

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

M.F., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Decatur, IL, Employer)

**Docket No. 23-0876
Issued: November 9, 2023**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 15, 2023 appellant, through counsel, filed a timely appeal from a June 2, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$9,502.13 for the period December 1, 2021

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

through September 10, 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 \$81.30 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On January 18, 2008 appellant, then a 52-year-old letter carrier, filed a notice of traumatic injury (Form CA-1) alleging that on that date she sustained right hip, shoulder, elbow, and knee injuries when she slipped and fell on ice while delivering mail while in the performance of duty. OWCP accepted the claim for right elbow strain, right shoulder strain, traumatic osteoarthritis of the right knee, and degenerative osteoarthritis of the right knee.³ It paid appellant on the supplemental rolls commencing January 7, 2009 and on the periodic rolls commencing June 6, 2010.

By decision dated September 5, 2013, OWCP reduced appellant's compensation benefits, effective that date, finding that she had the capacity to earn wages of \$408.00 per week in the constructed position of information clerk.

On July 20, 2022 OWCP forwarded a FERS/SSA dual benefits form to SSA.

On July 22, 2022 OWCP received a completed FERS/SSA dual benefits form, wherein SSA reported appellant's SSA age-related retirement benefit rates with FERS and without FERS from December 2021 through July 19, 2022. Beginning December 2021, the SSA rate with FERS was \$1,974.80 and without FERS was \$959.90.

On October 11, 2022 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's offset overpayment from December 1, 2021 through September 10, 2022 and computed a total overpayment amount of \$9,502.13. It determined that, during the period December 1, 2021 through September 10, 2022, she received an overpayment in the amount of \$9,502.13.

In a preliminary overpayment determination dated October 11, 2022, OWCP advised appellant that she received an overpayment of compensation in the amount of \$9,502.13 for the period December 1, 2021 through September 10, 2022 because her wage-loss compensation benefits had not been reduced by her SSA age-related retirement benefits attributable to her federal service. It also made a preliminary determination that she was without fault in the creation of the overpayment. OWCP requested that appellant 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. It further requested that she provide

³ OWCP assigned the present claim OWCP File No. xxxxxx131. On September 3, 2008 appellant filed an occupational disease claim (Form CA-2) alleging that her continued work duties aggravated her right knee condition. OWCP assigned that claim OWCP File No. xxxxxx132 and accepted it for aggravation of degenerative osteoarthritis of the right knee. Appellant's claims under OWCP File Nos. xxxxxx131 and xxxxxx132 have been administratively combined, with the former serving as the master file. The Board notes that the claim form for her claim in OWCP File No. xxxxxx132 indicates that she was covered under the Federal Employees Retirement System (FERS).

supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records that support income and expenses. Additionally, OWCP further 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 preresoupment hearing.

In an overpayment action request form dated October 24, 2022, appellant requested waiver of recovery of the overpayment and a preresoupment hearing before a representative of OWCP's Branch of Hearings and Review. She indicated that she was led to believe that once she reached the age of 65 that her social security benefits would not be impacted by her FECA benefits. In an attached OWCP-20 form, appellant reported her total monthly income as \$1,725.00, and her cash assets as \$20.00. She listed monthly expenses of \$142.00 for rent or mortgage, \$500.00 for food, \$50.00 for clothing, \$500.00 for utilities, \$150.00 for other expenses, \$490.00 for a car payment, and \$1,258.92 for credit card payments. Appellant did not submit supporting financial documentation.

A telephonic hearing was held on March 22, 2023 during which OWCP's hearing representative advised appellant of the financial documents required including copies of bank account statements, billing statements, utility statements, canceled checks, or other records supporting expenses and income. Appellant testified that her current SSA benefits were \$1,895.00 monthly, that she lived with her daughter and great-granddaughter, and that she has been supporting her daughter who had been unemployed for four months and had no income. She also testified that the house she lived in was in her name because her daughter could not obtain credit to purchase the house, however, her daughter paid the mortgage for the house and the house belonged to her daughter. Appellant testified that she had a retirement account through the employing establishment, but has not received any payments from it. She denied having a Thrift Savings Account (TSP). Following the hearing, appellant submitted numerous monthly statements documenting her expenses.

