

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$34,051.79, for the period January 1, 2014 to August 15, 2020, 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 directed recovery of the overpayment in full.

FACTUAL HISTORY

On September 21, 2012 appellant, then a 62-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 13, 2012 she cracked her ribs, sustained numerous lacerations on her legs requiring stitches, and broke her front teeth as a result of a migraine that caused her to blackout and hit a telephone pole while in the performance of duty. She stopped work on the date of injury. OWCP initially accepted appellant's claim for hairline fractures of the left fourth and fifth ribs, broken eighth and ninth teeth, and open wound of the bilateral knees and legs. It subsequently expanded the acceptance of the claim to include the additional conditions of open wound of the bilateral ankles, suprapatellar effusion of the right knee, aggravation of preexisting chronic migraines without aura, abrasions of the bilateral knees, legs, and shins, lumbar back spasm, and sciatica of the right leg. OWCP paid appellant wage-loss compensation on the supplemental rolls beginning December 15, 2012 and on the periodic rolls beginning May 5, 2013.

On July 18, 2020 SSA forwarded a completed FERS/SSA dual benefits calculation form to OWCP. The form indicated that beginning in January 2014 appellant's SSA rate with FERS was \$1,613.30 and without FERS was \$1,200.40; beginning in December 2014 her SSA rate with FERS was \$1,640.70 and without FERS was \$1,220.80; beginning in December 2015 her SSA rate with FERS was \$1,640.70 and without FERS was \$1,220.80; beginning in December 2016 her SSA rate with FERS was \$1,645.60 and without FERS was \$1,224.30; beginning in December 2017 her SSA with FERS was \$1,678.50 and without FERS was \$1,248.80; beginning in December 2018 her SSA with FERS was \$1,725.40 and without FERS was \$1,283.70; and beginning in December 2019 her SSA with FERS was \$1,753.00 and without FERS was \$1,304.30.

In an August 21, 2020 letter, OWCP notified appellant that her compensation would be offset by the portion of her SSA age-related retirement benefits attributable to her federal service.

In a preliminary overpayment determination dated August 24, 2020, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$34,051.79 because her wage-loss compensation benefits had not been reduced for the period January 1, 2014 through August 15, 2020 by the portion of her SSA benefits that were attributable to her federal service. It calculated the overpayment amount by determining the difference between her SSA amount with and without FERS for the stated period and adding this amount to find a total overpayment of \$34,051.79. OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment and requested that she complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, it notified her that she could request a final decision based on the written evidence, or a precoupment hearing. OWCP allotted 30 days for appellant to respond.

In a September 22, 2020 letter, appellant, through counsel, requested waiver of recovery of the \$34,051.79 overpayment. Appellant completed an overpayment action request form and requested that OWCP make a decision based on the written evidence. She indicated that she was requesting waiver of recovery of the overpayment because she relied on the direction of SSA persons. Appellant contended that she received SSA benefits through a FECA annuity and did not understand the complexity of the amounts received. In an accompanying Form OWCP-20 of even date, she reported monthly income of \$4,205.23, including SSA benefits of \$1,740.00 and FECA compensation benefits of \$2,465.23. Appellant also reported her monthly expenses of \$1,971.65. She indicated that she had available assets of \$10.00 cash on hand and \$500.00 in a checking account, totaling \$510.00.

OWCP, by decision dated October 6, 2020, finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$34,051.79 for the period January 1, 2014 through August 15, 2020, for which she was not at fault, because her FECA compensation payments were not offset by the portion of her SSA age-related retirement benefits attributable to her federal service. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery because the evidence of record did not establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment in full within 30 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 duty.⁴ However, section 8116 also 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.⁵ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁶

Section 10.421(d) of OWCP's implementing regulations requires that it reduce the amount of compensation by the amount of any SSA benefits that are attributable to the federal service of the employee.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

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ *Id.* at § 8129(a).

⁷ 20 C.F.R. § 10.421(d); *see R.R.*, Docket No. 19-0104 (issued March 9, 2020); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *L.J.*, 59 ECAB 264 (2007).

