

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,513.52 for the period July 1, 2022 through January 28, 2023, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits 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 \$65.00 from her continuing compensation payments every 28 days.

FACTUAL HISTORY

On February 4, 2005 appellant, then a 48-year-old contact representative, filed an occupational disease claim (Form CA-2) alleging that she sustained repetitive trauma due to factors of her federal employment as a career employee, including sitting at her desk doing tasks eight hours per day. She noted that she first became aware of the condition on January 28, 2005, and she noted a date of injury as January 17, 2005. On the reverse side of the claim form, appellant's supervisor indicated that appellant's last date of exposure was January 17, 2005 and that appellant's retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for brachial neuritis or radiculitis, bilateral adhesive capsulitis of the shoulder, bilateral cervical spinal stenosis, displacement of the cervical intervertebral disc without myelopathy, and bilateral disorder of the bursae and tendons in the bilateral shoulders. It paid appellant wage-loss compensation on the supplemental rolls beginning January 17, 2005, and on the periodic rolls beginning October 29, 2006.

On January 9, 2023 OWCP sent a FERS/SSA dual benefits form to SSA for completion.³

On a dual benefits form dated January 21, 2023, SSA reported appellant's SSA age-related retirement benefit rates with and without FERS for the period July 2022 to the present. With FERS, appellant was entitled to \$1,000.10 effective July 2022; and \$1,087.90 effective December 2022. Without FERS, appellant was entitled to \$649.20 effective July 2022; and \$705.60 effective December 2022.

In a March 13, 2023 FERS offset overpayment calculation memorandum, OWCP calculated appellant's FERS/SSA offset for each month from July 1, 2022 through November 30, 2022 in the amount of \$1,769.92, and from December 1, 2022 until January 28, 2023 in the amount of \$743.59, for a total overpayment amount of \$2,513.52.

On March 14, 2023 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$2,513.52 had been created because appellant received wage-loss compensation payments for the period July 1, 2022 through January 28, 2023 that had not been reduced to offset her SSA age-related retirement benefits attributable to her federal service. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form

³ The employing establishment also indicated on a November 28, 2005 claim for compensation (Form CA-7) that appellant was covered by FERS.

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 supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records which support income and expenses. Additionally, OWCP provided an overpayment action request form and 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 prerecoupment hearing.

On March 23, 2023 appellant requested a decision based on the written evidence. She submitted a completed Form OWCP-20 of even date. Appellant requested waiver of recovery of the overpayment and explained that she relied on misinformation given to her in writing by OWCP and had no way of knowing the proper course of action. She reported supporting her spouse, and that her monthly household income was \$3,986.00 while her monthly expenses were \$4,425.78. Appellant further reported a debt of \$16,650.00 with OPM. She also indicated a checking account balance of \$1,400.00, savings account balance of \$22,000.00, retirement account balance of \$350,000.00, and \$100.00 in cash on hand. Appellant did not submit supporting financial documentation.

By decision dated May 3, 2023, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$2,513.52 for the period July 1, 2022 through January 28, 2023 because it failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to her federal service. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment and required recovery of the overpayment by deducting \$65.00 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA⁴ 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.⁵ 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.⁶

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.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

⁴ *Supra* note 2.

⁵ 5 U.S.C. § 8102.

⁶ *Id.* at § 8116.

⁷ 20 C.F.R. § 10.421(d); *D.F.*, Docket No. 21-0652 (issued January 25, 2023); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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 OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,513.52 for the period July 1, 2022 through January 28, 2023, 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 case record establishes that appellant received SSA age-related retirement benefits beginning July 2022. OWCP paid appellant wage-loss compensation on the supplemental rolls beginning January 31, 2005, and on the periodic rolls beginning October 29, 2006 and onward. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service without an appropriate offset.⁹ The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to her federal service. Accordingly, the Board finds that fact of overpayment has been established.¹⁰

To determine the amount of the overpayment, the portion of SSA age-related retirement benefits attributable to federal service must be calculated. OWCP received documentation from SSA with respect to 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 July 1, 2022 through January 28, 2023. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$2,513.52. The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period July 1, 2022 through January 28, 2023 and finds that an overpayment of compensation in the amount of \$2,513.52 was created.¹¹

