

¹ 5 U.S.C. § 8101 *et seq.*

overpayment by deducting \$325.69 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

On November 15, 2006 appellant, then a 53-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained a left shoulder injury due to factors of her federal employment including lifting and handling mail. She noted that she first became aware of her claimed injury on September 2, 1997, and first realized its relationship to her federal employment on April 5, 2005. Appellant first stopped work in mid-2006. OWCP accepted her claim for left shoulder sprain/strain, left rotator cuff rupture, left shoulder impingement, disorder of bursae and tendons of the left shoulder region, and displacement of cervical intervertebral disc without myelopathy. It paid appellant wage-loss compensation on the supplemental rolls effective July 21, 2006, and on the periodic rolls effective February 10, 2013.

Appellant retired from the employing establishment on disability retirement effective July 29, 2013. In a form signed on January 27, 2020, she elected to receive FECA compensation in lieu of compensation under the Federal Employees Retirement System (FERS).

On November 20, 2020 OWCP sent a FERS/SSA dual benefits calculation form to SSA.

On December 7, 2020 OWCP received a completed FERS/SSA dual benefits form from SSA, which reported that appellant received SSA age-related retirement benefits that were attributable to federal service commencing December 2017. SSA provided age-related retirement benefit rates with and without a FERS offset from December 2017 as follows: beginning December 2017, the SSA rate with FERS was \$1,834.20 and without FERS was \$777.00; beginning January 2018, the SSA rate with FERS was \$1,834.20 and without FERS was \$777.00; beginning December 2018, the SSA rate with FERS was \$1,885.50 and without FERS was \$798.70; beginning December 2019, the SSA rate with FERS was \$1,915.70 and without FERS was \$811.40; and beginning December 2020, the SSA rate with FERS was \$1,940.50 and without FERS was \$821.90.

On December 11, 2020 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculations of appellant's overpayment from December 1, 2017 through December 5, 2020. It determined: for the period December 1 through 31, 2017, appellant received an overpayment of \$1,080.44; for the period January 1 through November 30, 2018, appellant received an overpayment of \$11,640.82; for the period December 1, 2018 through November 30, 2019, appellant received an overpayment of \$13,077.43; for the period December 1, 2019 through November 30, 2020, appellant received an overpayment of \$13,324.41; and for the period December 1 through 5, 2020, appellant received an overpayment of \$184.38. From December 1, 2017 through December 5, 2020, she received a total overpayment of \$39,307.48.

On January 6, 2021 OWCP advised appellant that it was adjusting her wage-loss compensation benefits to offset the portion of her SSA age-related retirement benefits attributable to her federal service. It informed her that the portion of the SSA benefits that she earned as a federal employee was part of the FERS retirement package and that FECA did not allow the simultaneous receipt of workers' compensation and federal retirement benefits.

On January 20, 2021 OWCP notified appellant of its preliminary overpayment determination that she received an overpayment of compensation in the amount of \$39,307.48 for the period December 1, 2017 through December 5, 2020, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset. 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 statement, bills, and canceled check, pay slips, and any other records that 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 prerecoupment hearing.

In an overpayment action request form, signed on March 1, 2021, appellant requested waiver of recovery of the overpayment and also requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She did not submit a completed overpayment recovery questionnaire.

By decision dated March 31, 2021, OWCP denied appellant's request for a prerecoupment hearing as untimely filed.

By decision dated March 15, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$39,307.48, for the period December 1, 2017 through December 5, 2020, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset. It further found that she was without fault in the creation of the overpayment, but, denied waiver of recovery because she failed to submit the requested financial information. OWCP required recovery of the overpayment by deducting \$325.69 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.² 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.³

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

² 5 U.S.C. § 8102.

³ *Id.* at § 8116.

attributable to the employee's federal service.⁴ 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.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$39,307.48 for the period December 1, 2017 through December 5, 2020 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 disability due to her accepted employment injury on the supplemental rolls beginning July 21, 2006. Appellant received SSA age-related retirement benefits beginning December 1, 2017. As noted, a claimant cannot concurrently receive FECA wage-loss compensation benefits and SSA age-related retirement benefits attributable to federal service for the same period.⁶ The evidence of record indicates that, while appellant was receiving wage-loss compensation benefits under FECA, she was also receiving SSA age-related retirement benefits that were attributable to her federal service without an appropriate offset. Consequently, fact of overpayment has been established.⁷

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 a dual benefits calculation form from SSA with respect to appellant's SSA age-related retirement benefits attributable to federal service. SSA provided its rate with FERS and without FERS for specific periods from December 1, 2017 through December 5, 2020. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment of compensation in the amount of \$39,307.48.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits in the amount of \$39,307.48 for the period December 1, 2017 through December 5, 2020.⁸

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

⁵ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁶ *M.R.*, Docket No. 20-0427 (issued October 30, 2020). *See also N.B.*, *id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁷ *See K.H.*, Docket No. 18-0171 (issued August 2, 2018).

⁸ *See L.W.*, Docket No. 19-0787 (issued October 23, 2019); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP 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.⁹ Section 10.438 of OWCP's regulations provides 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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁰

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.¹¹ Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.¹²

In its preliminary overpayment determination, dated January 20, 2021, OWCP requested that appellant complete an overpayment recovery questionnaire and submit supporting 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. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant, however, did not complete the overpayment questionnaire. The evidence of record is, therefore, insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹³

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 compensation.¹⁴

⁹ 5 U.S.C. § 8129.

¹⁰ 20 C.F.R. § 10.438.

¹¹ *Id.* at § 10.436.

¹² *Supra* note 10.

¹³ *Id.*

¹⁴ *See T.E.*, Docket No. 19-0348 (issued December 11, 2019).

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.¹⁵ Section 10.441 of Title 20 of the Code of Federal Regulations provides that, if an overpayment of compensation has been made to an individual entitled to future payments, proper adjustment shall be made by decreasing subsequent 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."¹⁶

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$325.69 from appellant's compensation payments every 28 days.

The record reflects that appellant received FECA compensation benefits on the periodic rolls in the net amount of \$1,302.74 every 28 days as of March 15, 2022. Appellant failed to submit a completed financial overpayment questionnaire as requested by OWCP.

OWCP's procedures provide that, if no response to the preliminary overpayment determination is received, which provides supporting 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.¹⁷ The Board notes that 25 percent of \$1,302.74 is \$325.69. The Board, therefore, finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$325.69 every 28 days.

CONCLUSION

The Board finds OWCP properly determined that appellant received an overpayment of compensation in the amount of \$39,307.48 for the period December 1, 2017 through December 5, 2020 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 required recovery of the overpayment by deducting \$325.69 from appellant's continuing compensation payments every 28 days.

¹⁵ *M.P.*, Docket No. 18-0902 (issued October 16, 2018); *Albert Pinero*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

¹⁶ 20 C.F.R. § 10.441; *see also P.J.*, Docket No. 18-0248 (issued August 14, 2018); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

¹⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.8(c)(1) (September 2018); *M.W.*, Docket No. 20-1107 (issued March 17, 2021).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2023
Washington, DC

Alec J. Koromilas, 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