

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

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**P.B., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
SAM RAYBURN MEMORIAL VETERANS  
CENTER, Bonham, TX, Employer**

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**Docket No. 22-0976  
Issued: April 17, 2023**

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 9, 2022 appellant filed a timely appeal from a January 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 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 \$57,074.59 for the period May 1, 2015 through March 27, 2021, for which she was without fault, because she concurrently received FECA wage-

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

<sup>2</sup> The Board notes that, following the January 18, 2022 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.*

loss compensation 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 \$991.47 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On February 6, 2007 appellant, then a 62-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on January 23, 2007 she strained her low back when assisting a patient on a lift while in the performance of duty. OWCP accepted the claim for a closed dislocation of a lumbar vertebra. It subsequently expanded the acceptance of the claim to include degeneration of a lumbar or lumbosacral intervertebral disc and mechanical complication of internal orthopedic device, implant, and graft. After sustaining intermittent periods of disability, appellant stopped work on October 11, 2010 and did not return. OWCP paid her wage-loss compensation on the periodic rolls effective February 13, 2011.

On March 3, 2021 OWCP sent a Federal Employees Retirement System (FERS)/SSA dual benefits form to SSA for completion.<sup>3</sup>

On March 16, 2021 SSA completed the FERS/SSA dual benefits form and listed appellant's monthly SSA age-related retirement benefits with and without FERS from May 2015 through December 2019. Based on these figures, OWCP calculated that she had received an overpayment of \$83,432.03 for the period May 1, 2015 through March 27, 2021 and issued a March 29, 2021 preliminary overpayment determination.

On March 30, 2021 OWCP notified appellant that it was reducing her wage-loss compensation effective March 28, 2021 by the amount of her SSA benefits attributable to her federal service. It indicated that her new net compensation every 28 days would be \$3,652.19.

On April 22, 2021 SSA completed a new FERS/SSA dual benefits form and provided appellant's monthly age-related retirement benefit rates with and without FERS from May 2015 through December 2020. SSA indicated that, effective May and December 2015, her SSA rate with FERS was \$1,966.90 and without FERS was \$1,187.40, effective December 2016, her SSA rate with FERS was \$1,972.70 and without FERS was \$1,190.90, effective December 2017, her SSA rate with FERS was \$2,012.00 and without FERS was \$1,214.60, effective December 2018, her SSA rate with FERS was \$2,068.30 and without FERS was \$1,248.50, effective December 2019, her SSA rate with FERS was \$2,101.30 and without FERS was \$1,268.50, and effective December 2020, her SSA rate with FERS was \$2,128.50 and without FERS was \$1,284.80.

In a FERS offset overpayment calculation form completed April 29, 2021, OWCP calculated the amount that it should have offset from appellant's compensation for each period from May 1, 2015 through April 24, 2021. It found that, from May 1 through November 30, 2015, she received an overpayment of \$5,499.33; from December 1, 2015 through November 30, 2016, she received an overpayment of \$9,405.40; from December 1, 2016 through November 30, 2017, she received an overpayment of \$9,407.37; from December 1, 2017 through November 30, 2018,

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<sup>3</sup> On the CA-1 form, the employing establishment indicated that appellant had FERS as her retirement system.

she received an overpayment of \$9,595.09; from December 1 2018 through November 30, 2019, she received an overpayment of \$9,864.63; from December 1, 2019 through November 30, 2020, she received an overpayment of \$10,048.51; and from December 1, 2020 through April 24, 2021, she received an overpayment of \$4,033.07. Based on these amounts, OWCP calculated a total overpayment of \$57,853.39.

On April 29, 2021 OWCP notified appellant of its preliminary determination that she had received a \$57,853.39 overpayment of compensation from May 1, 2015 through April 24, 2021 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It further advised her of its preliminary determination 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 payment method. Additionally, it provided an overpayment action request form and 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 prerecoupment hearing.

On April 29, 2021 OWCP determined that the corrected FERS offset amount was \$778.80 and noted that it had over deducted \$359.63 during the last payment cycle. It found appellant's net compensation every 28 days based on the updated information was \$4,011.82.

On April 25, 2021 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She requested waiver of recovery of the overpayment, arguing that she was not informed that her income needed to be adjusted. Appellant submitted a completed OWCP-20 form.

