

<sup>2</sup> The Board notes that, following the March 22, 2022 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.*

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 it properly required recovery of the overpayment by deducting \$400.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

Appellant filed a traumatic injury claim (Form CA-1) alleging that on January 13, 1997 she sustained injuries in connection with her federal employment. OWCP accepted the claim for injuries to her low back, right knee, and right shoulder/upper arm.<sup>3</sup> She stopped work on January 30, 1998. It paid appellant wage-loss compensation for total disability on the periodic rolls, effective that date.

On December 13, 2019 OWCP requested information from SSA regarding potential Federal Employees Retirement System (FERS)/SSA dual benefits.

OWCP thereafter received a completed FERS/SSA dual benefits form from SSA dated January 9, 2020. The form indicated that appellant received SSA age-related retirement benefits as of November 2012 and provided SSA age-related benefit rates with FERS offset. Beginning November 2012, the SSA rate with FERS was \$827.90 and without FERS was \$209.20. Beginning December 2012, the SSA rate with FERS was \$842.00 and without FERS was \$212.80. Beginning December 2013, the SSA rate with FERS was \$854.60 and without FERS was \$215.90. Beginning December 2014 and 2015, the SSA rate with FERS was \$869.10 and without FERS was \$219.60. Beginning December 2016, the SSA rate with FERS was \$871.60 and without FERS was \$220.20. Beginning December 2017, the SSA rate with FERS was \$889.00 and without FERS was \$224.50. Beginning December 2018, the SSA rate with FERS was \$913.90 and without FERS was \$230.80. Beginning December 2019, the SSA rate with FERS was \$928.50 and without FERS was \$234.40.

Beginning July 19, 2020, OWCP adjusted appellant's wage-loss compensation to \$2,181.51 per 28-day pay period to include the offset of her SSA age-related retirement benefits attributable to her federal service.

A July 24, 2020 FERS offset overpayment calculation sheet generated the amount that OWCP should have offset each 28-day compensation period from November 1, 2012 through July 18, 2020. OWCP found that, from November 3 through 30, 2012, appellant received an overpayment of \$571.11; from December 1, 2012 through November 30, 2013, she received an overpayment of \$7,571.14; from December 1, 2013 through November 30, 2014, appellant received an overpayment of \$7,685.46; from December 1, 2014 through November 30, 2016, she received an overpayment of \$15,652.24; from December 1, 2016 through November 30, 2017, she received an overpayment of \$7,838.27; from December 1, 2017 through November 30, 2018, she received an overpayment of \$7,995.91; from December 1, 2018 through November 30, 2019, she received an overpayment of \$8,219.72; and from December 1, 2019 through July 18, 2020, she

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<sup>3</sup> OWCP assigned this claim OWCP File No. xxxxxx202. It previously accepted an April 27, 1996 traumatic injury claim for the right knee under OWCP File No. xxxxxx194. OWCP has administratively combined these claims, with OWCP File No. xxxxxx202 serving as the master file.

received an overpayment of \$5,285.84. It added these overpayment amounts for each period to find a total overpayment of \$60,819.68.

In a preliminary overpayment determination dated August 18, 2020, OWCP notified appellant of its preliminary finding that she had received an overpayment of compensation in the amount of \$60,819.68 for the period November 1, 2012 through July 18, 2020 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It further advised her of its preliminary determination that she was without fault in the creation of the overpayment. OWCP requested that appellant 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 she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records supporting income and expenses. Additionally, OWCP provided an overpayment action request form and 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.

In a September 14, 2020 overpayment action request form, appellant requested a decision on the written evidence. She also requested waiver of recovery because she was found to be without fault in the creation of the overpayment.

In a Form OWCP-20 completed on September 16, 2020, appellant reported a total monthly income of \$2,913.71, which included \$728.20 in SSA benefits and \$2,185.51 in OWCP benefits. She noted total monthly expenses of \$3,309.13 for rent, food, clothing, utilities, automobile payments, and credit card payments and medical expenses for her husband totaling \$5,178.00. Appellant reported that she had cash on hand of \$50.00, a checking account balance of \$2,000.00, and a savings account balance of \$1,400.00. She did not submit supporting financial documentation.

By decision dated March 22, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$60,819.68 for the period November 1, 2012 through July 18, 2020 because it had failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to her federal service. It found her without fault in the creation of the overpayment but denied waiver of recovery of the overpayment as she had not provided documentation supporting her claimed expenses. OWCP required recovery of the overpayment by deducting \$400.00 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.<sup>4</sup> Section 8116 limits the right of an employee to receive

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<sup>4</sup> 5 U.S.C. § 8102(a).

