



through July 17, 2021, for which she was without fault, because she concurrently received FECA wage-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 \$500.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On October 19, 2004 appellant, then a 56-year-old housing management specialist, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome (CTS) due to factors of her federal employment. She explained that she performed daily repetitive duties including typing on the keyboard, inspecting housing units, and moving stoves and refrigerators. Appellant noted that she first became aware of her condition and realized its relation to her federal employment on July 21, 2004. On July 28, 2005 OWCP accepted the claim for bilateral carpal tunnel syndrome. On July 7, 2008 it expanded acceptance of the claim to include bilateral reflex sympathetic dystrophy of the upper limb. OWCP paid appellant wage-loss compensation on the supplemental rolls effective January 4, 2006, and on the periodic rolls effective January 22, 2006.

Notification of Personnel Action forms (Standard Form (SF) 50) dated November 10, 2007 and March 1, 2021 indicated that appellant's retirement system was code K, which represents Federal Employees Retirement System (FERS) and Federal Insurance Contributions Act (FICA).

On May 26, 2021 OWCP contacted SSA to obtain the information necessary to determine whether an offset of compensation benefits was required.

On June 28, 2021 OWCP received from SSA a FERS/SSA dual benefits form which indicated that appellant had been in receipt of SSA age-related retirement benefits since April 2014. The form showed SSA benefit rates with and without a FERS offset: beginning April 2014, the SSA rate with FERS was \$1,438.30 and without FERS was \$921.40; beginning December 2014, the SSA rate with FERS was \$1,462.70 and without FERS was \$937.00; beginning December 2016, the SSA rate with FERS was \$1,467.00 and without FERS was \$939.80; beginning December 2017, the SSA rate with FERS was \$1,496.30 and without FERS was \$958.50; beginning December 2018, the SSA rate with FERS was \$1,538.10 and without FERS was \$985.30; beginning December 2019, the SSA rate with FERS was \$1,562.70 and without FERS was \$1,001.00; and beginning December 2020, the SSA rate with FERS was \$1,583.00 and without FERS was \$1,014.00.

OWCP completed a FERS offset overpayment calculation worksheet, determined the 28-day FERS offset amount for the days in each period, and computed a total overpayment amount of \$47,366.72. The worksheet indicated that from April 1 through November 30, 2014, appellant received an overpayment in the amount of \$4,157.92; from December 1, 2014 through November 30, 2015, she received an overpayment in the amount of \$6,325.73; from December 1, 2015 through November 30, 2016, she received an overpayment in the amount of \$6,343.06; from December 1, 2016 through November 30, 2017, she received an overpayment in the amount of \$6,343.78; from December 1, 2017 through November 30, 2018, she received an overpayment in the amount of \$6,471.33; from December 1, 2018 through November 30, 2019, she received an

overpayment in the amount of \$6,651.82; from December 1, 2019 through November 30, 2020, she received an overpayment in the amount of \$6,777.44; and from December 1, 2020 through July 17, 2021, she received an overpayment in the amount of \$4,295.64. OWCP determined that this resulted in a total overpayment of \$47,366.72.

On July 29, 2021 OWCP updated appellant's SSA offset pursuant to the information received from the SSA to reflect that she would receive net wage-loss compensation of \$3,021.37 every 28 days.

On November 4, 2021 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$47,366.72 had been created because it had failed to reduce appellant's wage-loss compensation payments for the period April 1, 2014 through July 17, 2021, to offset her SSA age-related retirement benefits that were attributable to her federal service. 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 repayment method, and advised her that she could request a waiver of the overpayment. It further requested that she provide supporting financial documentation, 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 failure to submit the requested information within 30 days would result in denial of waiver of the overpayment. Additionally, OWCP 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. No response was received.

