

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

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<b>J.G., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-0833</b>
	)	<b>Issued: December 29, 2023</b>
<b>U.S. POSTAL SERVICE, INCOMING MAIL</b>	)	
<b>CENTER, Chelsea, MA, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. McGINLEY, Alternate Judge

**JURISDICTION**

On May 25, 2023 appellant filed a timely appeal from a March 1, 2023 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.

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$77,185.73, for the periods December 1, 2010 through October 13, 2013 and November 1, 2014 through September 10, 2022, 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

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

OWCP properly required recovery of the overpayment by deducting \$550.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<sup>2</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.

On January 22, 1990 appellant, then a 41-year-old letter sorting machine clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained low back pain when she slipped and fell on ice while walking from her car to the door of her duty station while in the performance of duty. She stopped work on January 23, 1990 and returned to part-time modified-duty work on November 19, 1990. Appellant again stopped work on November 30, 1990 and did not return. An employing establishment personal statement of benefits form dated February 1991 notes her enrollment in the Federal Employees Retirement System (FERS). OWCP accepted the claim for low back strain. It paid appellant wage-loss compensation benefits on the supplemental rolls, effective December 1, 1990 and on the periodic rolls, effective May 21, 1996.

Appellant separated from the employing establishment effective June 2, 2001. OWCP continued to pay her wage-loss compensation on the periodic rolls.<sup>3</sup>

The case record also contains an election of benefits form, signed by appellant on September 10, 2014, in which she elected to receive FECA benefits in lieu of FERS benefits effective that date. OWCP continued to pay her wage-loss compensation on the periodic rolls.

On January 26, 2021 OWCP received a completed FERS/ SSA dual benefits form, wherein SSA advised that appellant reached retirement age and became eligible for SSA age-related retirement benefits effective November 7, 2010. SSA reported her SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from December 2010 through October 2013, and from November 2014 through December 2020. Beginning December 2010, the SSA rate with FERS was \$469.50 and without FERS was \$44.10; beginning December 2011, the SSA rate with FERS was \$486.40 and without FERS was \$45.70; beginning December 2012, the SSA rate with FERS was \$494.60 and without FERS was \$46.50; beginning October 2013, the SSA rate with FERS was \$494.60 and without FERS was \$46.50; beginning November 2014, the SSA rate with FERS was \$665.70 and without FERS was \$50.40; beginning December 2014, the SSA rate with FERS was \$677.00 and without FERS was \$51.20; beginning December 2015, the SSA rate with FERS was \$677.00 and without FERS was \$51.20; beginning December 2016, the SSA rate with FERS was \$679.00 and without FERS was \$51.30; beginning December 2017, the SSA rate with FERS was \$692.50 and without FERS was \$52.20; beginning December 2018, the

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<sup>2</sup> Docket No. 96-2283 (issued September 3, 1998).

<sup>3</sup> In a notice dated December 16, 2008 and finalized January 16, 2009, OWCP reduced appellant's entitlement to wage-loss compensation under 5 U.S.C. § 8115(a) effective January 18, 2009, based on her capacity to earn wages in the constructed position of Telephone Operator, Department of Labor, *Dictionary of Occupational Titles (DOT) #235.622-022*, at the weekly pay rate of \$300.00.

SSA rate with FERS was \$711.80 and without FERS was \$53.70; beginning December 2019, the SSA rate with FERS was \$723.10 and without FERS was \$54.50; and beginning December 2020, the SSA rate with FERS was \$732.50 and without FERS was \$55.10. SSA noted that, for all other periods, appellant “received disability benefits when no offset applies.”

On February 24, 2021 OWCP prepared a FERS offset overpayment calculation worksheet wherein it found a total overpayment amount of \$69,710.23 for the period December 1, 2010 through February 27, 2021.

On August 19, 2022 OWCP requested that SSA complete a FERS/SSA dual benefits form for the period January 1, 2010 through August 19, 2022.

On August 23, 2022 OWCP received a completed FERS/SSA dual benefits form, wherein SSA listed the periods and amounts set forth in the January 26, 2021 form, and added that, beginning December 2021, the SSA rate with FERS was \$775.70 and without FERS was \$58.40. It noted that appellant had two periods of retirement: December 2010 through October 2013, and November 2014 and continuing. Additionally, appellant had two periods of disability: June 2005 through November 2010, and November 2013 through October 2014 “when no offset applies.”

