

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

P.G., Appellant)	
)	
and)	Docket No. 23-0530
)	Issued: October 24, 2023
U.S. POSTAL SERVICE, COMMERCE PARK)	
POST OFFICE, Baton Rouge, LA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 7, 2023 appellant filed a timely appeal from a September 12, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$29,339.20, for the period February 1, 2020 through July 16, 2022, for which she was without fault, because she concurrently received FECA

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 12, 2022 decision and on appeal, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

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 \$716.34 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On August 21, 2012 appellant then a 58-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 10, 2012 she injured both shoulders when she fell while in the performance of duty. On the reverse side of the claim form, her retirement plan was listed as the Federal Employees Retirement System (FERS). OWCP accepted appellant's claim for cervicalgia and lumbago and later expanded the acceptance of her claim to include cervical spondylosis without myelopathy. It paid her wage-loss compensation on the supplemental rolls, effective October 20, 2012, and on the periodic rolls, effective December 16, 2012. On April 8, 2020 OWCP provided SSA with a FERS/SSA dual benefits calculation form.

On July 20, 2022 SSA completed the FERS/SSA dual benefits form, which reported appellant's SSA age-related retirement benefit rate for February 2020 through December 2021. The form listed appellant's SSA age-related retirement benefit rates with and without a FERS offset. Beginning February 1, 2020, the SSA rate with FERS was \$1,811.20 and without FERS was \$842.10. Beginning December 1, 2020, the SSA rate with FERS was \$1,834.70 and without FERS was \$853.00. Beginning December 1, 2021, the SSA rate with FERS was \$1,942.90 and without FERS was \$903.30.

On July 21, 2022 OWCP prepared a FERS offset overpayment calculation worksheet wherein it found a total overpayment of compensation for the period February 1, 2020 through July 16, 2022 in the amount of \$29,339.20. For the period February 1 through November 30, 2020, appellant received an overpayment in the amount of \$9,712.30; for the period December 1, 2020 through November 30, 2021, she received an overpayment in the amount of \$11,812.76; and for the period December 1, 2021 through July 16, 2022, she received an overpayment in the amount of \$7,814.14.

The record reveals that appellant's net compensation payments following the FERS offset were \$2,865.37 every 28 days.

On August 10, 2022 OWCP issued a preliminary overpayment determination, finding an overpayment of compensation in the amount of \$29,339.20 for the period February 1, 2020 through July 16, 2022, because appellant concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It found 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 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 provided an overpayment action request form and 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 prerecoupment hearing. No response was received.

By decision dated September 12, 2022, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$29,339.20 for the period February 1, 2020 through July 16, 2022, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$716.34 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.³ 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.⁴

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.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$29,339.20, for the period February 1, 2020 through July 16, 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.

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁶ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.⁷ The information provided by SSA established that a portion of appellant's benefits were attributable to her federal service from February 1, 2020 through July 16, 2022. Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.⁸

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 from SSA with respect to the specific amount of appellant's SSA age-related retirement benefits that were attributable to her federal service. The Board finds that OWCP properly determined the amount of the overpayment. SSA provided its rates with FERS and without FERS for specific periods February 1, 2020 through July 16, 2022. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$29,339.20.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$29,339.20 for the period February 1, 2020 through July 16, 2022.

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.¹⁰ 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

⁷ 20 C.F.R. § 10.421(d); *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *S.M.*, *supra* note 5.

⁸ *Id.*

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 *Id.* at Chapter 6.400.4.a(3); *see also N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

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 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.

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 equity and good conscience.¹⁴ However, appellant had the responsibility to provide financial information and documentation to OWCP, but failed to do so.¹⁵

In its preliminary overpayment determination, dated August 10, 2022, OWCP requested that appellant provide a completed Form OWCP-20 with 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 her that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant did not submit a Form OWCP-20 or otherwise submit any 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, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment compensation.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides in pertinent part that, 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

¹² 20 C.F.R. § 10.437(a), (b).

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

¹⁴ *Id.* at § 10.436.

¹⁵ *Id.* at § 10.438; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

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 any hardship.¹⁶

When an individual fails to provide requested information regarding 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.¹⁷

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$716.34 from appellant's continuing compensation payments every 28 days.

OWCP provided appellant a Form OWCP-20 with its August 10, 2022 preliminary overpayment determination. It afforded her the opportunity to provide appropriate financial information and documentation to OWCP. However, appellant did not complete the Form OWCP-20, nor did she provide financial documentation prior to the final September 12, 2022 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁸ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.¹⁹

Appellant did not submit supporting financial documentation to OWCP as requested and the Board finds that OWCP properly followed minimum collection guidelines. She was receiving net compensation of \$2,865.37 every 28 days at the time of OWCP's overpayment determination and, therefore, OWCP reasonably required recovery by deducting \$716.34, *i.e.*, 25 percent of \$2,865.37, every 28 days from her continuing compensation payments.²⁰

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$29,339.20, for the period February 1, 2020 through July 16, 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

¹⁶ *Id.* at § 10.441(a); A.S., Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

¹⁷ *Supra* note 10 at Chapter 6.500.8c(1) (September 2020).

¹⁸ 20 C.F.R. § 10.438(a).

¹⁹ *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).

²⁰ *See J.A., id.*; *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$716.34 from her continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy 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