

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

M.F., Appellant)	
)	
and)	Docket No. 23-0028
)	Issued: July 12, 2023
U.S. POSTAL SERVICE, EAST NORTHPORT)	
POST OFFICE, East Northport, NY, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 12, 2022 appellant filed a timely appeal from a September 12, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider 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 \$8,328.09 for the period February 1 through July 16, 2022 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 \$213.54 from appellant's continuing compensation payments every 28 days.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 16, 2010 appellant then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that same date she injured her left knee when she was delivering mail, and a dog charged her while in the performance of duty. On the reverse side of the claim form, appellant's supervisor checked a box indicating appellant's retirement plan as Federal Employees Retirement System (FERS). OWCP accepted appellant's claim for aggravation of traumatic chondromalacia of left patellae, and later expanded the acceptance of her claim to include acute pulmonary insufficiency following nonthoracic surgery, permanent aggravation of bilateral knee osteoarthritis, bilateral chondromalacia patellae, joint derangement of left lower leg, and internal derangement of right knee.² It paid her wage-loss compensation on the supplemental rolls effective April 3, 2010, and on the periodic rolls, effective January 16, 2011.

On January 8, 2018 OWCP sent a FERS/SSA dual benefits form to SSA. It listed the computation period as commencing February 16, 2010. OWCP submitted an additional dual benefits form to SSA on December 26, 2019 with a computation period of "April 30, 2010 to the present." On January 15, 2020 SSA responded, indicating that appellant was receiving disability benefits and no offset was required.

On February 8 and April 11, 2022 OWCP sent another FERS/SSA dual benefits form to SSA. It listed the computation period as "April 30, 2010 to the present." On June 1, 2022 OWCP sent an additional dual benefits form to SSA with a computation period of "December 2017 to the present." On July 28, 2022 it sent a FERS/SSA dual benefits calculation form to SSA with a computation period of January 1, 2016 through July 28, 2022.

On August 1, 2022 OWCP received a completed FERS/SSA dual benefits form from SSA, which indicated that appellant had been in receipt of SSA age-related retirement benefits since February 2022 and had received disability benefits prior to that date. The form listed appellant's SSA age-related retirement benefit rate with and without a FERS offset. Beginning February 2022, the SSA rate with FERS was \$2,407.60 and without FERS was \$885.80.

On August 1, 2022 OWCP prepared a FERS offset overpayment calculation worksheet wherein it found a total overpayment of compensation for the period February 1 through July 16, 2022 in the amount of \$8,328.09.

In a preliminary overpayment determination dated August 4, 2022, OWCP notified appellant of its preliminary finding that she received an overpayment of compensation in the amount of \$8,328.09 for the period February 1 through July 16, 2022, 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

² Under OWCP File No. xxxxxx458, OWCP accepted appellant's April 6, 2002 occupational disease claim (Form CA-2) for left heel spur syndrome, exacerbation of left plantar fasciitis, and exacerbation of left bursitis calcaneal. Appellant also has a previously filed Form CA-1 for an injury sustained on December 27, 1996, which OWCP accepted for left medial meniscus tear and derangement of left medial meniscus. Her claims have not been administratively combined by OWCP.

OWCP-20) to determine a reasonable recovery 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 provided an overpayment action request form and further 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 prerecoument hearing.

In a completed overpayment action request form dated August 17, 2022, appellant disagreed with the overpayment, and requested waiver of recovery of the overpayment and a decision based on the written evidence. She submitted a Form OWCP-20 of even date, and reported total monthly income of \$7,927.00, total monthly expenses of \$6,334.00, and additional assets valued at \$30,200.00. Appellant stated that she informed her claims examiner on multiple occasions that her SSA benefits were switching from disability benefits to age-related retirement benefits.

