

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

P.W., Appellant)	
)	
and)	Docket No. 23-0203
)	Issued: July 7, 2023
U.S. POSTAL SERVICE, LOS ANGELES POST)	
OFFICE, Los Angeles, CA, 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 November 20, 2022 appellant filed a timely appeal from a November 3, 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.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$7,271.45, for the period February 1, 2021 through September 10, 2022, for which she was not at fault, as she concurrently received Social Security Administration (SSA) age-related benefits while receiving FECA wage-loss compensation 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 \$186.45 from appellant's continuing compensation payments, every 28 days.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 17, 1990 appellant, then a 31-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she twisted her right ankle as she was walking while in the performance of duty. OWCP accepted the claim for right ankle sprain; mononeuritis of the right lower limb; right lower limb reflex sympathetic dystrophy; and lumbar radiculopathy. The record reflects that OWCP paid appellant compensation on the periodic rolls, effective June 16, 2002.² Appellant's compensation benefits included a June 27, 2006 schedule award, which OWCP paid on the periodic rolls from April 16, 2006 through March 1, 2008.

On July 28, 2022 OWCP contacted SSA to obtain information as to whether an offset of SSA age-related retirement benefits and FECA wage-loss compensation was required.

On August 18, 2022 OWCP received an August 18, 2022 completed Federal Employees Retirement System (FERS)/SSA dual benefits form from SSA, which indicated that appellant had been in receipt of SSA age-related retirement benefits since February 2021. The form showed her SSA age-related retirement benefit rates with and without a FERS offset. Beginning February 2021, the SSA rate with FERS was \$878.50, and without FERS was \$513.10; and beginning December 2021, the SSA rate with FERS was \$930.10 and without FERS was \$543.30.

By letter dated September 12, 2022, OWCP informed appellant that it had determined that she was receiving SSA age-related retirement benefits as part of a FERS retirement package and also FECA benefits, which was a prohibited dual benefit. It advised her that her FECA benefits would be offset by an SSA deduction and that her new four-week FECA benefit after the SSA offset would be \$2,419.30.

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 \$7,271.45. The offset overpayment calculation worksheet indicated that from February 1 through November 30, 2021, appellant received an overpayment in the amount of \$3,649.98; and from December 1, 2021 through September 10, 2022, she received an overpayment in the amount of \$3,621.47.

On September 16, 2022 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$7,271.45, had been created because it had failed to reduce appellant's wage-loss compensation payments for the period February 1, 2021 through September 10, 2022, to offset her SSA age-related retirement benefits that were attributable to federal service. It found that appellant was without fault in the creation of the overpayment, 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 she 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 appellant that, within 30 days of the date of

² An April 14, 2006 claim for compensation (Form CA-7), noted appellant's retirement system as FERS.

the letter, she could request a final decision based on the written evidence or a prerecoument hearing.

On October 3, 2022 OWCP received an overpayment action request form and a completed Form OWCP-20 from appellant. Appellant requested waiver of recovery of the overpayment because she was not aware of any overpayment or improper payment. She listed total monthly income of \$3,506.30, including SSA benefits of \$730.00 and FECA benefits of \$2,776.30. Appellant listed monthly expenses of \$1,500.00 for mortgage payment; \$450.00 for food; \$400.00 for clothing; \$450.00 for utilities; \$80.00 for monthly credit card payments; \$80.00 for variable expenses; and \$300.00 for other miscellaneous expenses. She noted total assets of \$1,740.00, which included \$200.00 dollars cash; \$640.00 checking account balance; and \$900.00 savings account balance. Appellant submitted some documentation including a check for rent payment; gas and electric bills; internet account statement; credit card statements; and an OWCP benefit statement dated September 10, 2022 confirming her net compensation every 28 days of \$2,776.35.

