

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

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C.B., Appellant	)	
	)	
and	)	
	)	<b>Docket No. 24-0285</b>
	)	<b>Issued: April 24, 2024</b>
<b>DEPARTMENT OF THE NAVY, NAVAL SEA</b>	)	
<b>SYSTEMS COMMAND, PHILADELPHIA</b>	)	
<b>NAVAL SHIPYARD, Philadelphia, PA, Employer</b>	)	
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*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  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 17, 2024 appellant filed a timely appeal from a November 14, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,703.61, for the periods January 10, 2014 through March 31, 2018, and May 13, 2019 through August 13, 2022, 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

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

required recovery of the overpayment by deducting \$395.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

OWCP accepted that on January 9, 1990 appellant, then a 38-year-old welder, developed displacement of lumbar intervertebral disc without myelopathy due to factors of her federal employment. She stopped work on January 9, 1990. The record reflects that OWCP paid appellant wage-loss compensation on the periodic rolls as of June 16, 2002.

A notification of personnel action (PS Form 50) dated January 22, 1990, noted appellant's retirement plan as Federal Employees Retirement System (FERS) and FICA.

On November 2, 2022 OWCP requested FERS offset information from the SSA. On March 13, 2023, the SSA completed the FERS/SSA dual benefits form and reported appellant's age-related retirement benefit rates with and without FERS beginning January 2014. It indicated that beginning January 2014 appellant's SSA rate with FERS was \$489.70 and without FERS was \$429.20; beginning December 2014 her SSA rate with FERS was \$498.00 and without FERS was \$436.50; beginning December 2016 her SSA rate with FERS was \$499.40 and without FERS was \$437.70; beginning December 2017 her SSA rate with FERS was \$509.40 and without FERS was \$446.50; beginning December 2018 her SSA rate with FERS was \$523.60 and without FERS was \$458.90; beginning December 2019 her SSA rate with FERS was \$532.00 and without FERS was \$466.30; beginning December 2020 her SSA rate with FERS was \$538.90 and without FERS was \$472.30; beginning December 2021 her SSA rate with FERS was \$570.60 and without FERS was \$500.10; and beginning December 2022 her SSA rate with FERS was \$620.30 and without FERS was \$543.60.

An August 29, 2023 FERS/SSA offset overpayment calculation worksheet noted that appellant was not paid wage-loss compensation from March 4, 2018 through May 12, 2019, so that period was excluded from the overpayment calculation.

By preliminary overpayment determination dated October 10, 2023, OWCP advised appellant that she had been overpaid \$5,703.61, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the periods January 1, 2014 through March 3, 2018, and May 13, 2019 through August 13, 2022, without an appropriate offset. It further determined that she was without fault in the creation of the overpayment. OWCP provided appellant with its calculations, finding an overpayment of \$666.21 for the period January 1 through November 30, 2014; \$1,482.10 for the period December 1, 2014 through November 30, 2016; \$742.38 for the period December 1, 2016 through November 30, 2017; \$192.84 for the period December 1, 2017 through March 3, 2018; \$430.84 for the period May 13 through November 30, 2019; \$792.78 for the period December 1, 2019 through November 30, 2020; \$801.44 for the period December 1, 2020 through November 30, 2021; and \$595.02 for the period December 1, 2021 through August 13, 2022, for a total overpayment amount of \$5,703.61. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable recovery method and advised 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 prerecoument hearing. No response was received.

By decision dated November 14, 2023, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$5,703.61, for the periods January 10, 2014 through March 31, 2018 and May 13, 2019 through August 13, 2022, for which she was without fault because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation 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 as appellant had not submitted any evidence for consideration of a waiver. OWCP required recovery of the overpayment by deducting \$395.00 from appellant's continuing compensation payments every 28 days.<sup>2</sup>

### **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>3</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>4</sup>

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.<sup>5</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>6</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,703.61, for the periods January 10, 2014 through March 31, 2018, and May 13, 2019 through August 13, 2022, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

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<sup>2</sup> The record reflects that appellant's net periodic compensation as of October 8, 2023, was \$1,583.20.

<sup>3</sup> 5 U.S.C. § 8102.

<sup>4</sup> *Id.* at § 8116.