On September 21, 2022 OWCP prepared a compensation adjustment sheet wherein it found a total overpayment amount of \$76,578.60 for the period December 1, 2010 through September 10, 2022.

On November 30, 2022 OWCP prepared a revised FERS offset overpayment calculation worksheet wherein it found a total overpayment of \$77,185.73. It noted that the September 21, 2022 calculation had been in error as the November 1, 2014 cost-of-living adjustment had been entered incorrectly, and the period November 2 through 30, 2018 had not been included in the calculation. Additionally, appellant “was paid disability by SSA from November 1, 2013 through October 31, 2014.”

On December 1, 2022 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$77,185.73 had been created for the periods December 1, 2010 through October 13, 2013 and from November 1, 2014 through September 10, 2022, because appellant had received concurrent benefits under both FERS and SSA without the mandatory offset being applied. 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 that support income and expenses. Additionally, OWCP further 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 precouplement hearing.

Appellant completed a Form OWCP-20 dated December 20, 2022, in which she requested waiver as she was found without fault in creation of the overpayment. She listed her income,

assets, expenses, and attached financial information including utility bills, credit card statements, and bank statements.

By decision dated March 1, 2023, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$77,185.73 for the periods December 1, 2010 through October 13, 2013 and from November 1, 2014 through September 10, 2022, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without an appropriate offset. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$550.00 every 28 days from appellant's 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 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 OWCP to 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 age-related retirement benefits earned as a federal employee is part of the FERS retirement package, and the concurrent receipt of FECA benefits and FERS benefits without an appropriate offset 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, as she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

OWCP paid appellant wage-loss compensation for total disability on the supplemental rolls as of December 1, 1990, and on the periodic rolls as of May 21, 1996. Beginning December 1, 2010, appellant received SSA age-related retirement benefits. As noted, a claimant cannot concurrently receive wage-loss compensation benefits and SSA age-related retirement benefits

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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 S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

attributable to federal service for the same period.<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. As OWCP did not offset her FECA benefits for the period December 1, 2010 through September 10, 2022, the Board finds that she received an overpayment of wage-loss compensation.<sup>9</sup> Therefore, fact of overpayment is established.<sup>10</sup>

The Board further finds, however, that this case is not in posture for decision regarding the period and the amount of the overpayment. The final overpayment decision dated March 1, 2023 indicates that appellant received prohibited dual benefits for the period December 1, 2010 through October 13, 2013; however, the overpayment calculation worksheet indicates that appellant's prohibited dual benefits continued through October 31, 2013. Due to the differing dates utilized in the calculation of the overpayment, the Board is unable to determine whether the overpayment period and amount are accurate. A claimant is entitled to an overpayment decision that clearly explains how the period and amount were calculated.<sup>11</sup> The Board will, therefore, remand the case for OWCP to further explain its calculation of the period and amount of the overpayment.<sup>12</sup>

On remand OWCP shall determine the period and amount of the overpayment of compensation. It shall then issue a new preliminary overpayment determination, with an overpayment action request form, an overpayment recovery questionnaire, and instructions for appellant to provide supporting financial information.<sup>13</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>14</sup>

### CONCLUSION

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. The Board also finds, however, that the case is not in posture for decision regarding the period and the amount of the overpayment.

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<sup>8</sup> *E.M.*, Docket No. 21-1231 (issued April 19, 2023); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>9</sup> *Id.*

<sup>10</sup> *See K.H.*, Docket No. 18-0171 (issued August 2, 2018).

<sup>11</sup> *R.B.*, Docket No. 20-0022 (issued October 28, 2020); *O.R.*, 59 ECAB 432 (2008).

<sup>12</sup> The Board also notes that the record contains an election of benefits form signed by appellant on September 10, 2014 wherein appellant elected FECA benefits commencing that date. However, it is unclear when the form was processed, and its effect on the overpayment period and amount in question.

<sup>13</sup> *See L.K.*, Docket No. 29-0416 (issued November 12, 2020).

<sup>14</sup> In light of the Board's disposition of Issue 2 and Issue 3 are rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 1, 2023 decision of the Office of Workers' Compensation Programs is affirmed in part, and set aside in part, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 29, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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