



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 \$250.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On December 11, 2013 appellant, then a 59-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she had slipped on salt that had been placed on the sidewalk outside of building 221B while in the performance of duty. She indicated that she had fallen on the right side of her body and sustained injuries to her head, right shoulder, elbow, hip, and knee. Appellant's supervisor noted on the claim form that appellant's retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for sprains of the neck, right hip, and thigh; concussion without loss of consciousness; old bucket handle tear of right medial meniscus; aggravation of degenerative thoracic or thoracolumbar intervertebral disc; displacement of lumbar intervertebral disc without myelopathy; disorder of bursae and tendons in right shoulder region; acute venous embolism and thrombosis of deep veins of right upper extremity; and other pulmonary embolism and infarction. Appellant stopped work on January 26, 2014 and has not returned. OWCP paid her wage-loss compensation on its supplemental rolls from January 27 through April 5, 2014, and on its periodic compensation rolls commencing April 6, 2014.

OWCP forwarded a FERS/SSA dual benefits form to SSA on September 3, 2021 to obtain information regarding appellant's potential receipt of dual benefits.

On September 29, 2021 OWCP received from SSA the completed FERS/SSA dual benefits form, which reported that appellant had been in receipt of SSA age-related retirement benefits since August 1, 2020. Beginning August 2020, appellant's monthly SSA rate with FERS was \$2,362.60 and without FERS was \$1,703.40. Beginning December 2020, appellant's monthly SSA rate with FERS was \$2,393.30 and without FERS was \$1,725.50.

An October 1, 2021 FERS offset overpayment calculation worksheet indicated that appellant had been in receipt of checks on its periodic compensation rolls for the period August 1, 2020 through September 11, 2021. OWCP calculated a FERS offset amount of \$325.98 for the period August 1 through 15, 2020; \$608.49 for the period August 16 through September 12, 2020; \$608.49 for the period September 13 through October 10, 2020; \$608.49 for the period October 11 through November 7, 2020; \$499.83 for the period November 8 through 30, 2020; \$110.08 for the period December 1 through 5, 2020; \$616.43 for the period December 6, 2020 through January 2, 2021; \$616.43 for the period January 3 through 30, 2021; \$616.43 for the period January 31 through February 27, 2021; \$616.43 for the period February 28 through March 27, 2021; \$616.43 for the period March 28 through April 24, 2021; \$616.43 for the period April 25 through May 22, 2021; \$616.43 for the period May 23 through June 19, 2021; \$616.43 for the period June 20 through July 17, 2021; \$616.43 for the period July 18 through August 14, 2021; and \$616.43 for the period August 15 through September 11, 2021, for a total overpayment of \$8,925.66 for the period August 1, 2020 through September 11, 2021.

On September 12, 2021 OWCP adjusted appellant's compensation to offset the amount of SSA age-related retirement benefits attributable to her federal service.

In an October 4, 2021 letter, OWCP informed appellant that she had been receiving dual FERS and SSA age-related retirement benefits since August 1, 2020. It further informed her that her FECA benefits must be adjusted based on the FERS portion of SSA age-related retirement benefits that were attributable to federal service. OWCP indicated that appellant's FECA benefits would be reduced by \$616.43 to \$3,907.62 every 28 days.

On March 25, 2022 OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$8,925.66 because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period August 1, 2020 through September 11, 2021. It noted that SSA had confirmed that a portion of her SSA benefits were attributed to her years of federal service as an employee under the FERS retirement program and that portion required an offset of her FECA compensation benefits until September 12, 2021 when her monthly compensation for wage loss was adjusted. OWCP explained that it had calculated the overpayment of compensation by determining the difference between appellant's SSA age-related retirement benefit rates with and without FERS for each period, and then multiplying that amount by the number of days in each period. The FERS offset overpayment calculation worksheet indicated that OWCP had utilized a 28-day FERS offset amount of \$2,651.29 for the period August 1 through November 30, 2020; and \$6,274.37 for the period December 1, 2020 through September 11, 2021. OWCP found that appellant was without fault in the creation of the overpayment. It requested that she complete an enclosed Form OWCP-20 and submit supporting financial documentation including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records supporting income and expenses. Additionally, OWCP notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written record or request a precoupment hearing.

