

from the Office of Personnel Management (OPM) and FECA wage-loss compensation benefits; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On June 6, 2018 appellant, then a 60-year-old lead sales and service distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on May 22, 2018 she injured her left shoulder when she fell over packages while in the performance of duty. OWCP accepted the claim for a concussion without loss of consciousness, sprains of the neck and lumbar spine, contusion and trochanteric bursitis of the left hip, joint derangement and superior glenoid labrum lesion of the left shoulder, and patellar tendinitis of the left knee. It paid appellant wage-loss compensation for disability on the supplemental rolls from June 23 through September 15, 2018, and on the periodic rolls from September 16, 2018 through November 6, 2021.

In a November 4, 2021 election of benefits form (Form CA-1105), appellant elected to receive retirement benefits from OPM in lieu of workers' compensation benefits from FECA, effective July 4, 2021.

By letter dated November 10, 2021, OWCP advised OPM that appellant had elected to receive OPM benefits effective July 4, 2021 and that it had paid wage-loss compensation through November 6, 2021.

In a form dated November 22, 2021, OPM indicated that it commenced payment of retirement annuity benefits to appellant in the gross amount of \$3,782.00 per month, effective November 6, 2021. It noted that OWCP stopped payment effective November 6, 2021, and, therefore, no overpayment debt was incurred.

By letter dated December 13, 2021, OWCP acknowledged that OPM commenced annuity payments as of November 6, 2021 in order to avoid an overpayment on appellant's account.

On March 24, 2022 OWCP issued a preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$13,038.49 for the period July 4 through November 6, 2021. It explained that the overpayment occurred because she elected to receive OPM retirement benefits effective July 4, 2021 but was paid compensation for temporary total disability through November 6, 2021, which resulted in a prohibited dual benefit payment. OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. It requested that she 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. OWCP further requested that appellant 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, 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.

In an April 11, 2022 memorandum of telephone call (Form CA-110), appellant advised OWCP that OPM paid her retirement annuity as of November 6, 2021.

On April 25, 2022 OWCP received an overpayment action request form dated April 12, 2022, noting that appellant contested the overpayment and disagreed that the overpayment occurred.

By decision dated May 3, 2022, OWCP finalized its preliminary determination that appellant received a \$13,038.49 overpayment of compensation, because she elected to receive OPM benefits effective July 4, 2021, but was paid FECA wage-loss compensation through November 6, 2021. It found that she was without fault in the creation of the overpayment but denied waiver of recovery, noting that she had not completed a Form OWCP-20 or provided financial documentation. OWCP determined that appellant should forward the full amount of the overpayment, \$13,038.49, within 30 days as repayment.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) 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 his or her federal employment.⁴ Section 8116 of FECA defines the limitations on the right to receive compensation benefits.⁵ Section 8116(a) provides that, while an employee is receiving workers' compensation benefits, he or she may not receive salary, pay, or remuneration of any type from the United States, except in return for services actually performed or for certain payments related to service in the Armed Forces, including benefits administered by the Department of Veterans Affairs, unless such benefits are payable for the same injury or the same death being compensated for under FECA.⁶

Section 10.421(a) of OWCP's implementing regulations provides that a beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.⁷ The beneficiary must elect the benefit that he or she wishes to receive.⁸ OWCP's procedures also explain that the employee must make an election between FECA benefits and OPM benefits. The employee has the right to elect the monetary benefit which is the more advantageous.⁹

³ *Supra* note 1.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ *Id.* at § 8116(a).

⁷ 20 C.F.R. § 10.421(a).

⁸ *Id.*

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4a (January 1997); *see also D.J.*, Docket No. 20-0004 (issued May 21, 2020); *Harold Weisman*, Docket No. 93-1335 (issued March 30, 1994).

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$13,038.49 for the period July 4 through November 6, 2021.

On November 4, 2021 appellant elected OPM retirement benefits effective July 4, 2021. OWCP paid her wage-loss compensation for temporary total disability through November 6, 2021. On March 24, 2022 it issued a preliminary overpayment determination that an overpayment of compensation was created in the amount of \$13,038.49 for the period July 4 through November 6, 2021 because appellant elected to receive retirement benefits effective July 4, 2021, but was paid compensation for temporary total disability through November 6, 2021.

In a form dated November 22, 2021, OPM indicated that it commenced payment of retirement annuity benefits to appellant effective November 6, 2021, the same date that OWCP stopped payment, and, therefore, no overpayment debt was incurred. By letter dated December 13, 2021, OWCP acknowledged that OPM commenced annuity payments on November 6, 2021 in order to avoid an overpayment on appellant's account. In addition, on April 11, 2022, appellant advised OWCP that she received payment from OPM as of November 6, 2021, not July 4, 2021. However, OWCP finalized the March 24, 2022 preliminary overpayment determination by decision dated May 3, 2022.

While the record reflects that appellant received FECA benefits for the period July 4 through November 6, 2021, OWCP has not established that she also received OPM benefits for this period.¹⁰ The Board has previously held that the mere fact that a claimant received FECA benefits after the effective date of an OPM election will not establish receipt of a prohibited dual benefit.¹¹ Therefore, the Board finds that OWCP has not met its burden of proof to establish that the overpayment occurred.¹²

CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$13,038.49 for the period July 4 through November 6, 2021.¹³

¹⁰ *C.P.*, Docket No. 19-0732 (issued September 5, 2019); *M.C.*, Docket No. 18-0074 (issued August 1, 2019).

¹¹ *T.M.*, Docket No. 20-0967 (issued April 12, 2022); *C.P., id.*; *J.M.*, Docket No. 15-1604 (issued May 23, 2016); *B.H.*, Docket No. 13-1955 (issued January 29, 2014).

¹² *T.M., id.*; *C.P., id.*

¹³ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 22, 2023
Washington, DC

Alec J. Koromilas, 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