



## **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$75,493.35, compromised to \$49,137.08, for the period February 10, 2013 through March 28, 2020, 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; (3) whether OWCP properly required recovery of the overpayment by deducting \$354.60 from appellant's continuing compensation payments every 28 days; and (4) whether OWCP properly suspended appellant's wage-loss compensation benefits, effective January 3, 2020, for failure to complete a Form CA-1032, as requested.

## **FACTUAL HISTORY**

On August 30, 2001 appellant, then a 57-year-old budget analyst, filed a traumatic injury claim (Form CA-1) alleging that on July 24, 2001 she injured her wrist, ankle, and back when she missed a step, fell, and twisted her ankle while in the performance of duty. She did not stop work. OWCP accepted appellant's claim for ankle strain and contusion of right wrist and hand. It subsequently expanded the acceptance of her claim to include right osteochondritis dissecans. On July 10, 2002 appellant returned to work part-time, limited-duty for four hours per day. She stopped work completely on July 26, 2002. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective July 10, 2002, and placed her on the periodic rolls, effective January 25, 2004.

On January 16, 2020 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits form. It listed the computation period as February 10, 2013 to the present.

On February 13, 2020 SSA completed the dual benefits form, reporting appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset as follows: beginning February 2013, the SSA rate with FERS was \$1,163.00 and without FERS was \$318.00; beginning December 2013, the SSA rate with FERS was \$1,180.00 and without FERS was \$322.00; beginning December 2014, the SSA rate with FERS was \$1,200.00 and without FERS was \$328.00; beginning December 2016, the SSA rate with FERS was \$1,204.00 and without FERS was \$329.00; beginning December 2017, the SSA rate with FERS was \$1,228.00 and without FERS was \$335.00; beginning December 2018, the SSA rate with FERS was \$1,262.00 and without FERS was \$345.00; and beginning December 2019, the SSA rate with FERS was \$1,282.00 and without FERS was \$350.00.

On March 25, 2020 OWCP prepared a FERS offset overpayment calculation worksheet which explained its calculation of appellant's SSA offset overpayment from February 10, 2013 through March 28, 2020 and computed a total overpayment in the amount of \$75,493.35. It found that: for the period February 10 through November 30, 2013, appellant received an overpayment of \$8,190.00; for the period December 1, 2013 through November 30, 2014, appellant received an overpayment of \$10,324.29; for the period December 1, 2014 through November 30, 2015, appellant received an overpayment of \$10,492.75; for the period December 1, 2015 through November 30, 2016, appellant received an overpayment of \$10,521.49; for the period December 1,

2016 through November 30, 2017, appellant received an overpayment of \$10,528.85; for the period December 1, 2017 through November 30, 2018, appellant received an overpayment of \$10,745.44; for the period December 1, 2018 through November 30, 2019, appellant received an overpayment of \$11,034.23; and for the period December 1, 2019 through March 28, 2020, appellant received an overpayment of \$3,656.31.

In a letter dated March 26, 2020, OWCP informed appellant that the portion of SSA age-related retirement benefits attributable to her federal service would be deducted from her 28-day periodic rolls compensation payments. It noted that her new net compensation benefit every 28 days would be \$1,418.39.

On April 1, 2020 OWCP issued a preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$75,493.35, for the period February 10, 2013<sup>4</sup> through March 28, 2020, because it had failed to reduce her wage-loss compensation benefits by the portion of her SSA age-related retirement benefits that were attributable to 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 OWCP-20), to determine a reasonable recovery method, and advised her that she could request waiver of recovery of the overpayment. It further requested supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. 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 prerecoupment hearing.

