

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

R.L., Appellant)	
)	
and)	Docket No. 23-0110
)	Issued: July 28, 2023
DEPARTMENT OF THE AIR FORCE, TINKER)	
AIR FORCE BASE, Oklahoma City, OK,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 21, 2022 appellant filed a timely appeal from an August 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 over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether OWCP properly denied waiver of recovery of the overpayment; and (2) whether OWCP properly required recovery of the overpayment by deducting \$171.87 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 11, 1994 appellant, then a 46-year-old information receptionist, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition due to factors of her federal employment. OWCP accepted the claim for major depression, recurrent episode, and severe. It paid appellant compensation on the supplemental rolls, effective December 14, 1997, and on the periodic rolls, effective October 28, 2007.

On April 16, 2020 OWCP contacted the Social Security Administration (SSA) to obtain information as to whether an offset of SSA age-related retirement benefits and FECA wage-loss compensation was required. On July 31, 2020 it received from SSA a March 6, 2020 completed Federal Employees Retirement System (FERS)/SSA dual benefits form, which indicated that appellant had been in receipt of SSA age-related retirement benefits since February 2014. The form showed her SSA age-related retirement benefit rates with and without a FERS offset.

OWCP completed a FERS offset overpayment calculation worksheet, determined the 28-day FERS offset amount for the days in each period, and computed a total overpayment amount of \$20,808.44.

On September 1, 2020 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$20,808.44 had been created because it had failed to reduce appellant's wage-loss compensation payments for the period February 1, 2014 through August 15, 2020, to offset her SSA age-related retirement benefits that were attributable to federal service. It explained that it had reduced her ongoing OWCP benefits for the periodic roll cycle, effective August 16, 2020. OWCP found that appellant was without fault in the creation of the overpayment. It requested that she submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised her that she could request waiver of recovery of the overpayment. OWCP further requested that appellant provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, it provided an overpayment action request form and further notified her 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.

³ Docket No. 21-1158 (issued April 4, 2022).

On September 18, 2020 OWCP received an overpayment action request form and a completed Form OWCP-20 from appellant. Appellant requested waiver of the overpayment, as she was without fault in the creation of the overpayment. She listed monthly income of \$3,031.83 including SSA benefits of \$2,406.00 and FECA benefits of \$625.83. Appellant listed total monthly expenses of \$3,307.91, including \$820.99 in rent, \$607.00 for food, \$50.00 for clothing, \$370.59 in utilities, \$248.73 for loan payments, and \$1,209.81 for other expenses. She listed total assets of \$6,076.39. Appellant did not submit any supporting financial documentation.

By decision dated June 21, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$20,808.44, for the period February 1, 2014 through August 15, 2020, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It also found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP noted that, as of the date of the decision, no response had been received to the preliminary overpayment determination and that appellant had not requested waiver of recovery of the overpayment. It required recovery of the overpayment by submission of payment in full by personal check or money order.

On July 19, 2021 appellant filed a timely appeal from the June 21, 2021 merit decision. By decision dated April 4, 2022, the Board found that OWCP properly determined that she received an overpayment of compensation in the amount of \$20,808.44, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period February 1, 2014 through August 15, 2020, without an appropriate offset.⁴ The Board further found that the case was not in posture for decision regarding waiver of recovery of the overpayment, noting that appellant had completed the Form OWCP-20, indicating her monthly income, monthly expenses and assets and had requested a waiver, while OWCP had found that she had failed to respond to the preliminary overpayment determination. The Board remanded the case for OWCP to fully consider the evidence that was properly submitted by her prior to the issuance of the decision and, following such further development as deemed necessary, to issue a *de novo* decision regarding waiver of recovery of the overpayment.

By decision dated August 12, 2022, OWCP denied waiver of recovery of the overpayment. It explained that it had reviewed the Form OWCP-20 completed by her which listed her monthly income, monthly expenses and assets. OWCP found that appellant listed total income of \$3,031.83, total monthly expenses of \$3,307.91 and total assets of \$6,076.39. However, appellant had not submitted any supporting financial documentation. OWCP explained that, because she did not submit any financial documents to support her monthly income/expenses, it was unable to determine her ability to repay the debt. It related that \$171.87 would be withheld from appellant's continuing payments every 28 days, which represented 25 percent of her continuing FECA benefits.

⁴ *Id.*

LEGAL PRECEDENT -- ISSUE 1

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.⁵ The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.⁶

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 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.⁷ 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.⁸

OWCP regulations provide 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

A decision of the Board is final upon the expiration of 30 days following the date of its order and, in the absence of new review by the Director, the subject matter is *res judicata* and not subject to further consideration by the Board.¹⁰ The Board has previously determined, in its April 4, 2022 decision, that appellant received an overpayment of \$20,808.44, for which she was

⁵ 5 U.S.C. § 8129(a)-(b).

⁶ A.C., Docket No. 18-1550 (issued February 21, 2019); see *Robert Atchison*, 41 ECAB 83, 87 (1989).

⁷ 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).

⁸ *Id.* at § 10.437(a)(b).

⁹ *Id.* at § 10.438.

¹⁰ See *E.A.*, Docket No. 22-0436 (issued August 23, 2022); *A.H.*, Docket No. 19-1336 (issued April 16, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

without fault.¹¹ The only issues presently before the Board are waiver and 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 recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹² In order to establish that repayment of the overpayment would defeat the purpose of FECA, appellant must show that she requires substantially all of her income to meet current ordinary and necessary living expenses and that her assets do not exceed the established limit as determined by OWCP procedures.¹³

In its September 1, 2020 preliminary overpayment determination, OWCP explained the importance of providing the completed Form OWCP-20, and supporting financial documentation. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant completed the Form OWCP-20, but she did not provide any supporting financial documentation. 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.¹⁴

Accordingly, 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.¹⁵

LEGAL PRECEDENT -- ISSUE 2

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.¹⁶ Section 10.441(a) of OWCP's implementing regulations¹⁷ provides that, if 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 factors, so as to minimize any hardship.¹⁸

¹¹ See *supra* note 5.

¹² 5 U.S.C. § 8129.

¹³ 20 C.F.R. § 10.436.

¹⁴ *Id.* at § 10.438.

¹⁵ See *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

¹⁶ See *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

¹⁷ 20 C.F.R. § 10.441(a).

¹⁸ *Id.*

When an individual fails to provide requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines. The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly required recovery of the overpayment by deducting \$171.87 from appellant's continuing compensation payments every 28 days.

As discussed, appellant did not provide the necessary financial documentation to support her reported income and expenses. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²⁰ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²¹

As appellant did not submit the financial documentation to OWCP as requested, the Board finds that OWCP properly required recovery of the \$20,808.44 overpayment at the rate of \$171.87, which represented 25 percent of appellant's continuing compensation benefits every 28 days.²²

CONCLUSION

The Board finds that OWCP properly denied waiver of recovery of the overpayment. The Board also finds that OWCP properly required recovery of the overpayment by deducting \$171.87 from appellant's continuing compensation every 28 days.

¹⁹ *Supra* note 7 at Chapter 6.500.8c(1) (September 2018).

²⁰ *Supra* note 14.

²¹ *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); *supra* note 7 at Chapter 6.400.3 (September 2020).

²² *See E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

ORDER

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

Issued: July 28, 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