By decision dated September 12, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$8,328.09 for the period February 1 through July 16, 2022, because she concurrently received FECA wage-loss compensation 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 of the overpayment, because the evidence of record failed 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 \$213.54 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.³ 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.⁴

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.⁵ 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

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

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

package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,328.09, for the period February 1 through July 16, 2022, 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 FECA wage-loss compensation on the supplemental rolls, effective April 3, 2010 and on the periodic rolls, effective January 16, 2011. Appellant received SSA age-related retirement benefits beginning February 1, 2022. As noted, a claimant cannot receive concurrent FECA wage-loss compensation benefits and SSA age-related retirement benefits attributable to federal service for the same period.⁷ The information provided by SSA established that a portion of appellant's benefits were attributable to her federal service. Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.⁸

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 documentation from SSA with respect to appellant's specific SSA age-related retirement benefits that were attributable to federal service. SSA provided its rates with FERS and without FERS for the period beginning February 2022. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$8,328.09.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits in the amount of \$8,328.09 for the period February 1 through July 16, 2022.

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

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP

⁶ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also* N.B., Docket No. 18-0795 (issued January 4, 2019).

⁷ 20 C.F.R. § 10.421(d); *id.*; L.D., Docket No. 19-0606 (issued November 21, 2019); A.C., Docket No. 18-1550 (issued February 21, 2019); S.M., *supra* note 5.

⁸ *Id.*

⁹ 5 U.S.C. § 8129.

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.¹⁰ An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹¹

Additionally, 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.¹²

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. The information is also used to determine the repayment schedule, if necessary.¹³

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 of recovery of the overpayment must be considered, and recovery is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA, or be against equity and good conscience.¹⁴

In its preliminary overpayment determination, dated August 4, 2022, OWCP requested that appellant provide a completed Form OWCP-20 with supporting financial documentation, including copies of income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support income and expenses. On August 17, 2022 appellant submitted a completed Form OWCP-20, wherein she reported total monthly income of \$7,927.00, total monthly expenses of \$6,334.00, and additional assets valued at \$30,200.00.

¹⁰ 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 6.400.4a(2) (September 2020).

¹¹ *Id.* at Chapter 6.400.4.a(3); *see also N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹² 20 C.F.R. § 10.437(a)(b).

¹³ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁴ *Id.* at § 10.436.

As noted above, an individual is deemed to need substantially all of his or her monthly income to meet current and ordinary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁵

As appellant's reported income exceeds her ordinary and necessary living expenses by more than \$50.00, she does not need substantially all of her income for ordinary and necessary living expenses.¹⁶

Additionally, the evidence of record does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant has not submitted evidence to substantiate that she would experience severe financial hardship in attempting to repay the debt, or that in reliance on such payment she gave up a valuable right or changed her position for the worse. Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.¹⁷

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁸

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides in pertinent part that, 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 the 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 factors, so as to minimize any hardship.¹⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$213.54 from appellant's continuing compensation payments every 28 days.

In setting the recovery rate at \$213.54 OWCP took into consideration the factors set forth at 20 C.F.R. § 10.441(a) in order to minimize hardship, while liquidating the debt, as appellant had

¹⁵ *Supra* note 12.

¹⁶ *Id.*

¹⁷ *See T.E.*, Docket No. 19-0348 (issued December 11, 2019).

¹⁸ *Id.*

¹⁹ *Id.* at § 10.441(a); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

financial resources sufficient for more than ordinary needs.²⁰ Thus, it did not abuse its discretion in setting the rate of recovery.²¹ The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$213.54 every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,328.09, for the period February 1 through July 16, 2022, 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 waiver of recovery of the overpayment, and properly required recovery of the overpayment, by deducting \$213.54 from her continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy 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

²⁰ See *A.V.*, Docket No. 22-1234 (issued May 4, 2023); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

²¹ *R.O.*, Docket No. 18-0076 (issued August 3, 2018); *Gail M. Roe*, 47 ECAB 268 (1995); 20 C.F.R. § 10.441; see *A.F.*, *id.*; *Donald R. Schueler*, *supra* note 19.