

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$18,910.79, for the period December 1, 2013 through June 15, 2024, 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 November 12, 1999 appellant, then a 48-year-old manual distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she injured her upper extremities due to factors of her federal employment, including repetitive motion, lifting, and hauling heavy trays of mail. OWCP accepted the claim for bilateral carpal tunnel syndrome, permanent aggravation of left de Quervain's disease, bilateral rotator cuff tendinitis secondary to chronic impingement, bilateral wrist tendinitis, bilateral epicondylitis, and right first carpometacarpal osteoarthritis. It paid appellant wage-loss compensation, effective December 13, 1999.⁴

On December 6, 2019 OWCP requested information from SSA regarding potential FERS/SSA dual benefits.

OWCP thereafter received completed FERS/SSA dual benefits forms from SSA dated January 16, August 3, and September 22, 2020, with conflicting information regarding appellant's SSA age-related retirement benefit rates. The September 22, 2020 form indicated that OWCP should disregard prior SSA age-related retirement rate determinations, as they were not adjusted for Medicare premiums.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the January 29, 2025 decision, OWCP received additional evidence. However, 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.*

⁴ On January 22, 2014, 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 May 13, 2014. Based upon the information contained therein, in a preliminary overpayment determination dated July 1, 2014, OWCP advised appellant that her FECA wage-loss compensation benefits were offset by her SSA age-related retirement benefits, every 28 days, in the amount of \$55.35, effective June 1, 2014. It also notified her that she had received an overpayment of compensation in the amount of \$360.00 because it had failed to reduce her wage-loss compensation for the period December 1, 2013 through May 31, 2014 by the portion of her SSA age-related retirement benefits attributable to her federal service. Appellant repaid \$360.00 to OWCP on July 15, 2014.

On October 23, 2020 OWCP prepared a FERS offset overpayment calculation worksheet wherein it computed a total overpayment amount of \$15,539.18 for the period December 1, 2013 through October 10, 2020 based upon the information provided by SSA on September 22, 2020.

In a letter dated October 28, 2020, OWCP advised appellant that it would be adjusting her ongoing wage-loss compensation, effective October 11, 2020, to \$1,584.65 per 28-day pay period to include the offset of her SSA age-related retirement benefits attributable to her federal service. No adjustment was made.

In a January 25, 2021 preliminary overpayment determination, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$15,539.18 because it had failed to reduce her wage-loss compensation payments for the period December 1, 2013 through October 10, 2020 by the portion of her SSA age-related retirement benefits attributable to her federal service. It provided a FERS offset overpayment calculation worksheet, in which it used the information provided by SSA on September 22, 2020 to calculate the 28-day FERS offset for the relevant periods. OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment and requested that she complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records to support income and expenses. Additionally, it notified her that she could request a final decision based on the written evidence or a prerecoupment hearing within 30 days.

On February 11, 2021 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She also submitted a completed Form OWCP-20.

Following a preliminary review, by decision dated April 23, 2021, OWCP's hearing representative set aside the January 25, 2021 preliminary overpayment determination and remanded the case for further development, noting that in its calculations, OWCP neglected to acknowledge that appellant's benefits had already been reduced for a FERS offset beginning June 1, 2014 and continuing, and that it had not adjusted appellant's ongoing compensation, effective October 11, 2020.

Subsequent preliminary overpayment determinations dated May 11, 2021, and August 16, 2021 were vacated and remanded by OWCP hearing representatives by decisions dated July 29 and October 22, 2021, respectively.

On July 21, 2022 OWCP requested information from SSA regarding FERS/SSA dual benefits. Between August 14, 2022 and October 5, 2023, OWCP received additional conflicting information regarding appellant's SSA age-related retirement benefit rates.

On May 8, 2024 OWCP requested clarification from SSA as to the discrepancies in the dual benefits information.

On June 7, 2024 OWCP received a completed FERS/SSA dual benefits form from SSA. SSA indicated that OWCP should disregard all prior rate determinations which contained clerical errors. The form reported appellant's SSA age-related retirement benefit rates with and without FERS, as of December 2013. Beginning December 2013, the SSA rate with FERS was \$906.40

and without FERS was \$769.70. Beginning December 2014, the SSA rate with FERS was \$921.80 and without FERS was \$782.80. Beginning December 2016, the SSA rate with FERS was \$924.50 and without FERS was \$785.10. Beginning December 2017, the SSA rate with FERS was \$943.00 and without FERS was \$800.80. Beginning December 2018, the SSA rate with FERS was \$969.40 and without FERS was \$823.20. Beginning December 2019, the SSA rate with FERS was \$984.80 and without FERS was \$836.30. Beginning December 2020, the SSA rate with FERS was \$997.60 and without FERS was \$847.20. Beginning December 2021, the SSA rate with FERS was \$1,056.40 and without FERS was \$897.10. Beginning December 2022, the SSA rate with FERS was \$1,148.20 and without FERS was \$975.10. Beginning December 2023, the SSA rate with FERS was \$1,006.20.

