

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

O.H., Appellant)	
)	
and)	Docket No. 24-0227
)	Issued: April 4, 2024
DEPARTMENT OF HOUSING & URBAN)	
DEVELOPMENT, Columbus, OH, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 3, 2024 appellant, through counsel, filed a timely appeal from a December 7, 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.³

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.*

³ The Board notes that following the December 7, 2023 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* 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.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$44,070.86 for the period May 1, 2013 through April 22, 2023, 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 \$349.97 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

On April 21, 1992 appellant, then a 44-year-old procurement clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 30, 1992 she sustained right calf, knee, hip, leg and back injuries when the heel of her shoe caught on the base of her chair as she stood up while in the performance of duty. OWCP accepted the claim for lumbosacral, right leg and hip, and acute cervical strain, right hip contusion, right shoulder adhesive capsulitis, displacement of the cervical intervertebral disc, major recurrent depression, and psychogenic pain disorder. It paid appellant wage-loss compensation on the supplemental and periodic compensation rolls commencing April 1, 1992.

On July 16, 2020 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 May 2013 through December 2019. Beginning May 2013, the SSA rate with FERS was \$1,006.80 and without FERS was \$725.10; from December 2013, the SSA rate with FERS was \$1,021.90 and without FERS was \$735.90; from December 2014, the SSA rate with FERS was \$1,039.20 and without FERS was \$748.40; from December 2015, the SSA rate with FERS was \$1,039.20 and without FERS was \$748.40; from December 2016, the SSA rate with FERS was \$1,042.30 and without FERS was \$750.60; from December 2017, the SSA rate with FERS was \$1,063.10 and without FERS was \$765.60; from December 2018, the SSA rate with FERS was \$1,092.80 and without FERS was \$787.00; and from December 2019, the SSA rate with FERS was \$1,110.20 and without FERS was \$799.50.

On September 15, 2021 OWCP prepared a FERS offset calculation worksheet wherein it noted the calculation of appellant's offset overpayment from May 1, 2013 through December 31, 2019 and computed a total overpayment amount of \$23,795.86.

In a preliminary overpayment determination dated September 15, 2021, OWCP advised appellant that she received an overpayment of compensation in the amount of \$23,795.86 for the period May 1, 2013 through December 31, 2019 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 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 prerecoumment hearing.

On September 22, 2021 appellant requested a waiver of recovery of the overpayment and a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review. She submitted a completed Form OWCP-20 dated October 7, 2021.

By decision dated December 6, 2021, following a preliminary review, an OWCP hearing representative set aside OWCP's September 15, 2021 preliminary overpayment finding and remanded the case for a *de novo* decision which provided appellant with an explanation of how the overpayment was calculated.

On June 9, 2022 OWCP forwarded a FERS/SSA dual benefits form to SSA. By correspondence dated September 13, 2022, it requested updated information from SSA regarding SSA rates with and without FERS.

On December 6, 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 May 2013 through December 2022. Beginning May 2013, the SSA rate with FERS was \$1,006.80 and without FERS was \$666.50; from December 2013, the SSA rate with FERS was \$1,021.90 and without FERS was \$676.30; from December 2014, the SSA rate with FERS was \$1,039.20 and without FERS was \$687.50; from December 2015, the SSA rate with FERS was \$1,039.20 and without FERS was \$687.80; from December 2016, the SSA rate with FERS was \$1,042.30 and without FERS was \$689.80; from December 2017, the SSA rate with FERS was \$1,063.10 and without FERS was \$703.50; from December 2018, the SSA rate with FERS was \$1,092.80 and without FERS was \$723.10; from December 2019, the SSA rate with FERS was \$1,110.20 and without FERS was \$734.60; from December 2020, the SSA rate with FERS was \$1,124.60 and without FERS was \$744.10; from December 2021, the SSA rate with FERS was \$1,190.90 and without FERS was \$788.00; and from December 2022, the SSA rate with FERS was \$1,294.50 and without FERS was \$856.50.

On April 19, 2023 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's offset overpayment from May 1, 2013 through April 22, 2023 and computed a total overpayment amount of \$44,070.86. It determined that: for the period May 1 through November 30, 2013, appellant received an overpayment of \$2,400.77; for the period December 1, 2013 through November 30, 2014, appellant received an overpayment of \$4,157.35; for the period December 1, 2014 through November 30, 2015, appellant received an overpayment of \$4,232.04; for the period December 1, 2015 through November 30, 2016, appellant received an overpayment of \$4,239.98; for the period December 1, 2016 through November 30, 2017, appellant received an overpayment of \$4,241.56; for the period December 1, 2017 through November 30, 2018, appellant received an overpayment of \$4,327.08; for the period December 1, 2018 through November 30, 2019, appellant received an overpayment of \$4,448.57; for the period December 1, 2019 through November 30, 2020, appellant received an overpayment of \$4,532.00; for the period December 1, 2020 through November 30, 2021, appellant received an overpayment of \$4,578.53; for the period December 1, 2021 through November 30, 2022, appellant received an overpayment of \$4,848.11; and for the period December 1, 2022 through April 22, 2023, appellant received an overpayment of \$2,064.87.

