

September 10, 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; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On October 14, 1988 appellant, then a 28-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day she slipped on water in the restroom and fell. OWCP accepted the claim for right shoulder contusion, low back strain, right shoulder strain, bilateral shoulder adhesive capsulitis, and bilateral osteoarthritis of the lower legs. The record reflects that appellant received wage-loss compensation on the supplemental rolls from December 5, 2002 and continuously on the periodic rolls from September 15, 2019.

A notification of personnel action (PS Form 50) dated November 7, 1987 indicated that appellant's retirement plan was the Federal Employees Retirement System (FERS).

On July 28, 2022 OWCP provided SSA with a FERS/SSA dual benefits calculation form. On August 16, 2022 SSA completed the dual benefits form, noting that appellant's entitlement to SSA age-related retirement benefits began in February 2022. Beginning February 2022, the SSA rate with FERS was \$1,198.40 and without FERS was \$62.10.

In letters dated September 29 and 30, 2022, OWCP informed appellant that, effective September 11, 2022, it would begin deducting the portion of SSA age-related retirement benefits attributable to her federal service from her 28-day periodic compensation benefits. It noted that her current monthly SSA age-related retirement benefit with FERS was \$1,198.40 and without FERS was \$62.10. OWCP explained that the amount of FERS/SSA dual benefit to be deducted from appellant's FECA benefits was \$1,048.89 every 28 days. It further explained that her new net compensation payment would be \$2,496.60, every 28 days.

On January 5, 2023 OWCP issued a preliminary overpayment determination that an overpayment occurred in the amount of \$8,316.20 for the period February 1 through September 10, 2022, because appellant concurrently received both FECA wage-loss compensation and SSA age-related retirement benefits during that period, without an appropriate offset, which resulted in a prohibited dual benefit. It calculated the overpayment amount by determining the difference between her SSA amount with and without FERS for the stated period and totaling this amount to find an overpayment of \$8,316.20. Based on the SSA worksheet, OWCP noted that the SSA rate with FERS was \$1,198.40, and the SSA rate without FERS was \$62.10, resulting in a monthly FERS offset of \$1,136.30, a 28-day FERS offset of \$1,048.89, and a daily FERS offset of \$37.4604. The daily FERS offset of \$37.4604 times the 222 days in the period from February 1 through September 10, 2022, resulted in an overpayment of \$8,316.20. OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. It requested that she submit a completed overpayment recovery questionnaire (Form OWCP-20), along with supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income, assets, and expenses. OWCP advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. It provided an appeal request form and

further notified her that, within 30 days of the date of the letter, she could contest the overpayment, and request a final decision based on the written evidence or a prerecoupment hearing.

In an accompanying overpayment memorandum, OWCP noted that appellant was overpaid compensation for the period February 1 through September 10, 2022 in the amount of \$8,316.20. A FERS offset overpayment calculation worksheet completed by OWCP determined the 28-day FERS offset amount for the days in each period and computed a total overpayment amount of \$8,316.20.

In a letter dated January 10, 2023, OWCP advised appellant that she was receiving FECA wage-loss compensation benefits and that OWCP had been informed that she also was receiving or was entitled to receive benefits paid by the Office of Personnel Management (OPM). It further advised her that benefits paid by OPM and benefits for wage loss paid by OWCP are not payable for the same period and that employees entitled to both OWCP and OPM benefits must elect which benefit to receive.

On January 19, 2023 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review.

On March 6, 2023 appellant completed an election of benefits form (Form CA-1105) advising that she elected to receive OPM retirement benefits in lieu of FECA compensation benefits effective November 1, 2022.

Appellant submitted multiple responses to the Form OWCP-20.³ With regard to the OWCP-20 form dated June 27, 2023, appellant listed a total monthly income of \$3,958.16, consisting of \$1,302.00 in SSA benefits and \$2,656.16 in OPM benefits. Appellant listed total monthly expenses of \$6,921.46, consisting of \$1,858.44 for rent, \$300.00 for food, "as needed" for clothing, \$398.00 for utilities, \$1,390.02 for miscellaneous expenses, and multiple credit card accounts with monthly payments totaling \$2,975.00. Additionally, she listed assets of \$531.78.