By decision dated June 2, 2023, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant had received a \$9,502.13 overpayment of compensation for the period December 1, 2021 through September 10, 2022 because OWCP failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to her federal service. She further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as she had not provided documentation supporting her assets. OWCP's hearing representative found that appellant had monthly SSA income of \$1,895.00 and monthly FECA benefits of \$880.76, resulting in a total monthly income of \$2,775.76. She disallowed a portion of appellant's claimed expenses and concluded that appellant had allowable monthly expenses of \$2,763.87, therefore, appellant needed substantially all of her current net income to meet current ordinary and necessary living expenses, as her monthly income did not exceed her monthly expenses by more than \$50.00. However, as appellant did not provide contemporaneous checking/savings account statements, as requested, to verify her assets, the evidence was insufficient to establish that her assets did not exceed the resource base of \$6,200.00 for an individual. Therefore, she had not established that recovery of the overpayment would defeat the purpose of FECA and cause the degree of financial hardship sufficient to justify waiver. The hearing representative also found that appellant had not established that recovery would be against equity and good conscience as she would have derived personal gain from the overpaid funds, and appellant had not submitted probative evidence to

establish that her position was changed for the worse as a result. OWCP's hearing representative required recovery of the overpayment by deducting \$81.30 from appellant's continuing compensation payments every 28 days.

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.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 OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁶ 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 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$9,502.13, for the period December 1, 2021 through September 10, 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.

As noted, a claimant cannot receive concurrent FECA wage-loss compensation and SSA retirement benefits attributable to federal service for the same period. The evidence of record indicates that while appellant was receiving FECA wage-loss compensation she was also receiving SSA age-related retirement benefits that were attributable to her federal service without appropriate offset. A claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁸ The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to her federal service commencing December 1, 2021. Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.⁹

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see L.E.*, Docket No. 22-0203 (issued March 17, 2023); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁷ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also L.E., id.; N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁸ 20 C.F.R. § 10.421(d); *L.E., id.; L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *S.M., supra* note 6.

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, wherein SSA provided appellant's age-related retirement benefit rates with FERS and without FERS for the period December 1, 2021 through September 10, 2022. It provided its calculations for each relevant period based on SSA's worksheet and determined that she received an overpayment in the amount of \$9,502.13.

The Board has reviewed OWCP's calculations for the period December 1, 2021 through September 10, 2022 and finds that appellant received an overpayment of compensation in the amount of \$9,502.13.

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.⁹

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. The allowable asset base for an individual is \$6,200.00¹⁰ An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹¹

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

Section 10.438 of OWCP's 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

⁹ 5 U.S.C. § 8129.

¹⁰ 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).

¹¹ *L.E.*, *supra* note 6; *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *id.* at Chapter 6.400.4.a(3).

¹² 20 C.F.R. § 10.437(a)(b).

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

ANALYSIS -- ISSUE 2

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

In its preliminary overpayment determination dated October 11, 2022, OWCP explained the importance of providing the completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and other records to support income and expenses. During the hearing held on March 22, 2023 appellant was again advised to submit supporting documentation, as the Form OWCP-20 alone would be insufficient to substantiate her request for waiver of the overpayment.

Following the hearing, appellant submitted substantial documentation regarding her monthly expenses. The hearing representative properly determined that appellant's monthly income of \$2,775.76 did not exceed her allowable monthly expenses of \$2,763.87 by more than \$50.00. However, because appellant did not submit copies of bank account statements, her assets could not be determined. The Board finds that the hearing representative properly concluded that appellant did not submit sufficient financial documentation of her assets to determine if recovery of the overpayment would defeat the purpose of FECA.¹⁴

OWCP also found that appellant had not established that she detrimentally relied on the overpayment or that recovery of the overpayment would be against equity and good conscience. The Board notes that she submitted no evidence to establish that, in reliance on the payments or notice that such payments would be made, she gave up a valuable right or changed her position for the worse.¹⁵ Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.¹⁶

Accordingly, as appellant did not submit sufficient financial information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine her assets and eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁷

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations 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

¹³ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁴ *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

¹⁵ 20 C.F.R. § 10.437(a)(b).

¹⁶ *J.C.*, Docket No. 20-0204 (issued October 16, 2020).

¹⁷ *P.R.*, Docket No. 21-1183 (issued January 25, 2023); *J.C.*, Docket No. 20-1062 (issued January 4, 2021); *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

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.¹⁸

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$81.30 from appellant's continuing compensation payments every 28 days.

OWCP provided appellant a Form OWCP-20 with its preliminary overpayment determination. It afforded her the opportunity to provide appropriate financial information and documentation to OWCP. While appellant completed the Form OWCP-20, she did not provide supporting financial documentation. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁹ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁰ As appellant did not submit supporting financial documentation to OWCP as requested, the Board finds that OWCP properly followed minimum collection guidelines and reasonably required recovery by deducting \$81.30, every 28 days from her continuing compensation payments.²¹

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$9,502.13 for the period December 1, 2021 through September 10, 2022, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits 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 \$81.30 from her continuing compensation payments every 28 days.

¹⁸ 20 C.F.R. § 10.441(a); *L.E.*, *supra* note 6; *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

¹⁹ *Id.* at § 10.438(a).

²⁰ *See D.W.*, Docket No. 23-0137 (issued June 23, 2023); *J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002).

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

ORDER

IT IS HEREBY ORDERED THAT the June 2, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board