In an April 20, 2023 letter, OWCP advised appellant that the offset of her OWCP wage-loss compensation payments would begin with her May 20, 2023 payment⁴ and noted the amount of her new wage-loss compensation amount.

In a preliminary overpayment determination dated April 20, 2023, OWCP advised appellant that she received an overpayment of compensation in the amount of \$44,070.86 for the period May 1 through April 22, 2023 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 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 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 prerecoumment hearing.

In an overpayment action request form dated April 28, 2023, appellant disagreed that the overpayment had occurred and requested waiver of recovery of the overpayment and a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review.

In an August 31, 2023 letter, OWCP advised appellant that it had not received a completed Form OWCP-20 with her appeal request or any supporting financial documentation for income and expenses, which was necessary for it to consider the question of waiver or to determine a reasonable method of collection of the overpayment. A new Form OWCP-20 was provided.

A telephonic hearing was held on October 3, 2023 during which OWCP's hearing representative advised appellant of the necessity of providing an updated Form OWCP-20 and financial documents. The record was held open for 30 days.

On October 19, 2023 OWCP received appellant's completed September 13, 2023 Form OWCP-20, which listed total monthly income of \$2,528.89, total monthly expenses of \$2,631.57 and assets totaling \$14.10. Financial documentation included benefit statements from OWCP dated August 12, 2023 and from a 2022 statement from SSA; a letter from a finance company dated July 7, 2023; a telephone bill from dated September 25, 2023; an invoice from a warranty company dated July 13, 2023; and credit card statements dated September 11 and October 2, 2023; a utility bill dated September 18, 2023; and a homeowner's association bill dated October 1, 2023.

By decision dated December 7, 2023, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant had received a \$44,070.86 overpayment of compensation for the period May 1, 2013 through April 22, 2023 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 appellant had not provided sufficient documentation for the income and expenses claimed. Specifically, appellant was asked to provide three months' worth of financial documentation for

⁴ The May 20, 2023 payment encompassed the period April 23 through May 20, 2023.

each income and each expense, but the financial information provided was insufficient to calculate her current monthly amount of expenses. The hearing representative also found that appellant failed to provide any financial documentation for food, clothing, and utilities other than electric, and did not itemize or provide any support for the other/miscellaneous expense amount claimed. Therefore, she found that appellant 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. She required recovery of the overpayment from continuing compensation in the amount of \$349.97 every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of 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 the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA benefits that are attributable to federal service of the employee.⁷ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA age-related retirement 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation, for the period May 1, 2013 through April 22, 2023, 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.

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 receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁹ In this case, OWCP was notified by SSA in a form received by OWCP on July 16, 2020, and December 6, 2022, that appellant had concurrently received FECA benefits and SSA

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8116.

⁷ 20 C.F.R. § 10.421(d); *see L.E.*, Docket No. 22-0203 (issued March 17, 2023); *S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

⁸ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also L.E., id.*; *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁹ *Id.* *See also Z.R.*, Docket No. 22-0028 (issued July 29, 2022); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

age-related retirement benefits attributable to her federal service without an appropriate offset beginning May 2013. The Board finds that fact of overpayment is, therefore, established.

The Board further finds, however, that the case is not in posture for decision with respect to the amount of the overpayment.

To determine the amount of the overpayment, the portion of SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service and provided its rate with FERS and without FERS for the period beginning May 1, 2013. However, it received two FERS/SSA dual calculation transmittal forms, the first dated July 16, 2020 and the second dated December 6, 2022, with differing amounts of SSA benefits without FERS for the overlapping period of May 2013 through December 2019, which it used in its respective FERS offset calculation worksheets to determine appellant's overpayment amount.¹⁰ The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated.¹¹ In this case, however, the Board finds that OWCP has not adequately explained how the overpayment was determined in light of the discrepancies in the evidence provided by SSA. As such, the Board is unable to verify that appellant received an overpayment of compensation in the amount of \$44,070.86.¹²

Accordingly, the Board finds that the case must be remanded to OWCP. On remand OWCP shall clarify with SSA the discrepancy between the figures provided by SSA to OWCP. It shall then determine the proper amount of the overpayment of compensation based on the correct rates provided by SSA. OWCP shall then issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, and instructions for appellant to provide supporting financial information. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹³

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation, 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 the case is not in posture for decision with respect to the amount of the overpayment for the period May 1, 2013 through April 22, 2023.

¹⁰ See *supra* note 4.

¹¹ *A.P.*, Docket No. 19-1671 (issued February 22, 2021); *J.M.*, Docket No. 18-1505 (issued June 21, 2019); *Teresa A. Ripley*, 56 ECAB 528 (2005).

¹² See *G.R.*, Docket No. 21-0209 (issued December 20, 2021); see also *S.H.*, Docket No. 20-1189 (issued January 27, 2021).

¹³ In light of the Board's disposition regarding Issue 1, Issues 2 and 3 are rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2023 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: April 4, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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