

period January 1 through 29, 2022 because she concurrently received retirement benefits 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 October 7, 2006 appellant, then a 32-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her right knee, foot, and ankle when she stepped off a stair and slipped and fell while in the performance of duty. OWCP accepted the claim for a lumbar herniated disc at L4-L5, lumbar radiculopathy, peroneal tendon tear of the left leg, and sprains of the lumbar region, right ankle, right foot, and left knee. It paid appellant wage-loss compensation for disability on the supplemental rolls, effective November 28, 2006, and on the periodic rolls, effective December 24, 2006.

On September 13, 2021 counsel advised that appellant wanted to elect disability retirement under OPM in lieu of workers' compensation benefits from OWCP. He requested an election form.

In an October 30, 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 January 1, 2022.

By letter dated November 3, 2021, OWCP advised OPM that appellant had elected to receive OPM benefits, effective January 1, 2022, and enclosed a copy of her election form.

In a December 20, 2021 memorandum of telephone call (Form CA-110), appellant advised OWCP that OPM had not received the election of benefits form.

In a February 1, 2022 Form CA-110, appellant again informed OWCP that OPM had not received the election of benefits form. She requested that it be resent.

By letter dated February 1, 2022, OWCP advised OPM that appellant had elected to receive OPM benefits effective January 1, 2022. It noted that this was the second request and enclosed copies of its November 3, 2021 letter and the October 30, 2021 election form.

On February 23, 2022 OWCP issued a preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$1,469.32 for the period January 1 through 29, 2022. It explained that the overpayment occurred because she "elected to receive retirement benefits effective January 1, 2022," but was "paid compensation for temporary total disability through January 29, 2022," 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 a February 28, 2022 Form CA-110, appellant advised that she still had not received payment from OPM.

By decision dated April 7, 2022, OWCP finalized its preliminary overpayment determination finding that appellant had received a \$1,469.32 overpayment of compensation, because she elected to receive OPM benefits effective January 1, 2022 but was paid FECA wage-loss compensation through January 29, 2022. It found that she was without fault in the creation of the overpayment but denied waiver of recovery, noting that she had not completed Form OWCP-20 or provided financial documentation. OWCP determined that appellant should forward the full amount of the overpayment, \$1,469.32, 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 It 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 *Id.*

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 \$1,469.32 for the period January 1 through 29, 2022.

On October 30, 2021 appellant elected OPM retirement benefits effective January 1, 2022. OWCP paid her wage-loss compensation for temporary total disability through January 29, 2022.

A FECA beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.¹⁰ The clear language of section 8116(a) of FECA, section 10.421(a) of OWCP's implementing regulations, and OWCP's procedures prohibit the concurrent receipt of FECA wage-loss benefits and a federal annuity.¹¹

On February 23, 2022 OWCP issued a preliminary overpayment determination that an overpayment of compensation was created in the amount of \$1,469.32 for the period January 1 through 29, 2022 because appellant elected retirement benefits on January 1, 2022 but continued to receive wage-loss compensation for total disability until January 29, 2022. On December 20, 2021, and February 2 and 28, 2022 appellant notified OWCP that OPM had not received the election of benefits form or paid her any retirement benefits. However, OWCP finalized the February 23, 2022 preliminary overpayment determination by decision dated April 7, 2022.

While the record reflects that appellant received FECA benefits for the period January 1 through 29, 2022, OWCP has not established that she also actually received OPM benefits for this period.¹² 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.¹³ Therefore, the Board finds that OWCP has not met its burden of proof to establish that the overpayment occurred.¹⁴

CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$1,469.32 for the period January 1 through 29, 2022.¹⁵

¹⁰ *Supra* note 7.

¹¹ 5 U.S.C. § 8116(a); 20 C.F.R. § 10.421(a); Federal (FECA) Procedure Manual, *supra* note 9.

¹² *C.P.*, Docket No. 19-0732 (issued September 5, 2019); *M.C.*, Docket No. 18-0074 (issued August 1, 2019).

¹³ *L.W.*, Docket No. 22-0742 (issued April 25, 2023); *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).

¹⁴ *L.W.*, *id.*; *T.M.*, *id.*; *C.P.*, *id.*

¹⁵ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 4, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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