In a July 23, 2024 FERS offset overpayment calculation worksheet, OWCP computed a total overpayment amount of \$18,910.79 for the period December 1, 2013 through June 15, 2024. It determined that for the period December 1, 2013 through November 30, 2014, appellant received an overpayment in the amount of \$1,644.85; for the period December 1, 2014 through November 30, 2015, she received an overpayment in the amount of \$1,672.61; for the period December 1, 2015 through November 30, 2016, she received an overpayment in the amount of \$1,677.20; for the period December 1, 2016 through November 30, 2017, she received an overpayment in the amount of \$1,677.44; for the period December 1, 2017 through November 30, 2018, she received an overpayment in the amount of \$1,711.07; for the period December 1, 2018 through November 30, 2019, she received an overpayment in the amount of \$1,759.17; for the period December 1, 2019 through November 30, 2020, she received an overpayment in the amount of \$1,791.83; for the period December 1, 2020 through November 30, 2021, she received an overpayment in the amount of \$1,809.75; for the period December 1, 2021 through November 30, 2022, she received an overpayment in the amount of \$1,916.90; for the period of December 1, 2022 through November 30, 2023, she received an overpayment in the amount of \$2,082.85; and from December 1, 2023 through June 15, 2024, she received an overpayment in the amount of \$1,167.14.

In a July 29, 2024 preliminary overpayment determination, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$18,910.79 because it had failed to reduce her wage-loss compensation payments for the period December 1, 2013 through June 15, 2024 by the portion of her SSA age-related retirement benefits attributable to her federal service. It advised appellant of its preliminary determination that she was without fault in the creation of the overpayment and requested that she complete an overpayment action request form and an updated Form OWCP-20, and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records to support income and expenses. Additionally, OWCP notified her that she could request a final decision based on the written evidence or a prerecoupment hearing within 30 days.

On August 12, 2024 appellant, through counsel, requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was held on November 14, 2024. OWCP's hearing representative advised appellant of the necessity of providing an updated Form OWCP-20 and financial documents to support her request for waiver of recovery of the overpayment. No further evidence was received.

By decision dated January 29, 2025, OWCP's hearing representative finalized the July 29, 2024 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$18,910.79 for the period December 1, 2013 through June 15, 2024 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without appropriate offset. The hearing representative found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, noting that she had not submitted a completed OWCP-20 form or provided any financial documentation. The hearing representative required appellant to repay the overpayment in full.

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 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.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$18,910.79 for the period December 1, 2013 through June 15, 2024, for which she was without fault, because she concurrently received FECA wage-loss compensation payments and SSA age-related retirement benefits, without an appropriate offset.⁹

The evidence of record indicates that, while appellant was receiving wage-loss compensation benefits under FECA, she was also receiving SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period without an appropriate offset.¹⁰ The information provided by SSA

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8116.

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

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

⁹ *V.G.*, Docket No. 20-1520 (issued September 21, 2021); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

¹⁰ *Id.*

established that appellant received SSA age-related retirement benefits that were attributable to her federal service during the period December 1, 2013 through June 15, 2024. No appropriate offset was made. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA's benefits that were attributable to federal service must be calculated. The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period December 1, 2013 through June 15, 2024, and finds that an overpayment of compensation in the amount of \$18,910.79 was created.¹¹

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.¹² 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.¹³

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.¹⁴ 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.¹⁵

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.¹⁶

¹¹ See *V.G., id.; R.F.*, Docket No. 20-0159 (issued October 15, 2020); see *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹² 5 U.S.C. § 8129(a)-(b).

¹³ *Supra* note 6 at § 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).

¹⁴ *Id.* at § 10.437(a)(b).

¹⁵ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁶ 5 U.S.C. § 8129.

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹⁷ In order to establish that recovery of the overpayment would defeat the purpose of FECA, appellant must show that she requires substantially all of her income to meet current ordinary and necessary living expenses, or that her assets do not exceed the established limit as determined by OWCP procedures.¹⁸

In its July 29, 2024 preliminary overpayment determination, OWCP explained the importance of providing an updated Form OWCP-20 and supporting financial documentation. Appellant, however, did not respond. The evidence of record is, therefore, insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁹

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.²⁰

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$18,910.79 for the period December 1, 2013 through June 15, 2024, 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.

¹⁷ *Id.*

¹⁸ *Supra* note 6 at § 10.436.

¹⁹ *Id.* at § 10.438.

²⁰ *See K.P.*, Docket No. 25-0040 (issued December 5, 2024); *E.T.*, Docket No. 22-0234 (issued August 17, 2022); *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2025
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