



Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$24,990.63 for the period January 1, 2019 through June 19, 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; (3) whether OWCP properly required recovery of the overpayment by deducting \$752.00 from appellant's continuing compensation payments every 28 days; and (4) whether OWCP properly denied her request for a precoupment hearing.

### **FACTUAL HISTORY**

On April 21, 2006 appellant, then a 50-year-old secretary, filed a traumatic injury claim (Form CA-1) alleging that on April 20, 2006 she injured her right elbow and tailbone when she fell to the floor, while in the performance of duty, when the chair she was attempting to sit in rolled away. She stopped work on April 20, 2006. The claim form noted that appellant's retirement system coverage was Federal Employees Retirement System (FERS). OWCP accepted the claim for buttock, right elbow, and right forearm contusions. It subsequently expanded acceptance of the claim to include lumbar sprain, left hip trochanteric bursitis, lumbar L3-4 stenosis, and L4-5 spondylolisthesis. OWCP paid appellant wage-loss compensation for total disability on the supplemental rolls, effective March 27, 2018, and on the periodic rolls, effective April 29, 2018.

On December 30, 2020 OWCP sent a FERS/SSA dual benefits calculation form to SSA for completion.

On February 2, 2021 SSA notified OWCP that appellant's monthly age-related retirement benefit rates with FERS were: \$1,622.00, effective January 2019; \$1,648.00 effective December 2019; and \$1,669.00, effective December 2020. Without FERS, her monthly age-related retirement benefit rates were: \$795.00 effective January 2019; \$808.00 effective December 2019; and \$818.00, effective December 2020. SSA advised that appellant received disability benefits August 2018 through December 2019.

In a June 30, 2021 FERS offset overpayment calculation memorandum, OWCP calculated appellant's FERS/SSA offset for each period from January 1, 2019 through July 16, 2021 and the amount of the overpayment for each period. It found that, from January 1 through November 30, 2019, she received an overpayment in the amount of \$9,216.25; from December 1, 2019 through

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that appellant submitted additional evidence on appeal. 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.*

November 30, 2020, she received an overpayment in the amount of \$10,135.32; and from December 1, 2020 through July 16, 2021, she received an overpayment in the amount of \$6,396.54. OWCP added the amounts to find a total overpayment of \$25,748.11.

In a June 30, 2021 letter, OWCP advised appellant that it was reducing her wage-loss compensation, effective July 17, 2021, by the amount of her SSA benefits attributable to her federal service. It indicated that it would offset \$851.00 from her continuing compensation payments, resulting in a new net wage-loss compensation payment amount of \$3,084.74.

On June 30, 2021 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$25,748.11 had been created because appellant received wage-loss compensation payments for the period January 1, 2019 through July 16, 2021 that had not been reduced to offset her SSA age-related retirement benefits 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 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, which support income and expenses. 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 precoupment hearing. No response was received.

In an updated FERS offset overpayment calculation memorandum dated March 16, 2022 OWCP calculated appellant's FERS/SSA offset for each period from January 1, 2019 through June 19, 2021 and the amount of the overpayment for each period. It found that, from January 1 through November 30, 2019, she received an overpayment in the amount of \$9,216.20; from December 1, 2019 through November 30, 2020, she received an overpayment in the amount of \$10,135.38; and from December 1, 2020 through June 19, 2021, she received an overpayment in the amount of \$5,639.04. OWCP added the amounts to find a total overpayment of \$24,990.63.

By decision dated March 16, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$24,990.63 for the period January 1, 2019 through June 19, 2021 because it failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to her federal service. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, noting that she had not responded to the preliminary overpayment determination. OWCP required recovery of the overpayment by deducting \$752.00 from appellant's continuing compensation payments every 28 days.

On April 9, 2022 appellant requested a precoupment hearing, arguing that she was without fault and, thus, was not responsible for the creation of the overpayment. She asserted that OWCP erroneously issued the March 16, 2022 overpayment determination without a hearing.

By decision dated May 9, 2022, OWCP denied appellant's request for a precoupment hearing as it was made after the final overpayment determination.

## 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>4</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>5</sup>

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.<sup>6</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 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, 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 total disability, effective March 27, 2018. The record indicates that appellant received SSA age-related retirement benefits beginning January 2020. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service.<sup>8</sup> The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to her federal service. Accordingly, the Board finds that fact of overpayment has been established.<sup>9</sup>

The Board further finds, however, that the case is not in posture for decision with regard to the period and amount of the overpayment. To determine the amount of the overpayment, the portion of SSA age-related retirement benefits attributable to federal service must be calculated. SSA provided appellant's SSA age-related retirement benefit rates with and without FERS for the

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<sup>4</sup> 5 U.S.C. § 8102(a).

<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); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

<sup>7</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also T.T., id.; N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>8</sup> *Supra* note 6. *See F.K.*, Docket No. 20-1609 (issued June 24, 2021); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>9</sup> *See T.T., supra* note 7; *L.K.*, Docket No. 20-1574 (issued June 23, 2021); *S.H.*, Docket No. 20-1157 (issued December 23, 2020).

period January 1, 2019 through June 19, 2021. However, SSA noted on the February 2, 2021 form that appellant received disability benefits from August 2018 through December 2019. It, therefore, remains unclear whether the reported benefit rates represent appellant's SSA disability benefits or her SSA age-related retirement benefits.

Accordingly, the Board finds that this case must be remanded to OWCP.<sup>10</sup> On remand, OWCP shall recalculate the period and amount of the overpayment of compensation and issue a new preliminary overpayment determination, with an overpayment action request form, a new Form OWCP-20, and instructions for appellant to provide updated supporting documentation. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>11</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation, for which she was without fault, as she concurrently received SSA age-based retirement benefits and FECA wage-loss compensation without appropriate offset. The Board further finds, however, that the case is not in posture for decision with regard to the period and amount of the overpayment.

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<sup>10</sup> See *P.W. (A.W.)*, Docket No. 20-1131 (issued November 30, 2022).

<sup>11</sup> In light of the Board's disposition of Issue 1, Issues 2, 3, and 4 are rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 16, 2022 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 11, 2023  
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