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

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

OWCP paid appellant wage-loss compensation due to her accepted employment injury. The evidence of record indicates that for the periods January 10, 2014 through March 31, 2018, and May 13, 2019 through August 13, 2022, she was receiving wage-loss compensation benefits under FECA while also receiving SSA age-related retirement benefits that were attributable to her federal service, without an appropriate offset. A claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period without an appropriate offset.<sup>7</sup> Consequently, the Board finds that the fact of overpayment has been established.<sup>8</sup>

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 a dual benefits form from SSA with respect to appellant's SSA age-related retirement benefits attributable to federal service. SSA provided its rates with FERS and without FERS for specific periods from January 10, 2014 through March 31, 2018, and May 13, 2019 through August 13, 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 \$5,703.61. The Board has reviewed OWCP's calculation of dual benefits received by appellant for the periods January 10, 2014 through March 31, 2018 and May 13, 2019 through August 13, 2022, and finds that an overpayment of compensation in the amount of \$5,703.61 was created.

### **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>9</sup> The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.<sup>10</sup>

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.<sup>11</sup> 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

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<sup>7</sup> *M.R.*, Docket No. 20-0427 (issued October 30, 2020); *see also N.B., id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>8</sup> *See K.H.*, Docket No. 18-0171 (issued August 2, 2018).

<sup>9</sup> 5 U.S.C. § 8129.

<sup>10</sup> *A.C.*, *supra* note 7; *see Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>11</sup> 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).

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.<sup>12</sup>

OWCP's regulations provide 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.<sup>13</sup> Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

The fact that OWCP may have been negligent in the creation of the overpayment does not entitle appellant to waiver of recovery of the overpayment.<sup>15</sup> 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>16</sup>

In its preliminary overpayment determination, dated October 10, 2023, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support her reported income and expenses. Appellant did not submit a Form OWCP-20 or otherwise submit the 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.

Appellant had the responsibility to provide financial information to OWCP but failed to do so.<sup>17</sup> As she did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.

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<sup>12</sup> *Id.* at § 10.437(a)(b).

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

<sup>14</sup> 20 C.F.R. § 10.438(b). *See J.M.*, Docket No. 23-1186 (issued January 25, 2024).

<sup>15</sup> *See L.D.*, Docket No. 19-0606 (issued November 21, 2019); *R.B.*, Docket No. 15-0808 (issued October 26, 2015).

<sup>16</sup> 20 C.F.R. § 10.436.

<sup>17</sup> 20 C.F.R. § 10.438; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

### **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>18</sup>

Section 10.441 of Title 20 of the Code of Federal Regulations provides that if an overpayment of compensation has been made to one entitled to future payments, proper adjustment shall be made by decreasing subsequent 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>19</sup> When an individual fails to provide the requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.<sup>20</sup> 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.<sup>21</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$395.00 from appellant's continuing compensation payments every 28 days.

OWCP provided appellant a Form OWCP-20 with its October 10, 2023 preliminary overpayment determination. It afforded her the opportunity to provide appropriate financial information and documentation to OWCP. Appellant however did not complete the Form OWCP-20 or otherwise provide the necessary financial information to support her income and expenses prior to the final November 14, 2023 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>22</sup> When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>23</sup> The record reflects that as of October 8, 2023, appellant's net compensation was \$1,583.20 every 28 days. As she did not submit financial information as requested, the Board finds that OWCP properly

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<sup>18</sup> *R.W.*, Docket No. 19-0451 (issued August 7, 2019); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Albert Pinero*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

<sup>19</sup> 20 C.F.R. § 10.441; *see A.F.*, Docket No. 19-0054 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>20</sup> *R.O.*, Docket No. 18-0076 (issued August 3, 2018); *Gail M. Roe*, 47 ECAB 268 (1995).

<sup>21</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, at Chapter 6.500.8(c)(1) (September 2020).

<sup>22</sup> 20 C.F.R. § 10.438(a).

<sup>23</sup> *J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002); *supra* note 21 at Chapter 6.500.2 (September 2018).

required recovery by deducting \$395.00 from her continuing compensation payments every 28 days.<sup>24</sup>

**CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,703.61, for the periods January 10, 2014 through March 31, 2018 and May 13, 2019 through August 13, 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 further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$395.00 from appellant's continuing compensation payments every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 14, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 24, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>24</sup> *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).