

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

D.W., Appellant)	
)	
and)	Docket No. 23-0137
)	Issued: June 23, 2023
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Coppell, TX,)	
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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 17, 2022 appellant filed a timely appeal from a September 14, 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

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$33,186.95 during the period January 1, 2019

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 14, 2022 decision, 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.*

through July 16, 2022 for which she was without fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation, 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 \$641.87 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On May 16, 2007 appellant, then a 54-year-old part-time flexible clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained right arm, right mid and upper rib cage sprains due to factors of her federal employment.³ She first became aware of her condition and its relationship to her employment on January 15, 2007. On the reverse side of the claim form, the employing establishment indicated that appellant's retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for sprains of the right shoulder and upper arm, thoracic region of the back, neck, and right forearm, later expanding the acceptance of her claim to include brachial neuritis or radiculitis, right medial epicondylitis, cervical spondylosis with myelopathy, depressive disorder, cervical radiculopathy, cervical sprain, and chronic pain syndrome. It paid appellant wage-loss compensation on the supplemental rolls beginning September 30, 2011 and on the periodic rolls beginning October 23, 2011.

On June 27, 2022 OWCP provided SSA with a FERS/SSA dual benefits form.

On July 21, 2022 SSA completed the dual benefits form, which reported appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from January 2019 through December 2021. Beginning January 2019, the SSA rate with FERS was \$1,417.50 and without FERS was \$660.60. Beginning December 2019, the SSA rate with FERS was \$1,440.10 and without FERS was \$671.10. Beginning December 2020, the SSA rate with FERS was \$1,458.80 and without FERS was \$679.80. Beginning December 2021, the SSA rate with FERS was \$1,544.80 and without FERS was \$719.90.

By letter dated August 5, 2022, OWCP advised appellant that, effective August 13, 2022, her FECA wage-loss compensation benefits would be offset by her SSA age-related retirement benefits, every 28 days, in the amount of \$761.45. Appellant's new net wage-loss compensation payment every 28 days would be \$3,546.94.

On August 5, 2022 OWCP prepared a FERS offset overpayment calculation worksheet wherein it explained that, for the period January 1, 2019 through July 16, 2022, appellant received an overpayment in the total amount of \$33,186.95. For the period January 1 through November 30, 2019, appellant received an overpayment of \$8,334.22; for the period December 1, 2019 through November 30, 2020, she received an overpayment of \$9,278.70; for the period December 1, 2020 through November 30, 2021, she received an overpayment of \$9,373.68; and for the period December 1, 2021 through July 16, 2022, she received an overpayment of \$6,200.35.

³ Under OWCP File No. xxxxxx760, appellant filed a traumatic injury claim (Form CA-1) on July 14, 2005 alleging that she injured her left shoulder and lower back in the performance of duty on June 4, 2005. OWCP accepted the claim for sprain/strain of the left shoulder, sprain/strain of the lumbar region, and sprain/strain of her left hip/thigh.

On August 10, 2022 OWCP issued a preliminary overpayment determination, finding an overpayment of compensation in the amount of \$33,186.95 had been created for the period January 1, 2019 through July 16, 2022 because appellant concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It found 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 recovery method and advised her that she could request a waiver of the overpayment. It further requested that she provide financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income and expenses. Additionally, OWCP further 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 precoupment hearing. No response was received.

On August 11, 2022 OWCP issued an amended letter advising appellant that, effective August 13, 2022, her FECA wage-loss compensation benefits would be offset by her SSA age-related retirement benefits, every 28 days, in the amount of \$761.45. Appellant's new net wage-loss compensation payment every 28 days would be \$2,567.49.

By decision dated September 14, 2022, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$33,186.95 during the period January 1, 2019 through July 16, 2022 as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP required recovery of the overpayment by withholding \$641.87 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁴ 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.⁵

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA benefits that are attributable to federal service of the employee.⁶ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA age-related retirement benefit earned

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

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 \$33,186.95 during the period January 1, 2019 through July 16, 2022 as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset.

As noted, a claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁸ The information provided by SSA on July 21, 2022 accurately indicated that appellant had received SSA age-related retirement benefits that were attributable to her own federal service from January 1, 2019 through July 16, 2022. Thus, the record establishes fact of the overpayment.⁹

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 appellant's SSA age-related retirement benefits that were attributable to her federal service. SSA provided its benefit rates with FERS and without FERS. The Board finds that OWCP properly determined the amount of the overpayment. It found that, since SSA benefits were paid monthly and FECA benefits were paid every 28 days, the monthly offset had to be adjusted to a 28-day payment cycle amount. OWCP provided its calculations for each relevant time period based on the SSA dual benefits form and properly calculated that the lack of offset from January 1, 2019 through July 16, 2022 resulted in an overpayment total of \$33,186.95.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$33,186.95 for the period January 1, 2019 through July 16, 2022.

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.¹⁰

⁷ FECA Bulletin No. 97-09 (issued February 3, 1997).

⁸ *Supra* note 5. See also *N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁹ *Id.*

¹⁰ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

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.¹¹

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.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

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.¹⁴

OWCP's 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.¹⁵ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹⁶

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 repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good

¹¹ A.C., Docket No. 18-1550 (issued February 21, 2019); *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹² 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).

¹³ *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *id.* at Chapter 6.400.4.a(3).

¹⁴ 20 C.F.R. § 10.437(a)-(b).

¹⁵ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁶ *Id.* at § 10.438(b).

conscience.¹⁷ Appellant had the responsibility to provide financial information to OWCP,¹⁸ but failed to do so.

In its preliminary overpayment determination, dated August 10, 2022, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support her reported income and expenses. It afforded her 30 days to submit the necessary information. Appellant did not submit a Form OWCP-20 or otherwise submit the financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

Accordingly, as appellant has not submitted the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.

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 of OWCP's regulations provides that, when an overpayment of compensation 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 hardship.²⁰

When an individual fails to provide requested information regarding 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.²¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$641.87 every 28 days from appellant's continuing compensation payments.

¹⁷ *Id.* at § 10.436.

¹⁸ *Id.* at § 10.438; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

¹⁹ *Id.* at § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²⁰ *Id.*

²¹ *Supra* note 12 at Chapter 6.500.8(c)(1) (September 2020).

OWCP provided appellant a Form OWCP-20 with its August 10, 2022 preliminary overpayment determination. It afforded her the opportunity to provide appropriate financial information and documentation to OWCP. Appellant, however, did not complete the Form OWCP-20 or otherwise provide the necessary financial information to support her income and expenses prior to the final September 14, 2022 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²² When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²³ As appellant did not submit financial information as requested, the Board finds that OWCP reasonably required recovery by deducting \$641.87 from her continuing compensation payments every 28 days.²⁴

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$33,186.95 during the period January 1, 2019 through July 16, 2022 for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, 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 \$641.87 every 28 days from her continuing compensation payments.

²² 20 C.F.R. § 10.438(a).

²³ *J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002); *supra* note 12 at Chapter 6.500.2 (September 2018).

²⁴ *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 September 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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