On April 4, 2022 appellant disagreed that the overpayment occurred, disagreed with the amount of the overpayment and requested waiver as she was found to be without fault in the creation of the overpayment. She also provided a completed signed Form OWCP-20, which listed her monthly income totaling \$5,574.00. Appellant also provided an itemized list of her monthly expenses totaling \$4,127.00. She also reported assets of over \$14,000.00. Appellant provided an SSA benefit statement and an OWCP benefit statement, but did not otherwise provide financial documentation supporting her reported income, assets, and expenses.

By decision dated May 2, 2022, OWCP finalized its preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$8,925.66 for the period August 1, 2020 through September 11, 2021, for which she was without fault. It denied waiver of recovery, noting that appellant had not provided sufficient financial documentation to support her reported income, assets, and expenses. OWCP required recovery of the overpayment by deducting \$250.00 from her continuing compensation payments every 28 days beginning May 22, 2022.

### **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>3</sup> Section 8116 limits the right of an employee to receive

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<sup>3</sup> 5 U.S.C. § 8102(a).

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>4</sup>

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.<sup>5</sup> FECA Bulletin No. 97-09 states that FECA benefits must be adjusted by the FERS portion of SSA age-related retirement benefits because the portion of 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>6</sup>

### ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,925.66 for the period August 1, 2020 through September 11, 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.<sup>7</sup>

The evidence of record indicates that, while appellant was receiving compensation for wage-loss under FECA, she also was receiving SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both compensation for wage-loss under FECA and SSA age-related retirement benefits attributable to federal service for the same period.<sup>8</sup> The information provided by SSA established that during the period August 1, 2020 through September 11, 2021, appellant received SSA age-related retirement benefits that were attributable to federal service, while she also received FECA wage-loss compensation that was not reduced by an appropriate offset. Consequently, fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA's age-related retirement 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 federal service. SSA provided its benefit rates with FERS and without FERS for specific periods from August 1 through November 30, 2020 and December 1, 2020 through September 11, 2021. OWCP provided its calculations for each relevant period based on the age-related retirement rates as reported by SSA which show that appellant

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<sup>4</sup> *Id.* at § 8116.

<sup>5</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>6</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>7</sup> *See R.S.*, Docket No. 21-1314 (issued June 9, 2022); *D.M.*, Docket No. 21-0230 (issued December 14, 2021); *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>8</sup> 20 C.F.R. § 10.421(d); *see S.M.*, *supra* note 5; *L.J.*, *supra* note 5.

received an overpayment in the amount of \$8,925.66. The Board thus finds that appellant received \$8,925.66 in prohibited dual benefits for the period August 1, 2020 through September 11, 2021.

### **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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

Section 10.438 of the implementing 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.<sup>12</sup> Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>13</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 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>14</sup>

In its preliminary overpayment determination dated March 25, 2022, OWCP provided a Form OWCP-20 and requested that appellant provide supporting financial documentation,

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<sup>9</sup> 5 U.S.C. § 8129(a)-(b).

<sup>10</sup> *R.S.*, *supra* note 7; *L.S.*, 59 ECAB 350 (2008).

<sup>11</sup> 20 C.F.R. § 10.437; *E.H.*, Docket No. 18-1009 (issued January 29, 2019).

<sup>12</sup> *Id.* at § 10.438(a).

<sup>13</sup> *Id.* at § 10.438.

<sup>14</sup> *Id.* at § 10.436.

including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income, expenses and assets.

While appellant submitted a completed Form OWCP-20, she failed to furnish sufficient financial documentation to support her reported income, assets, and expenses. 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.<sup>15</sup>

### **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.<sup>16</sup>

Section 10.441(a) of OWCP's regulations<sup>17</sup> 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.”<sup>18</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$250.00 every 28 days from appellant's continuing compensation payments.

OWCP gave due regard to the information 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.<sup>19</sup> The Board, therefore, finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$250.00 every 28 days.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,925.66 for the period August 1, 2020 through September 11, 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. The Board

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

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

<sup>17</sup> *Id.* at § 10.441(a).

<sup>18</sup> *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

<sup>19</sup> *J.R.*, Docket No. 21-0485 (issued December 10, 2021); *M.B.*, Docket No. 20-1578 (issued March 25, 2021).

also finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$250.00 from her continuing compensation payments every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 2, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 28, 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