offset by her SSA age-related retirement benefits, every 28 days, in the amount of \$500.86. Appellant's new net wage-loss compensation payment every 28 days would be \$2,573.94.

On February 1, 2021 OWCP issued a preliminary overpayment determination, finding an overpayment of compensation in the amount of \$8,076.39 had been created for the period November 1, 2019 through January 30, 2021 because appellant concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It indicated that she was 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 repayment method and advised her that she could request a waiver of the overpayment. It further requested that she 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, OWCP 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.

On March 1, 2021 appellant responded to OWCP's preliminary overpayment determination. She requested that OWCP make a decision based on the written evidence on issues of fault and possible waiver of recovery of the overpayment. Appellant disagreed that the overpayment occurred as she related that she was not currently receiving FERS retirement compensation. Enclosed was a Form OWCP-20 in which she indicated total monthly income of \$4,383.80. Appellant did not indicate her monthly expenses or assets. She submitted a credit union account statement from January 2021, a 2020 Internal Revenue Service form and a U.S. Treasury check regarding an Individual Retirement Account, several forms and letters regarding her receipt of SSA benefits, and employing establishment earnings and leave statements.

By decision dated March 14, 2022, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$8,076.39 during November 1, 2019 through January 30, 202 as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as she had not fully completed the Form OWCP-20 to indicate expenses and assets. OWCP required recovery of the overpayment by withholding \$207.08 from appellant's continuing compensation payments every 28 days.

### **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>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 the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA benefits that are attributable to federal service of the

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8116.

employee.<sup>5</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 age-related retirement 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>6</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,076.39 for the period November 1, 2019 through January 30, 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.

As noted, a claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>7</sup> The information provided by SSA on January 22, 2021 accurately indicated that appellant had received SSA age-related retirement benefits that were attributable to her own federal service from November 1, 2019 through January 30, 2021. Thus, the record establishes that appellant received an overpayment of FECA wage-loss compensation.<sup>8</sup>

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of appellant's SSA age-related retirement benefits that were attributable to her federal service. SSA provided its benefit rates with FERS and without FERS. The Board finds that OWCP properly determined the amount of the overpayment. The Board found that, since SSA benefits were paid monthly and FECA benefits were paid every 28 days, the monthly offset had to be adjusted to a 28-day payment cycle amount. OWCP provided its calculations for each relevant time period based on the SSA dual benefits form and properly calculated that the lack of offset from November 1, 2019 through January 30, 2021 resulted in an overpayment total of \$8,076.39.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$8,076.39 for the period November 1, 2019 through January 30, 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

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<sup>5</sup> 20 C.F.R. § 10.421(d); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>6</sup> FECA Bulletin No. 97-09 (issued February 3, 1997).

<sup>7</sup> *Supra* note 5. *See also N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

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

recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>9</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>10</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>11</sup> An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>12</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>13</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>14</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>15</sup>

## **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

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<sup>9</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>10</sup> *A.C.*, *supra* note 7; *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>11</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>12</sup> *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *id.* at Chapter 6.400.4.a(3).

<sup>13</sup> 20 C.F.R. § 10.437(a)-(b).

<sup>14</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>15</sup> *Id.* at § 10.438(b).

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>16</sup> Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.<sup>17</sup>

In its preliminary overpayment determination dated February 1, 2021, OWCP requested a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. However, while appellant returned the Form OWCP-20 containing information about her income, and some financial documentation, she did not submit the required information regarding her expenses and assets such that OWCP would have the financial information and supporting documentation necessary for it to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>18</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>19</sup> Section 10.441(a) of OWCP's implementing regulations<sup>20</sup> provides that, if 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>21</sup>

When an individual fails to provide requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines.<sup>22</sup>

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<sup>16</sup> *Id.* at § 10.436.

<sup>17</sup> *Id.*

<sup>18</sup> *See T.E.*, Docket No. 19-0348 (issued December 11, 2019).

<sup>19</sup> *See C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

<sup>20</sup> 20 C.F.R. § 10.441(a).

<sup>21</sup> *Id.*

<sup>22</sup> *Supra* note 11 at Chapter 6.500.8c(1) (September 2020).

### ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$207.08 from appellant's continuing compensation payments every 28 days.

Along with the February 1, 2021 preliminary overpayment determination, OWCP requested that appellant complete a Form OWCP-20 and submit supporting financial documentation. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>23</sup> When an individual fails to provide sufficient financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>24</sup> As appellant did not submit sufficient financial information and supporting documentation, the Board finds that OWCP properly required recovery of the \$8,076.39 overpayment at a rate of \$207.08 every 28 days from appellant's continuing compensation payments.<sup>25</sup>

### CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$8,076.39 for the period November 1, 2019 through January 30, 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 that OWCP properly denied waiver of recovery of the overpayment, and properly required recovery of the overpayment by deducting \$207.08 from appellant's continuing compensation payments.

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<sup>23</sup> *Supra* note 11.

<sup>24</sup> *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); *supra* note 11 at Chapter 6.400.3 (September 2020).

<sup>25</sup> *See E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 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