

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

_____)
S.P., Appellant)

and)

**U.S. POSTAL SERVICE, KILMER SORTING &)
DELIVERY CENTER, Edison, NJ, Employer**)
_____)

**Docket No. 25-0374
Issued: April 9, 2025**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 7, 2025 appellant filed a timely appeal from a December 26, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$17,186.79 for the period March 5 through October 5, 2024, for which she was without fault, because she concurrently received FECA wage-

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 26, 2024 decision, appellant submitted additional evidence to OWCP. 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.*

loss compensation benefits 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 \$358.09 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On December 14, 2023 appellant, then a 67-year-old maintenance mechanic, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment, including pulling belts, using hand tools, and cleaning/sorting machines. She noted that she first became aware of her condition on September 1, 2023, and realized its relationship to her federal employment on November 29, 2023. Appellant stopped work on December 9, 2023. The case record indicates that her retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for bilateral carpal tunnel syndrome. It paid appellant wage-loss compensation on the supplemental rolls, effective March 5, 2024, and on the periodic rolls, effective May 19, 2024.

On April 23, 2024 OWCP requested information from SSA regarding appellant's potential receipt of FERS/SSA dual benefits.

On May 2, 2024, OWCP received a completed FERS/SSA dual benefits form wherein SSA advised that appellant received SSA disability benefits effective December 1, 2022. SSA reported appellant's SSA age-related retirement benefit rates with and without federal service beginning December 2022. Beginning December 2022, the SSA rate with federal service was \$2,970.40 and without federal service was \$672.70. Beginning January 2023, the SSA rate with federal service was \$2,999.50 and without federal service was \$672.70. Beginning December 2023, the SSA rate with federal service was \$3,095.40, and without federal service was \$694.20. Beginning January 2024, the SSA rate with federal service was \$3,119.00, and without federal service was \$694.20.

In a preliminary overpayment determination dated October 23, 2024, OWCP notified appellant that she received an overpayment of compensation in the amount of \$17,186.79, for the period March 5 through October 5, 2024, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset. It advised her of its preliminary determination that she was without fault in the creation of the overpayment. OWCP requested that appellant 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 that support income and expenses. Additionally, it further notified her that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a precoupment hearing. No response was received.

By decision dated December 26, 2024, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$17,186.79 for the period March 5 through October 5, 2024, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It further found that she was without fault in the creation of the overpayment, but denied

waiver of recovery of the overpayment. OWCP required recovery of the overpayment by deducting \$358.09 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 retirement 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 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$17,186.79, for the period March 5 through October 5, 2024, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset.

OWCP paid appellant FECA wage-loss compensation on the supplemental rolls, effective March 5, 2024. It paid appellant SSA age-related retirement benefits beginning December 1, 2022. As noted, a claimant cannot concurrently receive FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period, without an appropriate offset.⁷ Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.⁸

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 information from SSA with respect to appellant's specific SSA age-related retirement benefits that were

³ 5 U.S.C. § 8102(a).

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).

⁷ 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.

⁸ *Id.*

attributable to federal service. SSA provided appellant's SSA age-related retirement benefit rates with federal service and without federal service for the period beginning December 2022. OWCP provided its calculations based on the information provided by SSA and determined that appellant received an of compensation in the amount of \$17,186.79.

The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period March 5 through October 5, 2024, and finds that an overpayment of compensation in the amount of \$17,186.79 was created.

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.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 An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹¹

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.¹²

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

⁹ 5 U.S.C. § 8129.

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 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).

¹² 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.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 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.¹⁴ However, appellant had the responsibility to provide financial information and documentation to OWCP, but failed to do so.¹⁵

In its preliminary overpayment determination, dated October 23, 2024, OWCP requested that appellant provide a completed Form OWCP-20, along with supporting financial documentation including copies of income tax returns, bank account statements, bills, cancelled checks, pay slips, and other records to support her reported income and expenses. Appellant did not provide the requested Form OWCP-20 or submit any 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.¹⁶

Accordingly, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment compensation.¹⁷

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

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

¹⁴ *Id.* at § 10.436.

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

¹⁶ *See T.H.*, Docket No. 23-0194 (issued July 17, 2023); *P.G.*, Docket No. 22-1073 (issued December 28, 2022); *see also S.M.*, Docket No. 17-1802 (issued August 20, 2018).

¹⁷ *T.H.*, *id.*; *A.S.*, Docket No. 22-0281 (issued September 26, 2022); *see also J.A.*, Docket No. 19-1946 (issued July 13, 2020).

compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.¹⁸

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$358.09 from appellant's continuing compensation payments every 28 days.

Appellant did not complete the Form OWCP-20 or otherwise provide the necessary financial information to support her income and expenses prior to the final December 26, 2024 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁹ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁰ As appellant did not submit the required financial information as requested, the Board finds that OWCP properly required recovery of the \$17,186.79 overpayment at the rate of \$358.09 from appellant's continuing compensation payments every 28 days.²¹

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$17,186.79, for the period March 5 through October 5, 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 \$358.09 from her continuing compensation payments every 28 days.

¹⁸ 20 C.F.R. § 10.441(a); A.S., Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

¹⁹ *Id.* at § 10.436.

²⁰ *See* A.S., Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.4003 (September 2018).

²¹ *See 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 December 26, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 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