

required recovery of the overpayment by deducting \$115.38 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

On July 5, 1994 appellant, then a 40-year-old boilermaker, filed a traumatic injury claim (Form CA-1) alleging that on June 29, 1994 she sustained a fractured thumb when it got caught in a metal plate while in the performance of duty. OWCP accepted the claim for open fracture of the right distal phalanx or phalanges; right closed fracture metacarpal; right fingers crushing injury; reflex sympathetic dystrophy (RSD); and prolonged depressive reaction. The record reflects that OWCP paid appellant wage-loss compensation on the periodic rolls as of June 16, 2002.

On November 20, 2020 OWCP sent a Federal Employees Retirement System (FERS)/SSA dual benefits form to SSA for completion.

On December 10, 2020 OWCP received from SSA a December 2, 2020 completed FERS/SSA dual benefits form setting forth appellant's SSA age-related retirement benefit rates with FERS and without FERS commencing November 1, 2019. SSA reported that commencing November 2019, appellant's rate with FERS was \$1,332.20, and without FERS was \$348.80; commencing December 2019, the rate with FERS was \$1,353.50, and without FERS was \$354.30; and commencing December 2020, the rate with FERS was \$1,371.00, and without FERS was \$358.90.

On January 8, 2021 OWCP completed a FERS offset overpayment calculation form wherein it determined the overpayment amount by multiplying the daily FERS offset amount by the number of days in each period. It related that from November 1 through 30, 2019, appellant received an overpayment of \$972.59; from December 1, 2019 through November 30, 2020, she received an overpayment of \$12,056.28; and from December 1, 2020 through January 2, 2021, she received an overpayment of \$1,101.08. OWCP found that the overpayments totaled \$14,129.95.

By separate letter also dated January 8, 2021, OWCP advised appellant that it was reducing her wage-loss compensation effective January 3, 2021 by the amount of her SSA benefits attributable to her federal service. It indicated that her new net compensation every 28 days would be \$1,055.89.

In a preliminary overpayment determination dated April 22, 2021, OWCP advised appellant of its determination that she received a \$14,129.95 overpayment of compensation for the period November 1, 2019 through January 2, 2021, because her FECA wage-loss compensation benefits had not been reduced by her SSA age-related retirement benefits attributable to federal service. It also made a preliminary determination that she was without fault in the creation of the overpayment. OWCP advised appellant that she could submit evidence challenging the fact or amount of the overpayment or request waiver of recovery of the overpayment. It instructed her to complete an overpayment recovery questionnaire (Form OWCP-20) to determine whether waiver should be granted, and if not, a reasonable repayment schedule. OWCP informed appellant that she should 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. It 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 prerecoupment hearing.

On May 25, 2021 OWCP received appellant's overpayment action request form. Appellant disagreed with the amount of the overpayment and requested waiver of recovery of the overpayment because she was found to be without fault in the creation of the overpayment.

On May 17, 2021 appellant completed the Form OWCP-20. She reported SSA income of \$1,371.00 and FECA benefits of \$1,062.00, for a total monthly income of \$2,433.00. Appellant listed monthly expenses of rent or mortgage including property taxes, \$1,271.83; food, \$610.00; clothing, \$100.00; utilities, \$1,152.00; and other expenses, \$664.48. She also listed monthly payments of \$704.94 for miscellaneous debts. Appellant listed assets of cash, \$23.00; checking account balance, \$292.00, savings account balance, \$8,219.47; other funds, \$10,500.00; and shared other property valued at \$176,400.00.

A telephonic hearing before an OWCP hearing representative was held on September 10, 2021.

Following the hearing, appellant submitted financial documentation.

In a November 10, 2021 decision, OWCP's hearing representative found that appellant received an overpayment of compensation in the amount of \$14,128.95, for the period November 1, 2019 through January 2, 2021, for which she was without fault. She found that appellant's monthly income totaled \$2,637.47, consisting of \$1,371.00 in SSA benefits and \$1,266.47 in FECA compensation (\$1,169.00 every 28 days). OWCP's hearing representative further found that appellant's monthly expenses totaled \$2,389.20.

OWCP's hearing representative found that appellant's monthly income of \$2,637.47 exceeded her monthly expenses of \$2,389.20 by \$248.27. She determined that, although appellant was not at fault in the creation of the overpayment, the overpayment could not be waived as her monthly income exceeded her monthly expenses by more than \$50.00, and her asset base also exceeded the allowable threshold of \$10,300.00. OWCP's hearing representative found that there was no evidence to substantiate that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. She required recovery of the overpayment by deduction of \$115.38 from appellant's continuing compensation payments every 28 days (\$125.00 per month).

