

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

M.M., Appellant)	
)	
and)	Docket No. 23-0129
)	Issued: May 19, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
DALLAS VA MEDICAL CENTER, Dallas, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 7, 2022 appellant filed a timely appeal from a November 1, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies the request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, oral argument is denied and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$8,337.31 for the period April 26, 2019 through March 26, 2022, for which she was without fault, 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 \$539.50 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

On March 5, 2019 appellant, then a 63-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on February 13, 2019 she sprained and bruised her right arm and right shoulder, and bruised her right hip and leg when a coworker pushed a food cart into her and knocked her to the cement floor while in the performance of duty. Her retirement system coverage was noted as Federal Employees Retirement System (FERS). OWCP accepted the claim for right shoulder contusion, initial encounter; right hip contusion, initial encounter; left shoulder unspecified sprain, initial encounter; right shoulder joint unspecified sprain, initial encounter; and cervical radiculopathy. It paid appellant wage-loss compensation on the supplemental rolls as of April 26, 2019 for intermittent disability.³ By decision dated August 11, 2022, OWCP expanded the acceptance of her claim for additional conditions, including other cervical disc displacement, occipito-atlanto-axial region; cervical disc disorder at C5-6 with radiculopathy; other cervical disc displacement at C4-5 and C5-6; other biomechanical lesions of the cervical region; and rheumatoid myopathy with rheumatoid arthritis of left knee.

On July 20, 2022 OWCP provided SSA with a FERS/SSA dual benefits calculation form.

On August 9, 2022 SSA completed the dual benefits form, wherein SSA calculated appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from February 2019 through January 2022. Beginning February 2019, the SSA rate with FERS was \$1,167.90 and without FERS was \$891.00; beginning December 2019, the SSA rate with FERS was \$1,186.50 and without FERS was \$905.20; beginning January 2020, the SSA rate with FERS was \$1,207.30 and without FERS was \$905.20; beginning December 2020, the SSA rate with FERS was \$1,222.90 and without FERS was \$916.90; beginning January 2021, the SSA rate with FERS was \$1,235.30 and without FERS was \$916.90; beginning December 2021, the SSA rate with FERS was \$1,308.10 and without FERS was \$970.90; and beginning January 2022, the SSA rate with FERS was \$1,314.90 and without FERS was \$970.90.

On August 15, 2022 OWCP received from SSA an updated FERS/SSA dual benefits form, which indicated appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from February 2019 through January 2022. Beginning

³ By decision dated April 20, 2022, OWCP granted appellant a schedule award for 12 percent permanent impairment of the right upper extremity and 6 percent permanent impairment of the left upper extremity. The period of the award ran from March 27, 2022 through April 24, 2023.

February 2019, the SSA rate with FERS was \$934.40 and without FERS was \$712.80; beginning December 2019, the SSA rate with FERS was \$949.20 and without FERS was \$724.10; beginning January 2020, the SSA rate with FERS was \$965.80 and without FERS was \$724.10; beginning December 2020, the SSA rate with FERS was \$978.30 and without FERS was \$733.50; beginning January 2021, the SSA rate with FERS was \$988.20 and without FERS was \$733.50; beginning December 2021, the SSA rate with FERS was \$1,046.40 and without FERS was \$776.70; and beginning January 2022, the SSA rate with FERS was \$1,051.90 and without FERS was \$776.70.

In a September 15, 2022 memorandum, OWCP identified an overpayment period of April 26, 2019 through March 26, 2022. It noted that it first paid appellant compensation on April 26, 2019 and she received schedule award compensation as of March 26, 2022, which did not require a FERS offset.

OWCP completed a FERS offset overpayment calculation worksheet, determined the 28-day FERS offset amount for the days in each period, and computed a total overpayment amount of \$8,337.31. The worksheet indicated that, from April 26 through November 30, 2019, appellant received an overpayment in the amount of \$1,599.18; from December 1 through 31, 2019, appellant received an overpayment in the amount of \$230.05; from January 1 through November 30, 2020, appellant received an overpayment in the amount of \$2,669.32; from December 1 through 31, 2020, appellant received an overpayment in the amount of \$250.18; from January 1 through August 14, 2021, appellant received an overpayment in the amount of \$1,897.65; from August 29 through November 30, 2021, appellant received an overpayment in the amount of \$789.20; from December 1 through 31, 2021, appellant received an overpayment in the amount of \$275.63; on January 1, 2022, appellant received an overpayment in the amount of \$9.07; from January 3 through 14, 2022, appellant received an overpayment in the amount of \$108.87; from January 16 through 29, 2022, appellant received an overpayment in the amount of \$127.02; and from February 13 through March 26, 2022, appellant received an overpayment in the amount of \$381.05.