By decision dated November 3, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$7,271.45 for the period February 1, 2021 through September 10, 2022, 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 reviewed the Form OWCP-20 indicating appellant's monthly income, monthly expenses, and assets. It noted that based on the OWCP-20 form appellant's expenses exceeded her monthly income by \$90.70, however, it found that the evidence was insufficient for waiver, because she did not submit financial documents to support all of the expenses listed on the Form OWCP-20. Therefore, OWCP concluded that it was unable to determine her current financial situation, her ability to repay the debt, and an appropriate repayment amount based on her financial situation. It required recovery of the overpayment by deducting \$186.45 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA³ provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.⁴ Section 8116 of FECA defines the limitations on the right to receive compensation benefits.⁵ Section 8116(a) provides that, while an employee is receiving workers' compensation benefits, he or she may not receive salary, pay, or remuneration of any type.

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

³ *Supra* note 1.

⁴ *Id.* at § 8102(a).

⁵ *Id.* at § 8116.

attributable to the employee's federal service.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$7,271.45 for the period February 1, 2021 through September 10, 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.

In its November 3, 2022 decision, OWCP found that an overpayment of compensation was created for the period February 1, 2021 through September 10, 2022. The overpayment was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant. A claimant cannot receive both FECA wage-loss compensation benefits and SSA age-related retirement benefits attributable to federal service for the same period.⁸ The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service during the period February 1, 2021 through September 10, 2022.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. The SSA provided the SSA rate with FERS, and without FERS, for specific periods commencing February 1, 2021 through September 10, 2022. In its September 16, 2022 preliminary overpayment determination, OWCP calculated the amount of overpayment by determining the difference between the SSA amount with and without FERS for each period and multiplying the daily offset amount by the number of days in each period, to find a total overpayment of \$7,271.45.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period February 1, 2021 through September 10, 2022, and finds that an overpayment of compensation in the amount of \$7,271.45 was created.

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.⁹

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

⁷ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁸ 5 U.S.C. § 8116(d)(2); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

⁹ 5 U.S.C. § 8129(a)-(b).

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.¹⁰

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.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

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. 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 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.¹⁴ 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.¹⁵

In its preliminary overpayment determination dated September 16, 2022, OWCP clearly explained the importance of providing the completed overpayment recovery questionnaire (Form OWCP-20) and financial information. While appellant completed the Form OWCP-20, she only

¹⁰ A.C., Docket No. 18-1550 (issued February 21, 2019); see *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹¹ 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).

¹² *Id.* at § 10.437(a)(b).

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

¹⁴ 5 U.S.C. § 8129.

¹⁵ 20 C.F.R. § 10.436.

provided partial financial documentation supporting her expenses.¹⁶ 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.¹⁷

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.¹⁸

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.¹⁹ Section 10.441(a) of OWCP's implementing regulations 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.²⁰ 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.²¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$186.45 from appellant's continuing compensation payments, every 28 days.

The record supports that, in requiring repayment of the overpayment by deducting \$186.45 from appellant's compensation payments every 28 days, OWCP took into consideration the financial information she submitted as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize resulting hardship. Therefore, OWCP properly

¹⁶ An individual's liquid assets include, but are not limited to, cash on hand, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits. Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4b(3)(a) and (b) (September 2020).

¹⁷ 20 C.F.R. § 10.438.

¹⁸ See *E.T.*, Docket No. 22-0234 (issued August 17, 2022); *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

¹⁹ See *P.G.*, Docket No. 22-1073 (issued December 28, 2022); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

²⁰ 20 C.F.R. § 10.441(a).

²¹ *Id.*

required recovery of the overpayment by deducting \$186.45 from appellant's continuing compensation every 28 days.²²

CONCLUSION

The Board finds that an overpayment of compensation was created in the amount of \$7,271.45 for the period February 1, 2021 through September 10, 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 by deducting \$186.45 from appellant's continuing compensation payments, every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 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

²² See *J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.G.*, Docket No. 19-1274 (issued July 10, 2020).