

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

M.H., widow of W.H., Appellant)	
)	
and)	Docket No. 22-1102
)	Issued: January 9, 2024
U.S. POSTAL SERVICE, INCOMING MAIL)	
CENTER, Chelsea, MA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Matthew Ferran, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 22, 2022 appellant, through counsel, filed a timely appeal from a February 15, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the

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 Appellant, through counsel, submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of her oral argument request, appellant asserted that oral argument should be granted because it would allow for further discussion of the legal issue. The Board, in exercising its discretion, denies appellant's request for oral argument because the argument on appeal can be adequately addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. Therefore, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly determined that the employee received an overpayment of compensation in the amount of \$21,881.28 for the periods August 1 through September 21, 2014 and April 30, 2017 through March 8, 2019, for which he was without fault, because he 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 April 9, 2011 the employee, then a 62-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 8, 2011 he tripped on a bag and sprained his left knee while in the performance of duty.⁴ He stopped work on April 9, 2011. OWCP accepted the claim for internal derangement of the left knee. It subsequently expanded the acceptance of the claim to include aggravation of preexisting osteoarthritis of the left knee on March 19, 2013. The employee returned to full-time light-duty work on September 22, 2014.

By decision dated December 6, 2016, OWCP granted the employee a schedule award for 67 percent permanent impairment of his left lower extremity. The period of the award ran for 192.96 weeks from October 13, 2014 through June 24, 2018.

OWCP accepted a recurrence of total disability on April 27, 2017. It stayed the employee's schedule award payments effective April 30, 2017 and instead paid him wage-loss compensation on the periodic rolls beginning that date.

The employee passed away on March 8, 2019 due to causes unrelated to his federal employment.

On August 16, 2019 OWCP issued a preliminary overpayment determination, addressed to appellant, finding that the employee had received an overpayment of compensation in the amount of \$21,881.28 for the periods August 1 through September 21, 2014 and April 30, 2017 through March 8, 2019, for which he was without fault, because his wage-loss compensation payments had not been reduced to offset his SSA age-related retirement benefits attributable to federal service. It requested that she complete an overpayment recovery questionnaire (Form OWCP-20) and provided an overpayment action request form. OWCP advised appellant that she could either

³ 5 U.S.C. § 8101 *et seq.*

⁴ OWCP assigned the present claim OWCP File No. xxxxxx103. The record reflects that the employee has prior claims involving his knees under OWCP File Nos. xxxxxx348 and xxxxxx434. He also subsequently filed a left knee occupational disease claim (Form CA-2) under OWCP File No. xxxxxx911; and a subsequent right knee occupational disease claim under OWCP File No. xxxxxx126. OWCP has administratively combined these files with the present claim serving as the master file.

request a review of the written evidence or a prerecoupment hearing, and that she had 30 days to respond. No response was received.

By decision dated September 26, 2019, addressed to the employee's estate, OWCP finalized its overpayment determination, finding that the employee had received an overpayment of compensation in the amount of \$21,881.28 for the periods August 1 through September 21, 2014 and April 30, 2017 through March 8, 2019, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It denied waiver of recovery of the overpayment, and required recovery of the \$21,881.28 overpayment in full.

In a letter dated January 23, 2020, appellant's then-counsel requested that the interrupted schedule award be recalculated for the period April 30, 2017 through June 24, 2018. He asserted that the September 26, 2019 final overpayment decision was issued to the estate of the employee and contended that this had no effect on the payments due appellant as she was the widow, not the estate.

By decision dated August 21, 2020, OWCP calculated the posthumous award of compensation and found that the employee had received schedule award compensation for the period October 13, 2014 through April 29, 2017 for 930 days of the 1,350.72 day total at the augmented rate. It determined that the 420.72 days remaining on the schedule award should be paid at the posthumous rate of 2/3 in accordance with section 8109(b) of FECA.⁵ OWCP found that appellant was entitled to \$47,148.61 in gross compensation. It noted that the employee had received an overpayment of \$21,881.28 during his lifetime, as finalized by its September 26, 2019 decision. OWCP determined that, in accordance with section 8129(a) of FECA (5 U.S.C. § 8129(a)), the posthumous schedule award would be adjusted to recover the outstanding overpayment of \$21,881.28 resulting in a reduced posthumous schedule award payment of \$25,235.45.

On September 14, 2020 appellant's then-counsel requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. On October 1, 2020 he requested that the oral hearing be converted to a review of the written record.