A prerecoupment hearing was held before a representative of OWCP's Branch of Hearings and Review on July 11, 2023.

By decision dated September 27, 2023, OWCP's hearing representative finalized the January 5, 2023 preliminary overpayment determination. With regard to the overpayment, the hearing representative determined that OWCP correctly determined that appellant received an overpayment of \$8,316.20 for the period February 1 through September 10, 2022, because appellant concurrently received both FECA benefits and SSA retirement benefits without an appropriate offset during that period. With regard to appellant's waiver request, the hearing representative determined that appellant failed to establish that she was entitled to a waiver because "her monthly income and expenses remain unknown." OWCP's hearing representative explained that appellant submitted multiple conflicting responses to Form OWCP-20 and failed to provide

³ On January 14, 2023 appellant indicated that she received monthly income of \$1,302.00 in SSA benefits. In her January 26, 2023 response, appellant indicated that she also received OWCP monthly benefits of \$2,405.35. She listed OPM retirement benefits of \$2,658.16 on the June 27, 2023 form based on her June 27, 2023 response, with a total monthly income of \$3,958.16, consisting of \$1,302.00 in SSA benefits and \$2,656.16 in OPM benefits.

supporting documentation. She concluded that the overpayment in the amount of \$8,316.20 was due and payable in full.

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.⁴ 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.⁵

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA benefits that are attributable to federal service of the employee.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,316.20, for the period February 1 through September 10, 2022, for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits, without an appropriate offset.

In its September 27, 2023 decision, OWCP found that an overpayment of compensation was created for the period February 1 through September 10, 2022. The overpayment was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant. A claimant cannot receive both FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁸ The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service. The overpayment was based on the evidence received from SSA with respect to age-related benefits paid to appellant beginning February 2022. Thus, the Board finds that fact of overpayment has been established.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see E.G.*, Docket No. 22-0574 (issued September 28, 2023); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁷ FECA Bulletin No. 97-09 (issued February 3, 1997).

⁸ 5 U.S.C. § 8116(d)(2); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. The SSA provided the SSA rate with FERS, and without FERS, beginning February 2022. Based on the SSA worksheet, OWCP provided its calculations for the period February 1 through September 10, 2022. OWCP noted that the SSA rate with FERS was \$1,198.40 and the SSA rate without FERS was \$62.10, resulting in a monthly FERS offset of \$1,136.30, a 28-day FERS offset of \$1,048.89, and a daily FERS offset of \$37.4604. The daily FERS offset of \$37.4604 times the 222 days within the period February 1 through September 10, 2022, resulted in an overpayment of \$8,316.20.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period February 1 through September 10, 2022, and finds that an overpayment of compensation in the amount of \$8,316.20 was created.

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 recovery would defeat the purpose of FECA or would be against equity and good conscience. The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.⁹

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 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.¹⁰ 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.¹¹

OWCP's regulations provide 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. The information is also used to determine the repayment schedule, if necessary.¹² Failure to submit the requested information

⁹ A.C., Docket No. 18-1550 (issued February 21, 2019); see *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁰ 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).

¹¹ *Id.* at § 10.437(a)(b).

¹² *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹³

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.¹⁴

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 she did not provide sufficient supporting financial information. In its preliminary overpayment determination, OWCP explained the importance of providing the completed Form OWCP-20 overpayment questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income, expenses, and assets. Appellant, however, did not provide sufficient financial documentation to support her claimed expenses. As she did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.¹⁵

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,316.20, during the period February 1 through September 10, 2022, for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits, without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

¹³ *Id.* at § 10.438(b).

¹⁴ *Id.* at § 10.436.

¹⁵ *D.C.*, Docket No. 19-0118 (issued January 15, 2020); *see S.B.*, Docket No. 16-1795 (issued March 2, 2017).

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 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