In a preliminary overpayment determination dated September 28, 2022, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$8,337.31 for the period April 26, 2019 through March 26, 2002 because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. It calculated the overpayment amount by determining the difference between her SSA amount with and without FERS for the stated period and totaling this amount to find an overpayment of \$8,337.31. OWCP further advised appellant of its preliminary overpayment 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), along with supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income, assets, and expenses. OWCP advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. It provided an appeal request form and further notified her that, within 30 days of the date of the letter, she could contest the overpayment and request final decision based on the written evidence or a prerecoupment hearing. No response was received.

By decision dated November 1, 2022, OWCP finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$8,337.31 for the period April 26, 2019 through March 26, 2022. It determined that she was without fault in the creation of the overpayment but, denied waiver of recovery of the overpayment because no financial information had been submitted. OWCP required recovery of the overpayment by deducting \$539.50 from appellant's continuing compensation payments every 28 days beginning November 6, 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 duty.⁴ However, section 8116 also 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 When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁶

Section 10.421(d) of OWCP's implementing regulations requires that it reduce the amount of compensation by the amount of any SSA benefits that are attributable to the employee's federal service.⁷ 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 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$8,337.31 for the period April 26, 2019 through March 26, 2022, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

OWCP paid appellant wage-loss compensation for of intermittent disability due to her accepted employment injury beginning April 26, 2019. Appellant received SSA age-related retirement benefits from SSA beginning February 2019. A claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ *Id.* at § 8129(a).

⁷ 20 C.F.R. § 10.421(d); *see B.W.*, Docket No. 21-0277 (issued May 6, 2022); *R.R.*, Docket No. 19-0104 (issued March 9, 2020); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *L.J.*, 59 ECAB 264 (2007).

⁸ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

service for the same period.⁹ The information provided by SSA established that appellant concurrently received SSA age-related retirement benefits that were attributable to her federal service. Accordingly, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided appellant's SSA rates with FERS and without FERS for the period February 2019 through January 2022. OWCP provided its calculations of the amount that it should have offset during the relevant period based on the SSA worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period April 26, 2019 through March 26, 2022 and finds that an overpayment of compensation in the amount of \$8337.31 was created.¹⁰

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 adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience."¹¹ Section 10.438 of OWCP 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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹²

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

⁹ *Id.*; *M.W.*, Docket No. 22-0791 (issued November 10, 2022); *M.R.*, Docket No. 20-0427 (issued October 30, 2020). *See also N.B., id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹⁰ *See M.W., id.*; *P.M.*, Docket No. 21-0915 (issued December 14, 2021); *K.W.*, Docket No. 20-1169 (issued April 7, 2021); *W.C.*, Docket No. 20-1241 (issued February 9, 2021); *S.O.*, Docket 20-0753 (issued October 28, 2020).

¹¹ 5 U.S.C. § 8129.

¹² 20 C.F.R. § 10.438.

equity and good conscience.¹³ However, appellant had the responsibility to provide financial information to OWCP and failed to do so.¹⁴

In its preliminary overpayment determination, dated September 28, 2022, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support income and expenses. It advised that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant, however, did not provide the requested Form OWCP-20 or otherwise submit the financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

Accordingly, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁵

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.¹⁶

Section 10.441 of OWCP's regulations provides that, when an overpayment of compensation 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 hardship.¹⁷

When an individual fails to provide requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines. The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.¹⁸

¹³ *Id.* at § 10.436.

¹⁴ *Id.* at § 10.438; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

¹⁵ *P.P.*, Docket No. 22-0819 (issued November 23, 2022); *M.W.*, *supra* note 9.

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

¹⁷ *Id.*

¹⁸ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.500.8c(1) (September 2020).

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$539.50 from appellant's continuing FECA compensation, every 28 days.

Appellant did not submit a completed Form OWCP-20 or provide supporting financial documentation. OWCP's procedures provide that, if no response to the preliminary overpayment determination is received, which provides supporting financial documentation, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.¹⁹ Based on the evidence of record, OWCP gave due regard to the relevant factors noted above and therefore did not abuse its discretion in setting the rate of recovery.²⁰ The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$539.50 every 28 days.²¹

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$8,337.31 for the period April 26, 2019 through March 26, 2022, 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 further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$539.50 from her continuing FECA compensation, every 28 days.

¹⁹ *P.M.*, Docket No. 22-1059 (issued April 28, 2023).

²⁰ *Id.*

²¹ *See M.W.*, *supra* note 9; *D.L.*, Docket No. 20-0716 (issued June 1, 2022); *J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.G.*, Docket No. 19-1274 (issued July 10, 2020).

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board