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>5</sup>

Section 10.421(d) of OWCP's implementing regulations requires that OWCP 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>6</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>7</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$60,819.68 for the period November 1, 2012 through July 18, 2020, 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 case record establishes that appellant stopped work on January 30, 1998, and OWCP paid her wage-loss compensation for total disability. She received SSA age-related retirement benefits, effective November 1, 2012. As noted, a claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>8</sup> The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service during the period November 1, 2012 through July 18, 2020. The Board thus finds that fact of overpayment is established.

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 FERS and without FERS for specific periods November 2012 through July 2020. OWCP set forth its calculations of the amount that should have been offset during each relevant period based on the information provided by SSA and determined that appellant received an overpayment in the amount of \$60,819.68. The Board has reviewed OWCP's calculation of dual benefits and finds appellant received prohibited dual benefits totaling \$60,819.68 for the period November 1, 2012 through July 18, 2020.

### **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

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<sup>5</sup> *Id.* at § 8116.

<sup>6</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>7</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>8</sup> 20 C.F.R. § 10.421(d); *L.D.*, Docket No. 21-0447 (issued September 28, 2021); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, *supra* note 6.

recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>9</sup> Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>10</sup>

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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> 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.<sup>12</sup> Also, 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.<sup>13</sup> An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.<sup>14</sup> Non liquid 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.<sup>15</sup>

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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>16</sup> OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.<sup>17</sup>

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<sup>9</sup> 5 U.S.C. § 8129(a)-(b).

<sup>10</sup> *L.A.*, Docket No. 22-1383 (issued June 14, 2023); *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019); *L.S.*, 59 ECAB 350 (2008).

<sup>11</sup> 20 C.F.R. § 10.436(a)(b).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

<sup>13</sup> *Id.* at Chapter 6.400.4a(2).

<sup>14</sup> *Id.* at Chapter 6.400.4b(3).

<sup>15</sup> *Id.* at Chapter 6.400.4b(3)(a), (b).

<sup>16</sup> 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

<sup>17</sup> *Supra* note 12 at Chapter 6.400.4c(3).

## **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation.<sup>18</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>19</sup> Appellant, however, has the responsibility to provide the appropriate financial information and documentation to OWCP as requested.<sup>20</sup>

In its preliminary overpayment determination, dated August 18, 2020, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial information, including copies of income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records to support income and expenses. Appellant submitted a completed OWCP-20 form, but failed to provide the supporting financial documentation necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>21</sup>

Accordingly, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>22</sup>

## **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>23</sup>

Section 10.441(a) of OWCP's regulations provides in pertinent part:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial

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<sup>18</sup> See *C.L.*, Docket No. 21-0481 (issued May 12, 2023); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>19</sup> 20 C.F.R. § 10.436.

<sup>20</sup> *Id.* at § 10.438. See *E.S.*, Docket No. 20-0919 (issued February 8, 2021).

<sup>21</sup> *P.R.*, Docket No. 21-1183 (issued January 25, 2023); *J.C.*, Docket No. 20-1062 (issued January 4, 2021); *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

<sup>22</sup> *P.R.*, *id.*; *J.C.*, *id.*

<sup>23</sup> 20 C.F.R. § 10.441; see *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”<sup>24</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$400.00 from appellant’s continuing compensation payments every 28 days.

In setting the recovery rate at \$400.00, OWCP took into consideration the factors set forth at 20 C.F.R. § 10.441(a) in order to minimize hardship, while liquidating the debt, as appellant had not submitted sufficient documentation to assess her financial standing.<sup>25</sup> Thus, it did not abuse its discretion in setting the rate of recovery.<sup>26</sup> The Board therefore finds that OWCP properly required recovery of the overpayment from appellant’s continuing compensation payments at the rate of \$400.00 every 28 days.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$60,819.68 for the period November 1, 2012 through July 18, 2020, 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 \$400.00 from appellant’s continuing compensation payments every 28 days.

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<sup>24</sup> *Id.* at § 10.441(a).

<sup>25</sup> *See A.V.*, Docket No. 22-1234 (issued May 4, 2023); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>26</sup> *R.O.*, Docket No. 18-0076 (issued August 3, 2018); *Gail M. Roe*, 47 ECAB 268 (1995); 20 C.F.R. § 10.441; *see A.F.*, *id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 22, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 14, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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