By decision dated March 23, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$47,366.72 for the period April 1, 2014 through July 17, 2021,<sup>3</sup> because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without a proper offset. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP noted that as of the date of the decision, no response to the preliminary overpayment decision had been received and appellant had not requested waiver. It required recovery of the overpayment by deduction of \$500.00 every 28 days from her 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>4</sup> Section 8116 limits the right of an employee to receive

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<sup>3</sup> OWCP's final overpayment determination noted the end of the overpayment period as July 21, 2021; however, this appears to be a typographical error as the case record establishes that the period ended on July 17, 2021.

<sup>4</sup> 5 U.S.C. § 8102(a).

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>5</sup>

Section 10.421(d) of OWCP's implementing regulations requires that OWCP 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>6</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 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>7</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$47,366.72, during the period April 1, 2014 through July 17, 2021, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.<sup>8</sup>

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 without an appropriate offset.<sup>9</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 period April 1, 2014 through July 17, 2021, without an appropriate offset. Consequently, the fact of overpayment has been established.<sup>10</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 the SSA with respect to the specific amounts of SSA age-related retirement benefits that were attributable to federal service. The SSA provided its age-related retirement rates with and without FERS during the specific period April 1, 2014 through July 17, 2021. In the March 23, 2022 final decision, OWCP provided its calculations for each relevant period based on the information provided by SSA.

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<sup>5</sup> *Id.* at § 8116.

<sup>6</sup> 20 C.F.R. § 10.421(d); *see T.T.*, Docket No. 20-1257 (issued July 29, 2022); *S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>7</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019). *See also S.R.*, Docket No. 21-0492 (issued March 23, 2022).

<sup>8</sup> *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>9</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.*, *supra* note 7.

<sup>10</sup> *See L.B.*, Docket No. 19-1322 (issued January 27, 2020).

The Board has reviewed OWCP's calculation of benefits received by appellant for the period April 1, 2014 through July 17, 2021, and finds that appellant received an overpayment of compensation in the amount of \$47,366.72.

### **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>11</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>12</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>13</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>14</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>15</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>16</sup>

### **ANALYSIS -- ISSUE 2**

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

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<sup>11</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>12</sup> *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>13</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>14</sup> *Id.* at § 10.437(a)(b).

<sup>15</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>16</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>17</sup>

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience because she did not provide any necessary supporting financial information. In its preliminary overpayment determination dated November 4, 2021, OWCP explained the importance of providing the completed overpayment questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income, expenses, and assets. Appellant, however, did not submit a completed Form OWCP-20, nor did she provide any supporting financial documentation. As she did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, 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 regulations<sup>20</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>21</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$500.00 every 28 days from appellant's continuing compensation payments.

The record reflects that appellant received FECA compensation benefits on the periodic rolls in the net amount of \$3,021.37 every 28 days. Appellant did not submit a completed Form OWCP-20 or provide supporting financial documentation. OWCP's procedures provide that, if no response to the preliminary overpayment determination is received, which provides supporting

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<sup>17</sup> *Id.* at § 10.436.

<sup>18</sup> *D.C.*, Docket No. 19-0118 (issued January 15, 2020); *see S.B.*, Docket No. 16-1795 (issued March 2, 2017).

<sup>19</sup> 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

<sup>20</sup> *Id.* at § 10.441(a).

<sup>21</sup> *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

financial documentation, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.<sup>22</sup> Based on the evidence of record, OWCP gave due regard to the relevant factors noted above and therefore did not abuse its discretion in setting the rate of recovery.<sup>23</sup> The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$500.00 every 28 days.

### CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$47,366.72, for the period April 1, 2014 through July 17, 2021, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. The Board also finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$500.00 from appellant's continuing compensation payments every 28 days.

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<sup>22</sup> FECA Procedure Manual, *supra* note 14, at *Debt Liquidation*, Chapter 6.500.8.c(1) (September 2018); *M.W.*, Docket No. 20-1107 (issued March 17, 2021).

<sup>23</sup> *See M.W., id.*; *R.M.*, Docket No. 19-0183 (issued November 18, 2019); *M.D.*, Docket No. 11-1751 (issued May 7, 2012).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 23, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 28, 2023  
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