

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

N.A., Appellant)	
)	
and)	Docket No. 22-0866
)	Issued: March 24, 2023
U.S. POSTAL SERVICE, PASADENA POST)	
OFFICE, Pasadena, 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 May 3, 2022 appellant filed a timely appeal from a March 21, 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 \$44,709.29 during the period August 1, 2018 through January 30, 2021, for which she was without fault, as she concurrently received Social

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the March 21, 2022 decision, OWCP received additional evidence. 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.*

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 \$150.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On October 16, 2012 appellant, then a 59-year-old sales, services, and distribution associate, filed an occupational disease claim (Form CA-2) alleging that she sustained strain as a result of duties of her federal employment including lifting of heavy parcels, tubs, and sacks of mail and distributing flats and letter mail for more than 27 years. Her retirement plan was noted on the claim form as Federal Employee Retirement System (FERS). OWCP accepted appellant's claim for aggravation of a sprain of the right shoulder, upper arm, and rotator cuff, as well as right shoulder disorder of the bursae and tendons on March 6, 2014.³ Appellant stopped work on October 16, 2012 and did not return. OWCP paid her wage-loss compensation on the supplemental and periodic rolls as of October 16, 2012 and on the periodic rolls as of November 16, 2014.

On December 10, 2020 OWCP forwarded a FERS/SSA dual benefits form to SSA requesting information from SSA regarding appellant's potential receipt of dual benefits.

On January 5, 2021 OWCP received a completed FERS/SSA dual benefits form from SSA dated January 5, 2021, wherein SSA reported appellant's SSA age-related retirement benefit rates with and without a FERS offset. The form indicated that the SSA rate with FERS was \$1,723.50 effective August 2018, \$1,771.80 effective December 2018, \$1,800.10 effective December 2019, and \$1,823.40 effective December 2020. The form further indicated that the SSA rate without FERS was \$287.00 effective August 2018, \$295.00 effective December 2018, \$299.60 effective December 2019, and \$303.50 effective December 2020.

OWCP completed a FERS offset overpayment calculation form on February 4, 2021. It determined the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$44,709.29. OWCP indicated that during the period August 1 to November 30, 2018 appellant received an overpayment in the amount of \$5,77.57, from December 1, 2018 to November 30, 2019 an amount of \$17,770.29, during the period December 1, 2019 to November 30, 2020 an amount of \$18,104.93, and from December 1, 2020 to January 30, 2021 an amount of \$3,056.50.

By letter dated February 8, 2021, OWCP advised appellant that a FECA beneficiary may not receive compensation concurrently with SSA age-based benefits attributable to federal service. Therefore, the portion of appellant's social security benefit attributed to federal service must be offset from her compensation benefits. OWCP advised that beginning January 30, 2021 her new wage-loss compensation payment would be \$1,339.48.

³ Under OWCP File No. xxxxxx921, OWCP accepted a complete rotator cuff tear of the left shoulder, a ggravation of intervertebral lumbar disc displacement of the lumbar region at L4-5, a right rotator cuff sprain, and left shoulder joint derangement caused or a ggravated by an occupational disease with a date of injury of September 18, 2014.

On March 24, 2021 OWCP notified appellant of its preliminary overpayment determination that she received an overpayment of compensation in the amount of \$44,709.29 as she had received FECA wage-loss compensation benefits for the period August 1, 2018 through February 27, 2021 that had not been reduced by the portion of her SSA age-related retirement benefits attributable to her federal service, and that this portion of her SSA benefit was a prohibited dual benefit. It further advised her of its preliminary determination that she was at fault in the creation of the overpayment. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit 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. Additionally, it provided an overpayment action request form and 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 precoupment hearing.

On March 30, 2021 appellant requested that OWCP render a decision based upon the written evidence regarding possible waiver of recovery of the overpayment. She requested waiver as she was found to be without fault in the creation of the overpayment. In an attached Form OWCP-20, appellant advised that her total monthly income included \$1,823.00 in SSA benefits and \$1,381.91 from OWCP, for a total monthly income of \$3,204.91. She further advised that her monthly expenses included: \$800.00 for food, \$300.00 for clothing, \$500.00 for utilities, and \$2,000.00 for other expenses. Appellant indicated that she had assets of \$200.00 in a checking account. She submitted copies of insurance bills and an OWCP FECA benefit statement.

