

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

N.B., Appellant)	
)	
and)	Docket No. 25-0113
)	Issued: December 17, 2024
U.S. POSTAL SERVICE, BEACHWOOD POST)	
OFFICE, Beachwood, 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:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On November 14, 2024 appellant, through counsel, filed a timely appeal from an October 28, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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 The Board notes that, following the October 28, 2024 decision, 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.*

³ 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$21,273.89, for the period September 1, 2023 through April 20, 2024, 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; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On August 2, 2005 appellant, then a 48-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed fibromyalgia and myofascial pain syndrome due to factors of her federal employment including increased residential deliveries with more steps to climb and uneven terrain to cover. OWCP accepted the claim for unspecified myalgia/myositis. It paid appellant wage-loss compensation on the supplemental rolls commencing September 7, 2005. OWCP subsequently accepted a recurrence of total disability on April 22, 2006. It paid appellant wage-loss compensation on the periodic rolls commencing June 29, 2014.

In a March 13, 2019 letter, OWCP informed appellant that section 8116(d)(2) of FECA (5 U.S.C. § 8116(d)(2)) requires that her continuing compensation benefits be reduced if she begins receiving SSA retirement benefits based on her age and federal service. It advised that because she was approaching her 62nd birthday they were notifying her of this requirement. OWCP further advised that failure to report receipt of retirement benefits to OWCP could result in an overpayment of compensation, which could be subject to recovery.

On April 23, 2024 OWCP requested information from SSA regarding potential Federal Employees Retirement System (FERS)/SSA dual benefits.

On May 4, 2024 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. Beginning September 2023, the SSA rate with FERS was \$3,196.40 and without FERS was \$479.80. Beginning December 2023, the SSA rate with FERS was \$3,298.60 and without FERS was \$495.10.

A FERS offset overpayment calculation worksheet indicated that appellant received a \$21,273.89 overpayment of compensation for the period September 1, 2023 through April 20, 2024. The overpayment calculation was based on the information that SSA had provided.

In a letter dated May 6, 2024, OWCP advised appellant that her FECA benefits would be offset every 28-day payment cycle beginning May 17, 2024 for a net wage-loss compensation payment of \$842.57.

In a preliminary overpayment determination dated May 20, 2024, OWCP advised appellant that she received an overpayment of compensation in the amount of \$21,273.89, for the

period September 1, 2023 through April 20, 2024, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation based on her federal service without an appropriate offset. It explained its calculations for the period September 1, 2023 through April 20, 2024. OWCP also made a preliminary determination that appellant 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 provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records that support income and expenses. Additionally, it 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.

On June 5, 2024 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She requested waiver of recovery of the overpayment. Appellant did not submit a completed Form OWCP-20 or provide supporting financial documentation as requested.

A prerecoupment hearing was held on September 10, 2024.⁴

By decision dated October 28, 2024, OWCP's hearing representative finalized the May 20, 2024 preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$21,273.89, for the period September 1, 2023 through April 20, 2024, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. She further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. The hearing representative finalized the overpayment amount and period, and noted that the appellant had already repaid the debt in full.

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.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 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.⁷ FECA Bulletin No. 97-09 states that FECA

⁴ Appellant subsequently submitted an October 11, 2024 check in the full amount of the overpayment, \$21,273.89.

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8116.

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

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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$21,273.89, for the period September 1, 2023 through April 20, 2024, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

OWCP paid appellant FECA wage-loss compensation on the periodic rolls, effective June 29, 2014. However, appellant also received SSA age-related retirement benefits attributable to her federal service beginning September 2023. As noted, a claimant cannot concurrently receive FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁹ Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.¹⁰

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 appellant's specific SSA age-related retirement benefits that were attributable to federal service. SSA provided appellant's SSA age-related retirement benefit rates with FERS and without FERS for the period beginning September 1, 2023. OWCP provided its calculations based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$21,273.89.

The Board has reviewed OWCP's calculation of dual benefits received by appellant and finds that an overpayment of compensation in the amount of \$21,273.89 was created.

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.¹¹

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

⁹ 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 7.

¹⁰ *Id.*

¹¹ 5 U.S.C. § 8129.

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.¹² An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹³

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.¹⁴

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.¹⁵

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.¹⁶

In its preliminary overpayment determination dated May 20, 2024, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised her that it would deny waiver if she failed to furnish the requested financial information in a timely manner. Appellant neither completed a Form OWCP-20, nor provided any supporting financial documentation within the allotted time period following the May 20, 2024 preliminary overpayment determination. OWCP, therefore, did not

¹² 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).

¹³ *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).

¹⁴ 20 C.F.R. § 10.437(a)(b).

¹⁵ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁶ 5 U.S.C. § 8129.

have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.¹⁷

Consequently, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁸

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$21,273.89, for the period September 1, 2023 through April 20, 2024, 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.

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2024
Washington, DC

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

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

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

¹⁷ *B.J.*, Docket No. 24-0599 (issued July 16, 2024); *J.M.*, Docket No. 24-0356 (issued May 24, 2024); *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

¹⁸ As on October 11, 2024 appellant made full payment of the overpayment in the amount of \$21,273.89, the issue of recovery of the overpayment is not before the Board.