

through January 2, 2021, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits 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 \$440.17 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On April 11, 2012 appellant, then a 65-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left knee when she slid stepping off a mat while in the performance of duty. OWCP accepted the claim for a sprain of the lateral collateral ligament of the left knee and tears of the medial and lateral meniscus of the left knee. On July 2, 2012 appellant underwent an OWCP-authorized partial medial meniscectomy and chondroplasty of the medial femoral condyle, patella, and femoral trochlea. She stopped work on November 14, 2012 and did not return. OWCP paid appellant wage-loss compensation on the supplemental rolls beginning July 2, 2012 and on the periodic rolls beginning December 16, 2012.

On December 4, 2020 OWCP sent a Federal Employees Retirement System (FERS)/SSA dual benefits form to SSA for completion.³

On a dual benefits form dated December 17, 2020, SSA reported appellant's SSA age-related retirement benefit rates with and without FERS for the period July 2010 through December 2020. With FERS, appellant was entitled to \$1,211.90 effective July 2010 and December 2010; \$1,280.30 effective December 2011; \$1,319.50 effective December 2012; \$1,356.30 effective December 2013; \$1,379.30 effective December 2014 and December 2015; \$1,383.40 effective December 2016; \$1,411.00 effective December 2017; \$1,450.50 effective December 2018; \$1,473.70 effective December 2019; and \$1,492.80 effective December 2020. Without FERS, appellant was entitled to \$892.20 effective July and December 2010; \$924.20 effective December 2011; \$939.90 effective December 2012; \$953.90 effective December 2013; \$970.10 effective December 2014 and December 2015; \$972.90 effective December 2016; \$992.30 effective December 2017; \$1,020.00 effective December 2018; \$1,036.40 effective December 2019; and \$1,049.80 effective December 2020.

In a January 12, 2021 FERS offset overpayment calculation memorandum, OWCP calculated appellant's FERS/SSA offset for each month from July 2, 2012 through January 2, 2021 and the amount of the overpayment for each period, for a total overpayment amount of \$41,971.77. It found that, from July 2 through November 30, 2012, appellant received an overpayment in the amount of \$1,784.41; from December 1, 2012 through November 30, 2013, appellant received an overpayment in the amount of \$4,567.71; from December 1, 2013 through November 30, 2014, appellant received an overpayment in the amount of \$4,842.07; from December 1, 2014 through November 30, 2015, appellant received an overpayment in the amount of \$4,923.89; from December 1, 2015 through November 30, 2016, appellant received an overpayment in the amount of \$4,937.38; from December 1, 2016 through November 30, 2017, appellant received an

³ The employing establishment indicated on a July 27, 2012 claim for compensation (Form CA-7) that appellant was covered by FERS.

overpayment in the amount of \$4,939.52; from December 1, 2017 through November 30, 2018, appellant received an overpayment in the amount of \$5,038.20; from December 1, 2018 through November 30, 2019, appellant received an overpayment in the amount of \$5,180.19; from December 1, 2019 through November 30, 2020, appellant received an overpayment in the amount of \$5,276.43; and from December 1, 2020 through January 2, 2021, appellant received an overpayment in the amount of \$481.95.

On January 12, 2021 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$41,971.77 had been created because appellant received wage-loss compensation payments for the period July 2, 2012 through January 2, 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 precouplement hearing.

On January 29, 2021 appellant requested a decision based on the written evidence. She submitted a completed Form OWCP-20 of even date. Appellant indicated that she had a total of \$15,715.20 per month in income which was comprised of only SSA benefits. She also listed monthly expenses totaling \$2,762.70, including rent or mortgage of \$425.00, food of \$597.87, clothing of \$400.00, utilities of \$265.00, other expenses of \$500.00, a car payment of \$474.83, and a bank loan of \$100.00. Appellant listed assets totaling \$1,739.00. She submitted supporting financial documentation with her OWCP-20 form.

By decision dated February 26, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$41,971.77 for the period July 2, 2012 through January 2, 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 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 failed to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP noted that appellant's monthly income of \$15,715.20 exceeded her monthly expenses by more than the allowed amount. It required recovery of the overpayment by deducting \$440.17 from her continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA⁴ provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the

⁴ *Supra* note 1.

performance of his or her duty.⁵ 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.⁶

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.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$41,971.77 for the period July 2, 2012 through January 2, 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 case record establishes that appellant received SSA age-related retirement benefits beginning July 1, 2010. OWCP paid her wage-loss compensation for total disability following her injury on the supplemental rolls effective July 2, 2012 and on the periodic rolls effective December 16, 2012. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service without an appropriate offset.⁹ 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.¹⁰

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 appellant's SSA age-related retirement benefits that were attributable to federal service. SSA provided its benefit rates with FERS and without FERS for specific periods July 2, 2012 through January 2, 2021. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$41,971.77. The Board has reviewed OWCP's calculation of dual benefits received by appellant

⁵ 5 U.S.C. § 8102.

⁶ *Id.* at § 8116.

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

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

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

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

for the period July 2, 2012 through January 2, 2021 and finds that an overpayment of compensation in the amount of \$41,971.77 was created.¹¹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA 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.¹²

Recovery of an overpayment will defeat the purpose of FECA when 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.¹³ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁴ Also, 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.¹⁵ An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.¹⁶

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.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that the case is not in posture for decision regarding waiver of recovery of the overpayment.

¹¹ See *N.B.*, Docket No. 20-0727 (issued January 26, 2021); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

¹² 5 U.S.C. § 8129.

¹³ 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(2), (3) (September 2020).

¹⁴ *Id.* at Chapter 6.400.4(a)(3); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁵ See *id.* at Chapter 6.400.4(a)(2) (September 2018).

¹⁶ *Id.* at Chapter 6.400.4(b)(3).

¹⁷ 20 C.F.R. § 10.437(a)(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.¹⁸

In a January 29, 2021 Form OWCP-20, appellant reported that she received a total of \$15,715.20 per month in income, which was comprised only of SSA benefits. Documentation from SSA, however, establishes that her monthly SSA benefits were \$1,492.80 effective December 2020. Given the disparity between the figures, OWCP should have inquired further regarding the amount of appellant's monthly income from SSA.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP share responsibility to see that justice is done.¹⁹

Accordingly, the Board finds that this case is not in posture for decision regarding the issue of waiver of recovery of the overpayment.²⁰ On remand, OWCP shall obtain clarification from appellant regarding her reported monthly income. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision on the issue of waiver of recovery of the overpayment.²¹

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation in the amount of \$41,971.77 for the period July 2, 2012 through January 2, 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 the case is not in posture for decision regarding the issue of waiver of recovery of the overpayment.

¹⁸ 5 U.S.C. § 8129(b); *J.R.*, Docket No. 20-1215 (issued June 17, 2021); *R.L.*, Docket No. 20-0186 (issued September 14, 2020).

¹⁹ *See T.M.*, Docket No. 17-0464 (issued October 4, 2017); *A.M.*, Docket No. 16-1260 (issued November 7, 2016).

²⁰ *See J.R.*, *supra* note 18.

²¹ In light of the Board's disposition of Issue 2 and Issue 3 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2021 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: January 25, 2023
Washington, DC

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

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

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