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

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$34,051.79, for the period January 1, 2014 to August 15, 2020, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

In its October 6, 2020 decision, OWCP found that an overpayment of compensation was created for the period January 1, 2014 to August 15, 2020. The overpayment was based on the evidence received from SSA with respect to retirement benefits paid to appellant. As noted, a claimant cannot receive both compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁹ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service beginning January 1, 2014. OWCP, however, neglected to offset her FECA benefits until August 15, 2020. Accordingly, the Board finds that it properly determined that appellant received an overpayment of wage-loss compensation for the period January 1, 2014 to August 15, 2020.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. The SSA provided appellant's SSA rates with FERS and without FERS for the period January 1, 2014 to August 15, 2020. OWCP provided its calculations of the amount that it should have offset during the relevant period based on the SSA worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period January 1, 2014 to August 15, 2020 and finds that an overpayment of compensation in the amount of \$34,051.79 was created.¹⁰

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.¹¹

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP

⁹ 5 U.S.C. § 8116(d)(2); *see W.C.*, Docket No. 20-1241 (issued February 9, 2021); *R.D.*, Docket No. 19-1598 (issued April 17, 2020); *C.M.*, Docket No. 19-1451 (issued March 4, 2020); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

¹⁰ *See W.C., id.; M.S.*, Docket No. 18-0740 (issued February 4, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹¹ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see A.S.*, Docket No. 17-0606 (issued December 21, 2017).

from data provided by the Bureau of Labor Statistics.¹² 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 \$50.00.¹³

Section 10.437 of OWCP's implementing regulations provides that 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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁴ OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.¹⁵

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.¹⁶

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not shown that she needs substantially all of her current income to meet ordinary and necessary living expenses. As her monthly income of \$4,205.23 exceeds her monthly expenses of \$1,971.65 by more than \$50.00, in this case, \$2,233.58, she has not shown that she needs substantially all of her current income to meet current ordinary and necessary living expenses.¹⁷ Because appellant has not met the first prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is unnecessary for OWCP to consider the second prong of the test based on her assets.

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because she has not shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt or that she relinquished a

¹² 20 C.F.R. § 10.436. OWCP's procedures provide that the 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

¹³ *Id.* at Chapter 6.400.4a(3) (September 2020).

¹⁴ 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁵ *Supra* note 12 at Chapter 6.400.4c(3) (September 2018).

¹⁶ 20 C.F.R. § 10.436.

¹⁷ *Id.* at § 10.437(a), (b).

valuable right or changed her position for the worse in reliance on the payment which created the overpayment.¹⁸

Because appellant has not established that, recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, she has failed to establish that OWCP acted improperly by denying waiver of recovery of the \$34,051.79 overpayment.

LEGAL PRECEDENT -- ISSUE 3

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 facts, so as to minimize any hardship.¹⁹

ANALYSIS -- ISSUE 3

The Board finds that the case is not in posture for a decision with regard to recovery of the \$34,051.79 overpayment.

In this case, appellant is receiving compensation based on her accepted September 13, 2012 employment injuries for which she was placed on the supplemental rolls beginning December 15, 2012 and on the periodic rolls beginning May 5, 2013. In the October 6, 2020 final overpayment decision, OWCP requested that she repay the overpaid amount of compensation in full. However, it failed to provide appellant with the additional appropriate recovery method of deduction of installment payments from periodic compensation in accordance with its procedures. As appellant is receiving compensation benefits and has not refunded the amount owed to OWCP, recovery of the overpayment must be made by decreasing subsequent payments of compensation. Neither FECA, nor its implementing regulations make any provision for a mandatory lump-sum repayment by a claimant who is receiving continuing compensation benefits and is not entitled to any accrued compensation benefits.²⁰ On remand, therefore, OWCP shall apply the criteria of section 10.441(a) of the regulations to arrive at a proper repayment schedule.²¹

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$34,051.79, for the period January 1, 2014 to August 15, 2020, 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 further finds that OWCP properly denied

¹⁸ *M.R.*, Docket No. 20-1622 (issued June 30, 2021); *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

¹⁹ 20 C.F.R. § 10.441(a). *See also L.B.*, Docket No. 11-2076 (issued August 29, 2012); *G.B.*, Docket No. 11-1568 (issued February 15, 2012).

²⁰ *L.B.*, *id.*; *G.B.*, *id.* *See Jesse T. Adams*, 44 ECAB 256 (1992).

²¹ *Supra* note 19.

waiver of recovery of the overpayment. The Board also finds that the case is not in posture for a decision with regard to the rate of recovery of the \$34,051.79 overpayment.

ORDER

IT IS HEREBY ORDERED THAT the October 6, 2020 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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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