

² The Board notes that, following the February 5, 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.*

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 OWCP properly required recovery of the overpayment by deducting \$117.40 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On August 24, 2023 appellant, then a 69-year-old maintenance mechanic, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome, arthritis, radiculopathy, shoulder and knee tears, cervical stenosis, bilateral shoulder bursitis, bilateral elbow strain, bilateral cubital tunnel syndrome, bilateral knee derangement, iliotibial band syndrome, and bilateral tenosynovitis of the wrists causally related to factors of her federal employment for 25 years. She stopped work on June 28, 2023. OWCP accepted the claim for bilateral shoulder bursitis; strains of unspecified muscle, fascia, and tendon at the shoulder and upper arm level bilaterally; right and left medial meniscus tears; bilateral synovitis and tenosynovitis of the hands; and a strain of the muscle, fascia, and tendon at the neck level. It subsequently expanded its acceptance of the claim to include cervical disc disorder with radiculopathy; cervical radiculopathy; an incomplete rotator cuff tear or rupture of the left shoulder, not specified as traumatic; an unspecified sprain of the bilateral elbows; infective tenosynovitis of the bilateral wrists; and internal derangement of the bilateral knees. OWCP paid appellant wage-loss compensation on the supplemental rolls effective July 21, 2023, and on the periodic rolls effective November 5, 2023.

A claim for compensation (Form CA-7) indicated that appellant was covered under the Federal Employees Retirement System (FERS).

On August 26, 2024 OWCP sent a FERS/SSA dual benefits form to SSA for completion. In a response dated September 5, 2024, SSA provided appellant's SSA age-related retirement benefit rates with and without Federal Service from May 2020 through December 2023. For the period relevant to the overpayment, it provided that her rate effective January 2023 with Federal Service was \$1,867.00 and without Federal Service was \$1,042.10; and her rate effective December 2023 with Federal Service was \$1,926.70 and without Federal Service was \$1,075.40.

In a notice dated November 7, 2024, OWCP advised appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$11,531.22 for the period July 21, 2023 through September 7, 2024 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It explained its calculation of the amount that it should have offset from her compensation for each period from July 21, 2023 through September 7, 2024. OWCP found that appellant had received an overpayment of \$3,616.89 for the period July 21 through November 30, 2023, and an overpayment of \$7,914.33 for the period December 1, 2023 through September 7, 2024, for a total overpayment of \$11,531.22. 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) 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.

In an overpayment action request form dated November 18, 2024, appellant requested a decision based on the written evidence. She disagreed with the amount of the overpayment, noting that, while she could not pay the full amount, she would consent to a payment plan. No further evidence was received.

By decision dated February 5, 2025, OWCP finalized the November 7, 2024 preliminary overpayment determination. It found that appellant had received an overpayment of compensation in the amount of \$11,531.22 for the period July 21, 2023 through September 7, 2024, for which she was without fault, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. OWCP noted that she had not submitted the requested financial information in response to the preliminary overpayment determination and thus had not established that the overpayment should be waived. It required recovery of the overpayment by deducting \$117.40 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.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 OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related benefits that are attributable to the employee's Federal Service.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation in the amount of \$11,531.22 for the period July 21, 2023 through September 7, 2024, for which she was without fault, because she concurrently received FECA

³ 5 U.S.C. § 8102.

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see 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).

wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset.

OWCP paid appellant wage-loss compensation on the supplemental rolls beginning July 21, 2023, and on the periodic rolls beginning November 5, 2023. The case record establishes that she concurrently received SSA age-related retirement benefits beginning May 2020, without an appropriate offset. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service.⁷ The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to her federal service. Accordingly, the Board finds that fact of overpayment has been established.⁸

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 appellant's SSA age-related retirement benefit rates with Federal Service and without Federal Service "January through December 2023. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$11,531.22. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$11,531.22 for the period July 21, 2023 through September 7, 2024.⁹

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.¹⁰ 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.¹¹

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

⁷ *Supra* note 4; *see F.K.*, Docket No. 20-1609 (issued June 24, 2021); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁸ *See L.K.*, Docket No. 20-1574 (issued June 23, 2021); *S.H.*, Docket No. 20-1157 (issued December 23, 2020).

⁹ *See H.S.*, Docket No. 22-1040 (issued May 12, 2023); *J.S.*, Docket No. 22-0369 (issued June 7, 2022); *N.B.*, Docket No. 20-0727 (issued January 26, 2021); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

¹⁰ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see M.C.*, Docket No. 19-0699 (issued February 12, 2020).

¹¹ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

not exceed a specified amount as determined by OWCP.¹² 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.¹³ To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained, and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.¹⁴

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 recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience.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 Appellant, however, has the responsibility to provide the appropriate financial information and documentation to OWCP.¹⁷

In its November 7, 2024 preliminary overpayment determination, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. Appellant, however, did not complete the OWCP-20 form or otherwise provide the requested financial information regarding her income, expenses, and assets.¹⁸ As a result, OWCP did not have the necessary information to determine if

¹² 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).

¹³ *Id.* at § 10.437(a)(b).

¹⁴ *Id.* at § 10.437(b)(1); *see also C.H.*, Docket No. 16-0968 (issued August 8, 2016).

¹⁵ *Id.* at § 10.438(b).

¹⁶ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

¹⁷ 20 C.F.R. § 10.438; *P.D.*, Docket No. 24-0923 (issued October 15, 2024); *V.B.*, Docket No. 20-0976 (issued January 26, 2021).

¹⁸ *See P.D., id.; D.P.*, Docket No. 21-0187 (issued August 12, 2024); *R.M.*, Docket No. 19-1570 (issued June 1, 2020).

recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.¹⁹ The Board thus finds that OWCP properly denied waiver of recovery of the overpayment.

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.²⁰

Section 10.441 of OWCP's regulations²¹ provides 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 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.²²

When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²³ The Federal (FECA) Procedure 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.²⁴

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$117.40 from appellant's continuing compensation payments every 28 days.

Appellant did not provide a completed Form OWCP-20 or otherwise provide the requested financial information. As noted, OWCP's regulations provide that the overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²⁵ OWCP determined that it would recover the overpayment by deducting \$117.40 every 28 days from appellant's continuing compensation. When an individual fails to provide requested financial information, it should follow minimum collection guidelines designed to collect the debt promptly

¹⁹ *P.D., id.; E.M.*, Docket No. 19-0857 (issued December 31, 2019).

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

²¹ *Id.* at § 10.441(a).

²² *Id.*; *see L.G.*, Docket No. 19-1274 (issued July 10, 2020).

²³ *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

²⁴ *See* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.8c(1) (September 2018); *D.H.*, Docket No. 20-1064 (issued December 14, 2020).

²⁵ *Id.* at § 10.438; *see also A.F.*, Docket No. 19-0054 (issued June 12, 2019).

and in full.²⁶ The Federal (FECA) Procedure 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.²⁷

The Board, therefore, finds that OWCP properly required recovery of the overpayment by deducting \$117.40 from appellant's continuing compensation payments, every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation in the amount of \$11,531.22 for the period July 21, 2023 through September 7, 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 and properly required recovery of the overpayment by deducting \$117.40 from appellant's continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2025
Washington, DC

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

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

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

²⁶ See A.S., Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

²⁷ *Supra* note 24.