

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

P.Y., Appellant)	
)	
and)	Docket No. 23-0823
)	Issued: January 24, 2024
U.S. POSTAL SERVICE, KINGWOOD POST OFFICE, Kingwood, TX, Employer)	
)	

Appearances:
Appellant, pro se,
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On May 22, 2023 appellant filed a timely appeal from an April 25, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$20,379.42 for the period December 1, 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;

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 25, 2023 decision, OWCP received additional evidence. 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.*

(2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$500.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On January 24, 2017 appellant, then a 64-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 23, 2017 she strained her middle back when she attempted to lift a package from a mail hamper while in the performance of duty. She did not immediately stop work. OWCP accepted the claim for a sprain of the ligaments of the thoracic spine and a strain of the muscle, fascia, and tendon of the lower back.

Thereafter, OWCP paid appellant wage-loss compensation on the supplemental rolls from April 1 through 28, 2018, and on the periodic rolls effective April 29, 2018.

An April 17, 2018 claim for compensation (Form CA-7) and an August 31, 2019 notice of personnel action (PS Form 50) indicated that appellant's retirement coverage was under the Federal Employees Retirement System (FERS).

In a November 12, 2019 letter, the employing establishment related that appellant was in the FERS retirement plan and was subject to a FERS offset.

On June 27, 2022 OWCP provided SSA with a FERS/SSA dual benefits form. On July 18, 2022 SSA completed the dual benefits form, which reported appellant's SSA age-related retirement benefit rates with and without a FERS offset for periods beginning December 2019 through December 2021. Beginning December 2019, appellant's monthly SSA rate with FERS was \$1,616.40 and without FERS was \$1,045.70. Beginning January 2020, the SSA rate with FERS was \$1,729.70 and without FERS was \$1,118.90. Beginning December 2020, the SSA rate with FERS was \$1,752.10 and without FERS was \$1,133.40. Effective December 2021, the SSA rate with FERS was \$1,855.30 and without FERS was \$1,200.30.

Beginning August 14, 2022, OWCP adjusted appellant's wage-loss compensation to reflect an offset for FERS of \$526.80. It subsequently noted that the correct amount of offset was \$604.62.

In a September 12, 2022 letter, OWCP informed appellant that it had determined that she had been receiving SSA age-related retirement benefits since December 1, 2019. It explained that it would begin deducting \$604.62, the portion of SSA age-related retirement benefits attributable to her federal service under FERS, from her periodic compensation benefits, beginning with her compensation payment dated August 14, 2022, and that her new net wage-loss compensation payment would be \$3,140.24.

On September 20, 2022 OWCP prepared a FERS offset calculation worksheet noting that, for the period December 1, 2019 through September 10, 2022, appellant received an overpayment in the amount of \$20,379.42. For the period December 1 through 31, 2019, she received an overpayment in the amount of \$583.24; for the period January 1 through November 30, 2020, she received an overpayment in the amount of \$6,745.65; for the period December 1, 2020 through November 30, 2021, she received an overpayment in the amount of \$7,444.80; and for the period December 1, 2021 through August 13, 2022, she received an overpayment in the amount of

\$5,527.91. The sum of these values totaled \$20,301.60. OWCP also noted that an incorrect FERS offset occurred between August 14 and September 10, 2022, wherein \$526.80 was deducted from appellant's periodic compensation benefits, however, the correct deduction amount should have been \$604.62, resulting in an additional \$77.82 overpayment. It concluded that she had therefore received a total overpayment of compensation in the amount of \$20,379.42 for the period December 1, 2019 through September 10, 2022.