By decision dated March 21, 2022, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$44,709.29 for the period August 1, 2018 through January 30, 2021. It enclosed a calculation of the overpayment matching the February 4, 2021 FERS offset overpayment calculation form. OWCP further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, finding that she had not provided supporting evidence for her expenses. It required repayment of the overpayment by deducting \$150.00 from her continuing compensation benefits beginning March 27, 2022.

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 age-related retirement benefits that are attributable to

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

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 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 has established that appellant received an overpayment of compensation in the amount of \$44,709.29 during the period August 1, 2018 through January 30, 2021, for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits, without appropriate offset.

As previously noted, a claimant cannot receive both FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁸ The evidence of record establishes that appellant had concurrently received wage-loss compensation benefits and SSA age-related retirement benefits that were attributable to federal service during the period August 1, 2018 through January 30, 2021.

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 from SSA with respect to the specific amounts of SSA age-related retirement benefits that were attributable to federal service. SSA provided its benefit rates with FERS and without FERS during the specific period August 1, 2018 through January 30, 2021. In its March 21, 2022 final decision, OWCP provided its calculations for each relevant period based on SSA's worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period August 1, 2018 through January 30, 2021 and finds that an overpayment of compensation in the amount of \$44,709.29 has been established. OWCP obtained documentation from SSA establishing her SSA age-related retirement benefit rates with and without FERS for each relevant period during the overpayment. Therefore, appellant received an overpayment of FECA compensation in the amount of \$44,709.29 during the period August 1, 2018 through January 30, 2021.

⁶ 20 C.F.R. § 10.421(d); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *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 *D.W.*, Docket No. 20-1533 (issued May 27, 2021); *M.R.*, Docket No. 20-0427 (issued October 30, 2020); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *N.B.*, *id.*

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

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'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.¹³ 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.¹⁴

ANALYSIS -- ISSUE 2

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

⁹ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see M.C.*, Docket No. 19-0699 (issued February 12, 2020).

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 *Id.* at § 10.438(b).

As OWCP found appellant without fault in the creation of the overpayment, waiver 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.¹⁵

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience because she did not provide sufficient necessary supporting financial information. In its preliminary overpayment OWCP explained the importance of providing the completed overpayment questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income, expenses, and assets. While appellant completed the Form OWCP-20 and submitted information relevant to her income, she did not provide sufficient financial documentation supporting her reported monthly recurring expenses or assets. As she did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.¹⁶

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.¹⁷

Section 10.441(a) of OWCP's regulations¹⁸ 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 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."¹⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$150.00 from appellant's continuing compensation payments every 28 days.

The Board finds that OWCP properly required recovery of the overpayment by deducting \$150.00 every 28 days from appellant's continuing compensation payments. In determining

¹⁵ *Id.* at § 10.436.

¹⁶ *D.C.*, Docket No. 19-0118 (issued January 15, 2020); *see S.B.*, Docket No. 16-1795 (issued March 2, 2017).

¹⁷ 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

¹⁸ *Id.* at § 10.441(a).

¹⁹ *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

whether appellant could repay the overpayment through \$150.00 deductions from continuing compensation payments, OWCP took into account her financial information as well as factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize any resulting hardship, not necessarily eliminate it, while at the same time liquidating the debt in a reasonably prompt fashion.²⁰ The Board thus finds that OWCP properly required recovery of the \$44,709.29 overpayment at the rate of \$150.00 every 28 days from her continuing compensation payments.²¹

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$44,709.29 for the period August 1, 2018 through January 30, 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 of the overpayment by deducting \$150.00 from her continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 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

²⁰ See *J.K.*, Docket No. 20-1190 (issued January 8, 2021).

²¹ See *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).