On May 11, 2020 appellant requested that OWCP issue a decision based on the written evidence regarding possible waiver of recovery of the overpayment. She indicated that she was requesting a waiver because she was found to be without fault in the creation of the overpayment and explained that she would suffer severe financial hardship in repaying the debt. Appellant submitted a completed Form OWCP-20 dated May 11, 2020, wherein she reported a monthly income of \$1,228.00 from SSA benefits and \$1,418.39 from "other" benefits for a total of \$2,646.39. She also indicated that she had monthly expenses of \$1,346.00 for rent or mortgage, \$200.00 for food, \$50.00 for clothing, \$260.00 for utilities, \$275.00 in creditor payments, and \$470.00 for "other expenses." Appellant reported that her monthly expenses totaled \$2,601.00. She also reported a total of \$11,844.50 in assets. In support thereof, appellant submitted a January 2020 energy bill, which showed a past due amount of \$120.21 and current charges of \$202.34, an April 17, 2020 water bill for \$10.73, and an April 2020 insurance renewal bill. A statement dated May 2020 indicated that she had \$541.25 in her savings account and \$1,298.28 in her checking account.

By decision dated July 7, 2020, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount

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<sup>4</sup> The preliminary determination notes the date as February 1, 2013; however, this appears to be a typographical error as the record indicates that the overpayment was calculated as of February 10, 2013.

of \$75,493.35 for the period February 10, 2013<sup>5</sup> through March 28, 2020 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without appropriate offset. However, due to appellant's age and ability to repay the debt, it reduced the principle balance of the debt to the compromised amount of \$49,137.08. OWCP found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. It required recovery of the overpayment by deducting \$354.60 from appellant's continuing compensation payments every 28 days.

On November 9, 2020 OWCP informed appellant that federal regulations required her to execute an affidavit relative to any earnings or employment during the previous year and that a Form CA-1032 was enclosed for that purpose. It notified her that she must fully answer all questions on the enclosed Form CA-1032 and return it within 30 days or her benefits would be suspended. The letter was mailed to appellant's address of record. No response was received.

By decision dated December 16, 2020, OWCP suspended appellant's wage-loss compensation benefits, effective January 3, 2020, due to her failure to submit the Form CA-1032, as requested. It advised that, if she completed and returned an enclosed copy of the Form CA-1032, her compensation benefits would be restored retroactively to the date they were suspended.

### **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.<sup>6</sup> 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.<sup>7</sup>

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.<sup>8</sup> 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.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$75,493.35, compromised to \$49,137.08, for the period

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<sup>5</sup> The final overpayment determination notes the date as February 1, 2013; however, this appears to be a typographical error as the record indicates that the overpayment was calculated as of February 10, 2013.

<sup>6</sup> 5 U.S.C. § 8102(a).

<sup>7</sup> *Id.* at § 8116.

<sup>8</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>9</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

February 10, 2013 through March 28, 2020 because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.<sup>10</sup>

As noted, a claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period. The concurrent receipt of FECA benefits and SSA age-related retirement benefits without an appropriate offset is a prohibited dual benefit.<sup>11</sup> In this case, SSA reported on a form received by OWCP on January 16, 2020 that appellant had received SSA age-related retirement benefits attributable to her federal service during the period February 10, 2013 through March 28, 2020. OWCP reviewed this information and properly calculated that appellant concurrently received FECA wage-loss compensation without an appropriate offset. As appellant concurrently received FECA wage-loss compensation without an appropriate offset, the Board finds that the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits attributable to federal service must be calculated. OWCP received a dual benefits form from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA reported appellant's age-related retirement benefit rates with FERS and without FERS for specific periods from February 10, 2013 through March 28, 2020. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that she received an overpayment in the amount of \$75,493.35, later compromised to \$49,137.08. The Board has reviewed OWCP's calculations of dual benefits received by appellant for the period February 10, 2013 through March 28, 2020 and finds that it properly determined that appellant received an overpayment of compensation in the amount of \$75,493.36.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>12</sup> Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>13</sup>

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP

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<sup>10</sup> *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>11</sup> *Supra* note 9.

<sup>12</sup> 5 U.S.C. § 8129(a)-(b).

<sup>13</sup> *L.S.*, 59 ECAB 350 (2008).

from data provided by the Bureau of Labor Statistics.<sup>14</sup> 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.<sup>15</sup>

Section 10.437 of OWCP's implementing regulations provides that 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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>16</sup> OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.<sup>17</sup>

### 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 repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>18</sup>

Appellant completed a Form OWCP-20 on May 11, 2020 and reported assets totaling \$11,844.50. As noted above, section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics. OWCP's procedures provide that the assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.<sup>19</sup> As the case record establishes that appellant did not have a spouse or dependent, and that her assets exceed the allowable resource base of \$6,200.00 for an individual, the Board finds

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<sup>14</sup> 20 C.F.R. § 10.436. OWCP's procedures provide that the assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a (3) (September 2020).