LEGAL PRECEDENT -- ISSUE 1

Section 8102 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 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

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Id.* at § 8102(a).

⁵ *Id.* at § 8116.

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 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 \$14,129.95, for the period November 1, 2019 through January 2, 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.

A claimant cannot receive both FECA compensation for wage loss and SSA age-related benefits attributable to federal service for the same period.⁸ The information provided by SSA establishes that appellant received SSA age-related retirement benefits that were attributable to federal service during the period November 1, 2019 through January 2, 2021.

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 November 1, 2019 through January 2, 2021. OWCP provided its calculations for each relevant period based on an SSA worksheet and 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, which resulted in a total overpayment of \$14,129.95. No contrary evidence was provided.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period November 1, 2019 through January 2, 2021, and finds that an overpayment of compensation in the amount of \$14,129.95 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 Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹⁰

⁶ 20 C.F.R. § 10.421(d); *see N.A.*, Docket No. 21-0982 (issued April 28, 2022); *S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

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

¹⁰ *See N.A.*, *supra* note 6; *C.B.*, Docket No. 20-0031 (issued July 27, 2020); *L.S.*, 59 ECAB 350 (2008).

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹¹ 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 \$50.00.¹²

Section 10.437 of OWCP's implementing regulations provides that 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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹³ OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.¹⁴

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.¹⁵

ANALYSIS -- ISSUE 2

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

The fact that OWCP may have been negligent in the creation of the overpayment does not entitle appellant to waiver of recovery of the overpayment.¹⁶ 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.¹⁷ 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

¹¹ 20 C.F.R. § 10.436. OWCP's procedures provide that the assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or 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 Federal (FECA) Procedure Manual, *id.* at Chapter 6.400.4a(3) (September 2020).

¹³ 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁴ Federal (FECA) Procedure Manual, *supra* note 11 at Chapter 6.400.4c(3) (September 2020).

¹⁵ 20 C.F.R. § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁶ *See L.D.*, Docket No. 19-0606 (issued November 21, 2019); *R.B.*, Docket No. 15-0808 (issued October 26, 2015).

¹⁷ 5 U.S.C. § 8129.

current ordinary and necessary living expenses and that her assets do not exceed the established limit as determined by OWCP procedures.¹⁸

The Board finds that OWCP properly determined that appellant did not require substantially all of her income to meet ordinary living expenses. Appellant reported monthly income of \$2,637.47, consisting of \$1,371.00 in SSA benefits and \$1,266.47 in FECA compensation (\$1,169.00 every 28 days), which exceeded her monthly expenses of \$2,389.20 by \$248.27. As her monthly income exceeded her ordinary and necessary living expenses by more than \$50.00, she did not need substantially all of her income for ordinary and necessary living expenses.¹⁹ OWCP also properly found that appellant's asset base exceeded the allowable threshold of \$10,300.00. Therefore, it properly determined that, although she was without fault in the creation of the overpayment, the overpayment could not be waived.

Additionally, the Board finds that the evidence of record does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant did not submit any evidence that she had relied upon the incorrect payments to her detriment or that she would experience severe financial hardship attempting to repay the debt.²⁰ Consequently, OWCP properly denied waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides 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 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.²¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$115.38 from appellant's continuing compensation payments every 28 days.

The Board finds that OWCP gave due regard to the financial information appellant submitted. OWCP also properly considered the factors set forth in section 10.441 in setting the amount of the repayment from continuing compensation benefits to minimize hardship, while liquidating the debt, as she had financial resources sufficient for more than ordinary needs.²² As noted, it properly determined that appellant's monthly income exceeded her monthly expenses by \$248.27, or more than \$50.00 per month, and her reported assets exceeded the allowed resource

¹⁸ 20 C.F.R. § 10.436.

¹⁹ *J.C.*, Docket No. 19-0122 (issued June 11, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see also M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²⁰ 20 C.F.R. § 10.437.

²¹ *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

²² *See N.J.*, Docket No. 19-1170 (issued January 10, 2020).

base of \$10,300.00. OWCP did not abuse its discretion in requiring recovery by deducting \$115.38 from her continuing compensation payments every 28 days.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$14,129.95 for the period November 1, 2019 through January 2, 2021, 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 deducting \$115.38 from her continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 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