By decision dated November 2, 2020, following a preliminary review, OWCP's hearing representative, vacated the August 21, 2020 schedule award decision and, in accordance with OWCP's authority under section 8128(a) of FECA,⁶ also vacated both the August 16, 2019 preliminary overpayment determination and the September 26, 2019 final overpayment decision. He directed OWCP to issue a new preliminary overpayment determination in accordance with its procedures, and if finalized, to issue a recalculated posthumous award of compensation.

On March 2, 2021 OWCP issued a subsequent preliminary overpayment determination addressed to the employee's estate, finding that the employee had received an overpayment of compensation in the amount of \$21,881.28 for the periods August 1 through September 21, 2014

⁵ 5 U.S.C. § 8109(b).

⁶ 5 U.S.C. § 8128(a).

and April 30, 2017 through March 8, 2019, for which he was without fault, because his wage-loss compensation payments had not been reduced to offset his SSA age-related retirement benefits attributable to federal service. It requested that the estate complete a Form OWCP-20 and provided an overpayment action request form for completion. OWCP notified the estate that it had 30 days to respond. No response was received.

By decision dated February 15, 2022, addressed to the employee's estate, OWCP finalized its preliminary overpayment determination, finding that the employee had received an overpayment of compensation in the amount of \$21,881.28 for the periods August 1 through September 21, 2014 and April 30, 2017 through March 8, 2019, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It denied waiver of recovery of the overpayment and required recovery of the \$21,881.28 overpayment 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.⁷ 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.⁸

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.⁹ 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 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.¹⁰

OWCP's procedures for recovery from a deceased debtor's estate provide that, if the claimant recently passed away, it should take prompt action because creditors who have not properly asserted a claim before the estate is closed are generally precluded from any recovery.¹¹

⁷ 5 U.S.C. § 8102(a).

⁸ *Id.* at § 8116.

⁹ 20 C.F.R. § 10.421(d); *E.M.*, Docket No. 22-0081 (issued August 22, 2022); *G.R.*, Docket No. 21-0209 (issued December 20, 2021); *L.D.*, Docket No. 21-0447 (issued September 28, 2021); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

¹⁰ FECA Bulletin No. 97-09 (issued February 3, 1997); *E.M.*, *id.*; *G.R.*, *id.*; *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹¹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.15 (September 2020).

Thus, it should refer the debt to the financial management system (FMS) for offset of the deceased claimant's last federal tax refund under the Treasury's Offset Program (TOP).¹² OWCP has a special profile with FMS under TOP for the collection of these specific estate debts. The claims examiner should follow the referral procedures set forth in Chapter 6.500.12.¹³ Including sending the complete referral package to the national office for final review and forwarding to the FMS.¹⁴

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

By notice dated March 2, 2021, addressed to the employee's estate, OWCP issued a notice of preliminary overpayment of compensation, finding that the employee had received an overpayment of compensation in the amount of \$21,881.28 for the periods August 1 September 21, 2014 and from April 30, 2017 through March 8, 2019, for which he was without fault, because his wage-loss compensation payments had not been reduced to offset his SSA age-related retirement benefits attributable to federal service.

OWCP's procedures provide for recovery from a deceased debtor's estate.¹⁵ The procedures specifically require that, if the claimant recently passed away, OWCP should refer the debt to the FMS for offset of the deceased claimant's last federal tax refund under the TOP.¹⁶ OWCP has a special profile with FMS under TOP for the collection of these specific estate debts. The claims examiner should follow the referral procedures set forth in Chapter 6.500.12,¹⁷ including sending the complete referral package to the national office for final review and forwarding to the FMS.¹⁸

The evidence of record does not substantiate that actions OWCP has taken to recover the overpayment debt include a referral to FMS for appropriate offset under the TOP prior to taking overpayment actions against the employee's estate. The case shall therefore be remanded to OWCP to follow all procedures as outlined in Chapter 6.500.15 of its procedures. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

¹² 31 C.F.R. § 285.2; *id.* at Chapter 6.500.15(g)(1)-(7) (September 2018). *See also* *D.J. (L.J.)*, Docket No. 22-0012 (issued August 18, 2022); *R.B., (J.B.)*, Docket No. 19-0700 (issued March 16, 2021); *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *W.J. (E.J.)*, Docket No. 18-1035 (issued July 9, 2019).

¹³ *Id.* at Chapter 6.500.12 (September 2020).

¹⁴ *Id.* at Chapter 6.500.15e.

¹⁵ *Supra* note 9.

¹⁶ *Supra* note 9.

¹⁷ *Supra* note 10.

¹⁸ *Supra* note 9.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the February 15, 2022 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 9, 2024
Washington, DC

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

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

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