In a September 21, 2022 preliminary overpayment determination, OWCP notified appellant that she had received an overpayment of compensation for the period December 1, 2019 through August 13, 2022 because she received FECA wage-loss compensation benefits and SSA age-related retirement benefits that were due in part to federal service, and this constituted a prohibited dual benefit. It found that she had received an overpayment of \$20,301.60 for the period December 1, 2019 through August 13, 2022 and had received an overpayment of \$77.82 for the period August 14 to September 10, 2022 because it had only offset \$526.80 from her wage-loss compensation rather than \$604.62, resulting in an overpayment of \$77.82. OWCP added this amount to the overpayment found from December 1, 2019 through August 13, 2022 to find a total overpayment of \$20,379.42. It further advised appellant that it had determined that she was without fault in the creation of the overpayment. OWCP 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. It 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, OWCP provided an overpayment action request form and notified her that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a precoupment hearing.

On October 7, 2022 appellant requested a precoupment hearing before a representative of OWCP's Branch of Hearings and Review. She indicated that she disagreed with the preliminary overpayment determination and requested a waiver because she had been found without fault in the creation of the overpayment and had no knowledge that she was being overpaid. Appellant attached a Form OWCP-20 indicating a total monthly income of \$4,917.42 and monthly expenses of \$3,355.50, however, the sum of the expenses listed on her form totaled \$3,826.35.³ She reported no assets and submitted supporting documents dated 2021 and 2022 for some of her expenses, including statements from creditors, medical service invoices, automobile service invoices, loan statements, life insurance statements, payment receipts, utility invoices, and a 2021 federal tax return. Appellant also attached an additional list describing her expenses "and some [prior] bills" totaling \$4,977.78, which included expenses for loans, insurance, housing, utilities, food, gas, clothing, personal items, and dental and pharmacy expenses.⁴

³ Appellant listed the following monthly expenses: automobile \$442.17, housing \$488.00, food \$700.00, clothing \$200.00, utilities \$470.00, other \$325.00, payments on loans of \$114.00, \$153.00, \$217.68, \$173.00, \$105.00, and \$142.50, which included car insurance every six months. She also listed another loan of \$596.00.

⁴ Appellant asserted that she made monthly payments of \$105.00 to Houston financial, \$147.52 to Sun Finance, \$569.00 to Boast Finance, \$800.00 to Tithemax, \$178.09 to Fig Loans, \$49.00 to Sunbit loans, \$189.00 to Lincoln Heritage, another \$100.00 per month to Lincoln Heritage, \$442.17 to Westlake Finance. She also listed expenses of \$260.00 for insurance, \$488.00 for housing, \$300.00 for utilities, \$400.00 for food, \$350.00 for gasoline, \$300.00 for clothing, and \$300.00 for dental and pharmaceutical expenses.

In a January 9, 2023 notice, OWCP's hearing representative informed appellant that her prerecoumment hearing was scheduled for February 8, 2023 at 10:00 a.m. Eastern Standard Time (EST). She mailed the notice to appellant's last known address of record and provided instructions on how to participate. Appellant did not attend the prerecoumment hearing. In a February 28, 2023 memorandum, OWCP noted that she related that she missed her hearing and requested a review of the written record. Appellant's request for a prerecoumment hearing was converted to a review of the written record.

By decision dated April 25, 2023, OWCP's hearing representative finalized the preliminary overpayment determination and found that appellant had received an overpayment of compensation in the amount of \$20,379.42 for the period December 1, 2019 through August 13, 2022 as she had concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. The hearing representative determined that she was without fault in the creation of the overpayment but denied waiver of recovery based on the figures provided on the Form OWCP-20 received on October 11, 2022 listing \$4,917.42 in monthly income and \$3,826.35 in expenses, which left her with a monthly surplus of \$1,091.07. The hearing representative reviewed the expenses listed on the form and noted that she had documented some but not all the expenses claimed. The hearing representative found that the overpayment would be recovered by deducting \$500.00 from appellant's continuing compensation payments every 28 days.

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 benefits must 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$20,379.42, for which she was without fault, because she

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8116.

⁷ 20 C.F.R. § 10.421(d); *see P.G.*, Docket No. 23-0530 (issued October 24, 2023); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset. The Board finds, however, that the period of the overpayment was from December 1, 2019 through September 10, 2022 rather than the stated period in OWCP's decision of December 1, 2019 through August 13, 2022.