Following a preliminary review, by decision dated July 8, 2021, OWCP's hearing representative vacated the April 29, 2021 preliminary overpayment determination. The hearing representative remanded the case for OWCP to explain its calculation of the overpayment and why appellant was at fault in the creation of the overpayment.

On July 28, 2021 OWCP notified appellant of its preliminary determination that she had received a \$57,853.39 overpayment of compensation from May 1, 2015 through April 24, 2021 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It set forth its calculation of the overpayment. OWCP further advised appellant of its preliminary determination that she was at fault in the creation of the overpayment. It found that she knew or should have known that an SSA annuity should be offset by any benefits received by OWCP. OWCP requested that appellant submit a completed Form OWCP-20 to determine a reasonable payment method. Additionally, it provided an overpayment action request form and 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 prerecoupment hearing.

On August 18, 2021 appellant requested a prerecoupment hearing before OWCP's Branch of Hearings and Review. She challenged the finding that she was at fault in the creation of the overpayment and requested waiver of recovery of the overpayment. Appellant maintained that she was not informed that an adjustment should be made to her compensation and questioned why the amount of the overpayment had changed. She further questioned why it took OWCP so long to find the overpayment. Appellant submitted a completed OWCP-20 form. She reported a total of \$8,148.19 in income; \$4,453.29 in expenses; and \$323,094.71 in assets. Appellant submitted financial documentation in support of her reported income and expenses.

Following a preliminary review, by decision dated November 4, 2021, OWCP's hearing representative vacated the July 28, 2021 preliminary overpayment determination. The hearing representative found that OWCP had not cited any evidence supporting that appellant was aware of the required offset and remanded the case for further consideration of the issue of fault.

On December 15, 2021 OWCP notified appellant of its preliminary determination that she had received a \$57,074.59 overpayment of compensation from May 1, 2015 through March 27, 2021, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It set forth its calculation of the overpayment for each period May 1, 2015 through March 27, 2021.<sup>4</sup> OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. It requested that she submit a completed Form OWCP-20 to determine eligibility for waiver and to set a rate of recovery of the overpayment. Additionally, OWCP provided an overpayment action request form and 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 prerecoumment hearing.

By decision dated January 18, 2022, OWCP finalized the preliminary finding that appellant received an overpayment of \$57,074.59 for the period May 1, 2015 through March 27, 2021 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It explained how it had calculated the amount of the overpayment. OWCP further found that appellant was without fault in the creation over the overpayment, but denied waiver of recovery of the overpayment. It determined that she had not responded to its most recent preliminary overpayment determination with a completed OWCP-20 form or provided any financial documentation supporting her waiver request. OWCP required recovery of the overpayment by deducting \$991.47 from appellant's continuing compensation payments every 28 days.

### **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>5</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>6</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 benefits that are attributable to the

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<sup>4</sup> OWCP found that, from May 1 through November 30, 2015, appellant received an overpayment of \$5,499.33; from December 1, 2015 through November 30, 2016, she received an overpayment of \$9,405.40; from December 1, 2016 through November 30, 2017, she received an overpayment of \$9,407.37; from December 1, 2017 through November 30, 2018, she received an overpayment of \$9,864.63; from December 1, 2019 through November 30, 2020, she received an overpayment of \$10,048.51; and from December 1, 2020 through March 27, 2021, she received an overpayment of \$3,254.27.

<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Id.* at § 8116.

employee's federal service.<sup>7</sup> FECA Bulletin No. 97-09 states that FECA benefits have to be adjusted for the FERS portion of SSA age-related retirement 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>8</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation in the amount of \$57,074.59 for the period May 1, 2015 through March 27, 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 wage-loss compensation for partial disability on the periodic rolls beginning February 13, 2011. Appellant received SSA age-related retirement benefits beginning May 1, 2015. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service.<sup>9</sup> The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to appellant's federal service. Accordingly, the Board finds that fact of overpayment has been established.<sup>10</sup>

To determine the amount of the overpayment, the portion of SSA age-related retirement benefits attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided appellant's SSA age-related retirement benefit rates with FERS and without FERS from May 2015 through December 2020. OWCP provided its calculations for each relevant period based on SSA's dual benefits form and determined that she received an overpayment in the amount of \$57,074.59. The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period May 1, 2015 through March 27, 2021 and finds that an overpayment of compensation in the amount of \$57,074.59 was created.<sup>11</sup>

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

Section 8129 of FECA<sup>12</sup> provides that an overpayment must be recovered 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. Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment.