<sup>15</sup> Federal (FECA) Procedure Manual *id.* at Chapter 6.400.4(a)(3) (September 2020).

<sup>16</sup> 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

<sup>17</sup> FECA Procedure Manual, *supra* note 14 at Chapter 6.400.4c(3) (September 2020).

<sup>18</sup> 20 C.F.R. § 10.436.

<sup>19</sup> *Supra* note 16.

that appellant has not established that recovery of the overpayment would defeat the purpose of FECA.<sup>20</sup>

Because appellant 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.<sup>21</sup> Appellant, therefore, has not established that she was entitled to waiver on the basis of defeating the purpose of FECA.<sup>22</sup>

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.<sup>23</sup>

Accordingly, OWCP properly denied waiver of recovery of the overpayment.

### **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.<sup>24</sup>

Section 10.441(a) of OWCP's regulations<sup>25</sup> 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.”<sup>26</sup>

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<sup>20</sup> See *J.T.*, Docket No. 21-0696 (issued August 7, 2023); *J.H.*, Docket No. 22-1375 (issued May 16, 2023).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> 20 C.F.R. § 10.441; see *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

<sup>25</sup> *Id.* at § 10.441(a).

<sup>26</sup> *Id.*; 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 \$354.60 from appellant's continuing compensation payments every 28 days.

The record supports that, in requiring recovery of the overpayment by deducting \$354.60 from appellant's compensation payments every 28 days, OWCP took into consideration the financial information she submitted as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize any resulting hardship on appellant. OWCP followed minimum collection guidelines by requiring installments large enough to collect the full debt promptly. Therefore, OWCP properly required recovery of the overpayment by deducting \$354.60 from her continuing compensation every 28 days.<sup>27</sup>

### **LEGAL PRECEDENT -- ISSUE 4**

Section 8106(b) of FECA authorizes the Secretary of Labor to require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.<sup>28</sup>

Under section 10.528 of OWCP's implementing federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work which the employee has performed for the prior 15 months.<sup>29</sup> If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.<sup>30</sup>

### **ANALYSIS -- ISSUE 4**

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective January 3, 2020, for failure to submit a Form CA-1032 as requested.

On November 9, 2020 OWCP provided appellant with a Form CA-1032 and notified her that federal regulations required her to complete the form and answer all questions concerning her employment or earnings or her benefits would be suspended. The record reflects that OWCP's

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<sup>27</sup> See *J.R.*, Docket No. 17-181 (issued August 12, 2020); *L.G.*, Docket No. 19-1274 (issued July 10, 2020).

<sup>28</sup> 5 U.S.C. § 8106(b).

<sup>29</sup> 20 C.F.R. § 10.528.

<sup>30</sup> *Id.*, see also *id.* at § 10.525.



letter was properly sent to appellant's address of record and there is no indication that it was returned as undeliverable.<sup>31</sup>

Appellant was receiving wage-loss compensation and she was, therefore, required to complete a Form CA-1032. The record indicates that appellant failed to timely submit the Form CA-1032 as required. Thus, the Board finds that OWCP properly suspended appellant's compensation benefits, effective January 3, 2020, pursuant to 20 C.F.R. § 10.528.<sup>32</sup>

### CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$75,493.35 for the period February 1, 2013 through March 28, 2020, for which she was without fault, as she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. The Board also finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$354.60 every 28 days from her continuing compensation payments. The Board further finds that OWCP properly suspended appellant's compensation benefits, effective January 3, 2020, for failure to submit a Form CA-1032, as requested.

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<sup>31</sup> *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015) (Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee's last known address is presumed to be received by the addressee).

<sup>32</sup> *See W.L.*, Docket No. 18-1051 (issued March 24, 2021); *see also R.B.*, Docket No. 20-0176 (issued June 25, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 7 and December 16, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 22, 2023  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board