

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

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**L.E., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
ALEXANDRIA VA MEDICAL CENTER,  
Alexandria, LA, Employer**

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**Docket No. 22-0203  
Issued: March 17, 2023**

*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 November 15, 2021 appellant filed a timely appeal from a September 27, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$56,768.98, for which she was without fault, for

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the September 27, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

the period June 1, 2016 through July 17, 2021, 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 required recovery of the overpayment by deducting \$448.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

This case has previously been before the Board on another issue.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 25, 1998 appellant, then a 47-year-old licensed practical nurse, injured her low back while transferring a patient from his bed to a bathing boat. OWCP accepted the claim for lumbosacral sprain, displacement of lumbar disc and lumbar spinal stenosis and authorized surgery. Appellant stopped work on June 27, 1998. It paid her wage-loss compensation on the supplemental rolls commencing January 5, 1999, and on the periodic rolls commencing June 16, 2002.

On July 15, 2021 OWCP forwarded a Federal Employees Retirement System (FERS)/SSA dual benefits form to SSA.

On July 23, 2021 OWCP received a completed FERS/SSA dual benefits form wherein SSA calculated appellant's SSA age-related retirement benefit rates with FERS and without FERS from June 2016 through December 2020. Beginning June 2016, the SSA rate with FERS was \$1,112.90 and without FERS was \$227.40. Beginning December 2016, the SSA rate with FERS was \$1,115.00 and without FERS was \$228.00. Beginning December 2017, the SSA rate with FERS was \$1,138.00 and without FERS was \$232.50. Beginning December 2018, the SSA rate with FERS was \$1,170.50 and without FERS was \$239.00. Beginning December 2019, the SSA rate with FERS was \$1,188.60 and without FERS was \$242.80. Beginning December 2020, the SSA rate with FERS was \$1,204.50 and without FERS was \$245.90.

On August 4, 2021 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's offset overpayment from June 1, 2016 through July 17, 2021 and computed a total overpayment amount of \$56,768.98. It determined that during the period June 1 through November 30, 2016, appellant received an overpayment in the amount of \$5,342.16. Beginning December 1, 2016 through November 30, 2017 she received an overpayment in the amount of \$10,673.25. Beginning December 1, 2017 through November 30, 2018 she received an overpayment in the amount of \$10,895.91. Beginning December 1, 2018 through November 30, 2019 she received an overpayment in the amount of \$11,208.76. Beginning December 1, 2019 through November 30, 2020 she received an overpayment in the amount of \$11,412.01. Beginning December 1, 2020 through July 17, 2021 she received an overpayment in the amount of \$7,236.89.

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<sup>3</sup> Docket No. 11-1483 (issued February 3, 2012).

In a preliminary overpayment determination dated August 4, 2021, OWCP advised appellant that she received an overpayment of compensation in the amount of \$56,768.98 for the period June 1, 2016 through July 17, 2021 because her wage-loss compensation benefits had not been reduced by her SSA age-related retirement benefits attributable to her federal service. It also made a preliminary determination 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 payment 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 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 precoupment hearing.

In a completed overpayment action request form dated August 15, 2021, appellant disagreed with the fact and amount of the overpayment and requested waiver of recovery of the overpayment.

In an undated Form OWCP-20, appellant reported that her monthly income totaled \$3,067.00; her monthly expenses totaled \$3,136.21; and her assets totaled \$500.00. No supporting financial documentation was received.

By decision dated September 27, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$56,768.98 for the period June 1, 2016 through July 17, 2021, because it failed to offset her wage-loss compensation payments by the portion of her SSA age-related retirement benefits that were attributable to her federal service. 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 \$448.00 from appellant's continuing compensation payments every 28 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 his or her duty.<sup>4</sup> 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.<sup>5</sup>

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

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<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8116.

attributable to the employee's federal service.<sup>6</sup> 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 package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$56,768.98, for the period June 1, 2016 through July 17, 2021, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

As noted, a claimant cannot receive concurrent FECA wage-loss compensation and SSA retirement benefits attributable to federal service for the same period. The evidence of record indicates that, while appellant was receiving FECA wage-loss compensation she was also receiving SSA age-related retirement benefits that were attributable to her federal service without appropriate offset. A claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>8</sup> The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to her federal service commencing June 1, 2016. Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.<sup>9</sup>

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, wherein SSA provided appellant's age-related retirement benefit rates with FERS and without FERS for the period June 1, 2016 through July 17, 2021. It provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$56,768.98.

The Board has reviewed OWCP's calculations for the period June 1, 2016 through July 17, 2021 and finds that appellant received an overpayment of compensation in the amount of \$56,768.98.

### **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

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

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

<sup>8</sup> 20 C.F.R. § 10.421(d); *supra* note 6; *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *S.M.*, *supra* note 6.

<sup>9</sup> *Id.*

adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup>

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.<sup>14</sup>

### 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 conscience.<sup>15</sup>

In its August 4, 2021 preliminary overpayment determination, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial documentation, including

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<sup>10</sup> 5 U.S.C. § 8129.

<sup>11</sup> 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).

<sup>12</sup> *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).

<sup>13</sup> 20 C.F.R. § 10.437(a)(b).

<sup>14</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>15</sup> *Id.* at § 10.436.

copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records to support income and expenses. It advised her that it would deny waiver of recovery if she failed to furnish the requested financial documentation within 30 days. Appellant provided a completed Form OWCP-20; however, she did not submit any financial documentation to support her reported income, assets, and expenses.

As such, appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience because she has not shown, that she would experience severe financial hardship in attempting to repay the debt, that a valuable right had been relinquished, or that a position had been changed for the worse in reliance on the payment, which created the overpayment.<sup>16</sup> Accordingly, as she did not submit 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**

Section 10.441 of OWCP's regulations provides in pertinent part: 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.<sup>17</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$448.00 from appellant's continuing compensation payments every 28 days.

As found above, appellant did not provide 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.<sup>18</sup> When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>19</sup>

The Board finds that OWCP properly considered the factors set forth in 20 C.F.R. § 10.441(a) in setting the rate of recovery at \$448.00 from continuing compensation benefits to

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<sup>16</sup> *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

<sup>17</sup> 20 C.F.R. § 10.441(a); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>18</sup> *Id.* at § 10.438(a).

<sup>19</sup> *See J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Liquidation, *Responsibility for the Collection and Settlement of Debts*, Chapter 6.300.2 (September 2020). 20 C.F.R. § 10.436; *id.* at Chapter 6.400.4a(2).

minimize hardship, while at the same time liquidating the debt in a reasonably prompt fashion.<sup>20</sup> There is no evidence of record to establish that OWCP erred in directing recovery of the \$56,768.98 overpayment at the rate of \$448.00 from appellant's continuing compensation payments every 28 days.<sup>21</sup>

**CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$56,768.98, for the period June 1, 2016 through July 17, 2021, 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. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$448.00 from her continuing compensation payments every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 27, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 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

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<sup>20</sup> See *L.F.*, Docket No. 15-0489 (issued May 11, 2015).

<sup>21</sup> See *J.A.*, *supra* note 19; *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).