Appellant began receiving SSA age-related retirement benefits in December 2019. OWCP paid her wage-loss compensation for total disability on the periodic rolls beginning April 29, 2018. As noted, a claimant cannot receive FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.⁹ Accordingly, the Board finds that fact of overpayment has been established.¹⁰

To determine the amount of the overpayment, the portion of SSA age-related retirement benefits 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. SSA provided the SSA rates with and without FERS for specific periods from December 1, 2019 through December 2021. OWCP set forth its calculations of the amount that should have been offset during the relevant period based on information provided by SSA for the period December 1, 2019 through August 13, 2022, a total of \$20,301.60. It further found, in its preliminary overpayment determination, that appellant had received an overpayment of \$77.82 for the period August 14 to September 10, 2022 as it had deducted \$526.80 from her wage-loss compensation payments for the SSA offset instead of the proper amount of \$604.62. OWCP added the amounts for both periods to find a total overpayment of \$20,379.42.

The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period December 1, 2019 through September 10, 2022 and finds that an overpayment of compensation in the amount of \$20,379.42 was created.¹¹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA¹² provides that an overpayment must be recovered 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. Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹³

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her income (including compensation benefits) to meet current ordinary and necessary living

⁹ *Supra* note 8; *E.G.*, Docket No. 22-0574 (issued September 28, 2023); *J.T.*, Docket No. 21-0010 (issued September 30, 2021); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹⁰ *See S.H.*, Docket No. 20-1157 (issued December 23, 2020); *K.H.*, Docket No. 18-0171 (issued August 2, 2018).

¹¹ *See N.B.*, Docket No. 20-0727 (issued January 26, 2021); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

¹² *Supra* note 1.

¹³ *J.T.*, *supra* note 9; *G.L.*, Docket No. 19-0297 (issued October 23, 2019).

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.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that the case is not in posture for decision regarding 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.¹⁵

In the April 25, 2023 final overpayment decision, OWCP's hearing representative considered the monthly income and expenses provided by appellant on the OWCP-20 form received by OWCP on October 11, 2022 and, based on this information, denied waiver of recovery of the overpayment. Appellant, however, also submitted an additional list of expenses which totaled \$4,977.78, including payments for loans, insurance, housing, utilities, food, gas, clothing, personal items, and dental and pharmacy expenses. She provided supporting documentation for some of the expenses. OWCP's hearing representative, however, did not consider these expenses or determine whether they were supported by adequate documentation or determine whether the expenses were ordinary and necessary.

In the case of *William A. Couch*,¹⁶ the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

In its final overpayment decision dated April 25, 2023, OWCP failed to consider and address all financial evidence submitted by appellant in support of waiver of recovery of the overpayment. As such, it failed to follow its procedures by properly discussing all the evidence of record. It is crucial that OWCP consider and address all evidence relevant to the subject matter properly submitted prior to the issuance of its final decision, as the Board's decisions are final regarding the subject matter appealed.¹⁷

The Board thus finds that this case is not in posture for decision with regard to the issue of waiver of recovery of the overpayment.¹⁸ On remand, OWCP shall review all evidence of record

¹⁴ 20 C.F.R. § 10.436. OWCP's procedures provide that a claimant is deemed to need substantially all of his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Its procedures further provide that 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(2) and (3) (September 2020).

¹⁵ *Id.* at § 10.436.

¹⁶ 41 ECAB 548 (1990); *see also* *C.W.*, Docket No. 23-0096 (issued October 2, 2023); *J.R.*, Docket No. 22-0464 (issued April 18, 2023); *S.H.*, Docket No. 19-1582 (issued May 26, 2020).

¹⁷ *See C.W., id.*; *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004).

¹⁸ In light of the Board's disposition of Issue 2, Issue 3 is rendered moot.

regarding waiver and recovery of the overpayment. Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$20,379.42, 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; however, the period of the overpayment is modified to December 1, 2019 through September 10, 2022. The Board further finds that the case is not in posture for decision regarding waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2023 decision of the Office of Workers' Compensation Programs is affirmed in part as modified, and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 24, 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