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

⁸ FECA Bulletin No. 97-09 (issued February 3, 1997); *C.W.*, Docket No. 22-1012 (issued January 20, 2023); *see also P.P.*, Docket No. 22-0819 (issued November 23, 2022); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁹ 20 C.F.R. § 10.421(d); *S.M.*, *supra* note 7; *F.K.*, Docket No. 20-1609 (issued June 24, 2021); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹⁰ *D.F.*, *supra* note 7; *see L.K.*, Docket No. 20-1574 (issued June 23, 2021); *S.H.*, Docket No. 20-1157 (issued December 23, 2020).

¹¹ *D.F.*, *supra* note 7; *see N.B.*, Docket No. 20-0727 (issued January 26, 2021); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹²

Recovery of an overpayment will defeat the purpose of FECA when 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.¹³ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁴

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.¹⁵

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 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.¹⁶

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 recovery is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁷

The Board finds that as appellant reported on her March 23, 2023 Form OWCP-20 a checking account balance of \$1,400.00, a savings account balance of \$22,000.00, a retirement account balance of \$350,000.00, and \$100.00 in cash on hand, she has not met the standard for

¹² 5 U.S.C. § 8129.

¹³ 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), (3) (September 2020).

¹⁴ *Id.* at Chapter 6.400.4a(3); *D.F.*, *supra* note 7; *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁵ 20 C.F.R. § 10.437(a)(b).

¹⁶ *Id.* at § 10.438(a); *C.W.*, *supra* note 8; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁷ 20 C.F.R. § 10.436.

waiver of recovery of the overpayment because her assets exceed the allowable resource base of \$10,300.00 for an individual with a spouse, such as appellant. Because she has not met the second prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider the first prong of the test, *i.e.*, whether she needs substantially all of her current income to meet ordinary and necessary living expenses.¹⁸ Appellant has not established that she was entitled to waiver on the basis of defeating the purpose of FECA.¹⁹

Additionally, appellant has not established that recovery of the overpayment would be against equity and good conscience because she has not shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt or that she relinquished a valuable right or changed her position for the worse in reliance on the payment which created the overpayment. Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.²⁰

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the \$2,513.52 overpayment.²¹

LEGAL PRECEDENT -- ISSUE 3

Section 10.441(a) of OWCP's regulations²² 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."²³

¹⁸ *J.H.*, Docket No. 22-1375 (issued May 16, 2023); *F.K.*, *supra* note 9; *S.W.*, Docket No. 20-0363 (issued November 23, 2020); *M.H.*, Docket No. 19-1497 (issued September 9, 2020).

¹⁹ *J.H.*, *id.*; *P.M.*, Docket No. 21-0915 (issued December 14, 2021); *F.K.*, *id.*; *N.B.*, *supra* note 11; *R.D.*, Docket No. 19-1598 (issued April 17, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020).

²⁰ *J.H.*, *id.*; *P.M.*, *id.*; *M.R.*, Docket No. 20-1622 (issued June 30, 2021); *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

²¹ *J.H.*, *id.*; *P.M.*, *id.*; *F.K.*, *supra* note 9; *D.M.*, Docket No. 17-0810 (issued October 2, 2017).

²² 20 C.F.R. § 10.441(a).

²³ *Id.*; *J.H.*, *supra* note 18; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$65.00 from appellant's continuing compensation payments every 28 days.

OWCP gave due regard to the financial 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 the resulting hardship. Thus, it did not abuse its discretion in setting the rate of recovery.²⁴ The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$65.00 every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,513.52 for the period July 1, 2022 through January 28, 2023, 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 \$65.00 from her continuing compensation payments every 28 days.

²⁴ *P.S.*, Docket No. 21-0859 (issued May 12, 2023); *T.G.*, Docket No. 17-1989 (issued June 5, 2018); *M.D.*, Docket No. 11-1751 (issued May 7, 2012).

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 27, 2023
Washington, DC

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

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

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