

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

K.S., Appellant)	
)	
and)	Docket No. 23-1058
)	Issued: January 18, 2024
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE,)	
Long Beach, CA, Employer)	
)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 4, 2023 appellant filed a timely appeal from a July 13, 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.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$10,870.85 for the period November 1, 2021 through September 11, 2022, for which she was without fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 17, 2007 appellant, then a 51-year-old revenue officer, filed a traumatic injury claim (Form CA-1) alleging that on March 22, 2007 she sustained bilateral knee contusions, left hand contusion, and left ankle sprain, when she fell on an uneven sidewalk while in the performance of duty. She stopped work on the date of injury. The employing establishment noted on the claim form that appellant's retirement system was the Federal Employees Retirement System (FERS). OWCP accepted the claim for left hand contusion, bilateral knee contusion, left ankle contusion, left shoulder contusion, left ankle sprain, and right lateral epicondylitis. Appellant returned to work at light duty on May 21, 2007, stopped again on July 31, 2007, and did not return. OWCP paid her wage-loss compensation on the supplemental rolls as of May 6, 2007, and on the periodic rolls as of January 20, 2008.²

On July 28, 2022 OWCP forwarded a FERS/SSA dual benefits form to SSA requesting information from SSA regarding appellant's potential receipt of dual benefits.

On August 19, 2022 OWCP received a completed FERS/SSA dual benefits form from SSA bearing that date. SSA reported appellant's SSA age-related retirement benefit rates with and without a FERS offset. The form indicated that the SSA rate with FERS was \$1,821.40 effective November 2021 and \$1,928.80 effective December 2021. The form further indicated that the SSA rate without FERS was \$827.60 effective November 2021 and \$876.40 effective December 2021.

By decision dated September 12, 2022, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date.

On November 9, 2022 OWCP notified appellant of its preliminary overpayment determination that she had received an overpayment of compensation in the amount of \$10,870.85 as she had received FECA wage-loss compensation benefits for the period November 1, 2021 through September 11, 2022 that had not been reduced by the portion of her SSA age-related retirement benefits attributable to her federal service, and that this portion of her SSA benefit was a prohibited dual benefit. With the preliminary determination, it included an explanation of its calculation of her overpayment. OWCP explained that, for the period November 1, 2021 through September 11, 2022, appellant received an overpayment in the total amount of \$10,870.85. For the period November 1 through 30, 2021, she received an overpayment of \$982.88. For the period December 1, 2021 through September 11, 2022, appellant received an overpayment of \$9,887.97. OWCP further advised her of its preliminary determination that she was without fault in the creation of the overpayment. It requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records to support her reported 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 prerecoupment hearing.

² OWCP paid appellant wage-loss compensation at the basic rate of 66 2/3 percent, indicating that she had no dependents.

On November 29, 2022 appellant requested a prerecoumpment hearing before a representative of OWCP's Branch of Hearings and Review regarding possible waiver. In an attached Form OWCP-20, she reported monthly income of \$1,758.00, monthly expenses of \$4,201.11 and \$37,924.31 of total assets. Appellant provided financial documentation to support these figures.

A hearing was held before a representative of OWCP's Branch of Hearings and Review on May 16, 2023.

By decision dated July 13, 2023, OWCP's hearing representative finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$10,870.85, for the period November 1, 2021 through September 11, 2022. The hearing representative further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, finding that her assets of \$37,924.31 exceeded the resource base of \$6,200.00 for an individual with no dependents. She required repayment of the overpayment at a rate of \$300.00 per month.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 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.³ 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.⁴

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related retirement benefits that are attributable to federal service of the employee.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP has established that appellant received an overpayment of compensation in the amount of \$10,870.85 for the period November 1, 2021 through September 11, 2022, for which she is without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset.

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

As previously noted, a claimant cannot receive both FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁷ The evidence of record establishes that appellant had concurrently received wage-loss compensation benefits and SSA age-related retirement benefits that were attributable to federal service during the period November 1, 2021 through September 11, 2022. Consequently, the fact of overpayment has been established.⁸

The Board has reviewed the calculation of benefits received by appellant for the period November 1, 2021 through September 11, 2022 and finds that an overpayment of compensation in the amount of \$10,870.85 has been established. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. The SSA provided appellant's SSA rate with FERS and without FERS for the period November 1, 2021 through September 11, 2022. OWCP provided its calculations of the amount that it should have offset during the relevant period based on the SSA worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period November 1, 2021 through September 11, 2022 and finds that OWCP properly calculated an overpayment of compensation in the amount of \$10,870.85.

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."⁹ Section 10.438 of OWCP 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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁰

The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of OWCP's regulations.¹¹

Section 10.436 provides that recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or

⁷ *D.W.*, Docket No. 20-1533 (issued May 27, 2021); *M.R.*, Docket No. 20-0427 (issued October 30, 2020); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *N.B.*, *id.*

⁸ *See L.B.*, Docket No. 19-1322 (issued January 27, 2020).

⁹ 5 U.S.C. § 8129.

¹⁰ 20 C.F.R. § 10.438.

¹¹ *Id.* at §§ 10.434-10.437.

her current income (including compensation benefits) to meet current ordinary and necessary living 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.¹² An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹³

OWCP's procedures provide that the 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.¹⁴ An individual's liquid assets include, but are not limited to, cash and the value of stocks, bonds, saving accounts, mutual funds, and certificates of deposit. Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.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

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience because her resource base included \$37,924.31 in assets. This exceeds the resource base of \$6,200.00 for an individual with no dependents as provided by OWCP's procedures.¹⁷

As appellant failed to establish that, recovery of the overpayment of compensation would either defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP did not abuse its discretion in denying waiver of recovery of the overpayment.¹⁸

¹² *Id.* at § 10.436.

¹³ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

¹⁴ *Id.* at Chapter 6.400.4a(2).

¹⁵ *Id.* at Chapter 6.400.4b(3)(a), (b).

¹⁶ 20 C.F.R. § 10.436.

¹⁷ *Id.*

¹⁸ *Supra* note 16.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$10,870.85 for the period November 1, 2021 through September 11, 2022, for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, 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 July 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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