

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

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**D.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Tulsa, OK, Employer**

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**Docket No. 23-1137  
Issued: March 11, 2024**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On September 3, 2023 appellant filed a timely appeal from a May 4, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,026.67, for the period October 1, 2022 through March 25, 2023, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the May 4, 2023 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.*

without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$597.66 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On April 27, 1987 appellant then a 30-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day she injured her left thigh, skull, and right hand when she was attacked by a dog while in the performance of duty. OWCP accepted her claim for contusion of the skull, dog bite on left thigh, and mild sprain of the right hand, and later expanded the acceptance of her claim to include post-traumatic stress disorder. It paid appellant's wage-loss compensation on the periodic rolls, effective June 16, 2002. Appellant's retirement coverage was listed as the Federal Employees Retirement System (FERS).

On January 9, 2023 OWCP sent SSA a FERS/SSA dual benefits form to SSA for completion.

On March 27, 2023 SSA completed the FERS/SSA dual benefits form, which reported appellant's SSA age-related retirement benefit rate for October through December 2022. The form listed appellant's SSA age-related retirement benefit rates with and without a FERS offset. Beginning October 1, 2022, the SSA rate with FERS was \$1,013.10 and without FERS was \$682.10. Beginning December 1, 2022, the SSA rate with FERS was \$1,100.90 and without FERS was \$741.90. SSA further noted that appellant received SSA disability benefits from May 1989 through September 2022.

On March 28, 2023 OWCP prepared a FERS offset overpayment calculation worksheet wherein it found a total overpayment of compensation for the period October 1, 2022 through March 25, 2023 in the amount of \$2,026.66. For the period October 1 through November 30, 2022, appellant received an overpayment in the amount of \$665.64; and for the period December 1, 2022 through March 25, 2023, she received an overpayment in the amount of \$1,361.02.

In a preliminary overpayment determination dated March 30, 2023, OWCP notified appellant of its preliminary finding that she received an overpayment of compensation in the amount of \$2,026.67 for the period October 1, 2022 through March 25, 2023, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It determined 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 and canceled checks, pay slips, and any other records that support income and expenses. Additionally, OWCP 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. No response was received.

By decision dated May 4, 2023, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$2,026.67 for the period October 1, 2022 through March 25, 2023, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an

appropriate offset. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$597.66 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>3</sup> 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.<sup>4</sup>

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.<sup>5</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 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.<sup>6</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,026.67, for the period October 1, 2022 through March 25, 2023, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

As noted, a claimant cannot receive concurrent FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>7</sup> The evidence of record indicates that while appellant was receiving FECA wage-loss compensation she was also receiving SSA age-related retirement benefits that were attributable to her federal service without appropriate offset. The information provided by SSA established that a portion of appellant's benefits were attributable to her federal service from October 1, 2022 through March 25, 2023. Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.<sup>8</sup>

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8116.

<sup>5</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

<sup>7</sup> 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 5.

<sup>8</sup> *Id.*

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, wherein SSA provided appellant's age-related retirement benefits rates with FERS and without FERS for specific periods October 1, 2022 through March 25, 2023. It provided its calculations for each relevant period based on SSA's worksheet and determined that she received a total overpayment in the amount of \$2,026.67.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$2,026.67 for the period October 1, 2022 through March 25, 2023.

### **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.<sup>9</sup>

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 their 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>10</sup> 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.<sup>11</sup>

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.<sup>12</sup>

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

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<sup>9</sup> 5 U.S.C. § 8129.

<sup>10</sup> 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).

<sup>11</sup> *Id.* at Chapter 6.400.4a(3); *see also N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

<sup>12</sup> 20 C.F.R. § 10.437(a), (b).

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.<sup>13</sup>

### **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 of recovery of the overpayment 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>14</sup> However, appellant had the responsibility to provide financial information and documentation to OWCP and failed to do so.<sup>15</sup>

In its preliminary overpayment determination, dated March 30, 2023, OWCP requested that appellant provide a completed Form OWCP-20 with supporting financial documentation, including copies of income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support income and expenses. It advised her that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant did not submit a Form OWCP-20 or otherwise submit the financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

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 compensation.

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 of OWCP's regulations provides in pertinent part that, 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 the 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 circumstances of the individual, and any other relevant factors, so as to minimize any hardship.<sup>16</sup>

When an individual fails to provide requested information regarding income, expenses, and assets, OWCP should follow minimum collection guidelines. The Federal (FECA) Procedure

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<sup>13</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>14</sup> *Id.* at § 10.436.

<sup>15</sup> *Id.* at § 10.438; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

<sup>16</sup> *Id.* at § 10.441(a); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

Manual provides that, in these instances, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.<sup>17</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$597.66 from appellant's continuing compensation payments every 28 days.

OWCP provided appellant a Form OWCP-20 with its March 30, 2023 preliminary overpayment determination. It afforded her the opportunity to provide appropriate financial information and documentation to OWCP. However, appellant did not complete the Form OWCP-20 or provide financial documentation to support her income and expenses prior to the final May 4, 2023 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>18</sup> When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>19</sup>

As appellant did not submit financial information as requested, the Board finds that OWCP reasonably required recovery by deducting \$597.66 from her continuing compensation payments every 28 days.<sup>20</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,026.67 for the period October 1, 2022 through March 25, 2023, 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 \$597.66 from her continuing compensation payments every 28 days.

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<sup>17</sup> *Supra* note 10 at Chapter 6.500.8c(1) (September 2018).

<sup>18</sup> 20 C.F.R. § 10.438(a).

<sup>19</sup> See *D.W.*, Docket No. 23-0137 (issued June 23, 2023); *J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002).

<sup>20</sup> *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 4, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 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