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<sup>7</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

<sup>9</sup> *Supra* note 7; *see F.K.*, Docket No. 20-1609 (issued June 24, 2021); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>10</sup> *See L.K.*, Docket No. 20-1574 (issued June 23, 2021); *S.H.*, Docket No. 20-1157 (issued December 23, 2020).

<sup>11</sup> *See J.S.*, Docket No. 22-0369 (issued June 7, 2022); *N.B.*, Docket No. 20-0727 (issued January 26, 2021); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

<sup>12</sup> *Supra* note 1.

OWCP must exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>13</sup>

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her income (including compensation benefits) to meet current ordinary and necessary living expenses, and also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.<sup>14</sup> An individual's liquid assets include, but are not limited to, cash on hand, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits. Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as TSP or 401(k)), jewelry, and artwork.<sup>15</sup>

Section 10.437 provides that recovery of an overpayment is against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes her position for the worse.<sup>16</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>17</sup>

Appellant submitted an OWCP-20 form, wherein she reported a total of \$8,148.19 in income; \$4,453.29 in expenses; and \$323,094.71 in assets. She submitted financial documentation in support of her reported income and expenses. The Board finds that, as appellant reported \$323,094.71 in assets on her Form OWCP-20 she did not meet the standard for waiver of recovery of the overpayment because her assets exceed the allowable resource base of \$10,300.00 for an individual with a spouse, such as appellant.<sup>18</sup> Furthermore, appellant provided financial

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<sup>13</sup> *I.R.*, Docket No. 22-0088 (issued May 5, 2022); *G.L.*, Docket No. 19-0297 (issued October 23, 2019).

<sup>14</sup> 20 C.F.R. § 10.436. OWCP procedures provide that a claimant is deemed to need substantially all his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Its procedures further provide that assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or 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) and (3) (September 2020).

<sup>15</sup> *Id.* at Chapter 6.400.4b(3)(a), (b).

<sup>16</sup> 20 C.F.R. § 10.437(b)(1).

<sup>17</sup> *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

<sup>18</sup> *Supra* note 15 at Chapter 6.400.4c(3) (September 2020).

information regarding her monthly household income and expenses, which demonstrated that she had no less than \$3,694.90 in monthly discretionary income. The Board finds that this evidence establishes that recovery of the overpayment would not defeat the purpose of FECA.<sup>19</sup>

The Board further finds that appellant has not established that recovery of the overpayment would be against equity and good conscience because she has not shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt or that she relinquished a valuable right or changed her position for the worse in reliance on the payment which created the overpayment. Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.<sup>20</sup>

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied 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 of OWCP's regulations<sup>23</sup> provides 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 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>24</sup>

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<sup>19</sup> 20 C.F.R. § 10.441(a).

<sup>20</sup> *P.M.*, Docket No. 21-0915 (issued December 14, 2021); *M.R.*, Docket No. 20-1622 (issued June 30, 2021); *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

<sup>21</sup> *P.M., id.*; *F.K.*, Docket No. 20-1609 (issued June 24, 2021); *D.M.*, Docket No. 17-0810 (issued October 2, 2017).

<sup>22</sup> 20 C.F.R. § 10.441; *see T.T.*, Docket No. 20-1257 (issued July 29, 2022); *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

<sup>23</sup> *Supra* note 19.

<sup>24</sup> *Id.*; *see L.G.*, Docket No. 19-1274 (issued July 10, 2020); *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$991.47 from appellant's continuing compensation payments every 28 days.

OWCP properly considered the factors set forth in 20 C.F.R. § 10.441(a) in setting the rate of recovery at \$991.47.00 from continuing compensation payments to minimize hardship, while at the same time liquidating the debt in a reasonably prompt fashion. There is no evidence of record to establish that OWCP erred in directing recovery of the overpayment at the rate of \$991.47 from appellant's continuing compensation payments every 28 days.<sup>25</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$57,074.59 for the period May 1, 2015 through March 27, 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 properly required recovery of the overpayment by deducting \$991.47 from her continuing compensation payments every 28 days.

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<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 January 18, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2023  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

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