

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

G.G., Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY MIAMI POST OFFICE, Miami, FL,
Employer**

**Docket No. 25-0617
Issued: August 19, 2025**

Appearances:

*Wayne Johnson, Esq., for the appellant¹
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 15, 2025 appellant, through counsel, filed a timely appeal from a December 17, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the 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.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,114.65, for the period July 1, 2021 through April 22, 2022, for which she was without fault, because she concurrently received FECA wage-

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 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.

² 5 U.S.C. § 8101 *et seq.*

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 April 29, 2021 appellant, then a 72-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 13, 2021 she sustained a right shoulder injury when lifting packages while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that appellant's retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for tear of right rotator cuff, unspecified tear extent. It subsequently expanded its acceptance of the claim to include strain of unspecified muscle, fascia, and tendon at shoulder and upper arm level, right arm, and strain of muscles/tendons of the rotator cuff of the right shoulder. It paid appellant wage-loss compensation on the supplemental rolls, effective July 1, 2021.

On September 14, 2021, OWCP provided SSA with a FERS/SSA dual benefits form, requesting that it report appellant's SSA age-related retirement benefit rates with and without FERS.

On October 30, 2021, SSA returned the completed dual benefits form, which reported SSA age-related retirement benefit rates with FERS and without FERS from March 2015 through January 2021. Beginning January 2021, the SSA rate with FERS was \$2,068.90 and without federal service was \$967.80.

On November 10, 2021, OWCP prepared a FERS offset overpayment calculation worksheet wherein it explained the calculation of appellant's SSA/FERS offset overpayment for the period July 1 through October 8, 2021 in the total amount of \$3,627.04. It determined that for the period July 1 through August 27, 2021, appellant received an overpayment of compensation in the amount of \$2,103.68; and for the period August 28 through October 8, 2021, she received an overpayment in the amount of \$1,523.36.

In a November 10, 2021 preliminary overpayment determination, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$3,627.04 for the period July 1 through October 8, 2021, because she received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset. It further made a preliminary determination that appellant was without fault in the creation of the overpayment. OWCP requested that she complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income and expenses. Additionally, it 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.

On December 6, 2021, appellant, through then-counsel, requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was held on March 22, 2022.³ Appellant subsequently submitted a completed Form OWCP-20 dated April 14, 2022, along with supporting financial documentation.

By decision dated June 6, 2022, OWCP's hearing representative vacated the November 10, 2021 preliminary overpayment determination and remanded the case for further development, noting that in its calculations, OWCP neglected to deduct the required SSA/FERS offset for the entire period of appellant's wage-loss compensation from July 1, 2021 through April 22, 2022.

OWCP subsequently provided SSA with another dual benefits form for its completion. On May 3, 2023, SSA returned the completed form, which reported appellant's SSA age-related retirement benefit rates with and without federal service from March 2015 through December 2022. Beginning January 2021, the SSA rate with federal service was \$2,068.90 and without federal service was \$967.80. Beginning December 2021, the SSA rate with federal service was \$2,190.90 and without federal service was \$1,024.90. Beginning January 2022, the SSA rate with federal service was \$2,208.20 and without federal service was \$1,024.90. Beginning December 2022, the SSA rate with federal service was \$2,400.30 and without federal service was \$1,114.00.

In letters dated May 1 and July 30, 2024, OWCP requested appellant submit financial documentation to support her claimed income, expenses, and assets to support the request for waiver of the overpayment.

On August 2 and 27, 2024, appellant submitted her reported income, expenses, and assets as well as supporting financial documentation.

On September 18, 2024, OWCP prepared an overpayment calculation worksheet wherein it explained the calculation of appellant's overpayment for the period July 1, 2021 through April 22, 2022 in the amount of \$11,114.65. It determined that for the period July 1 through November 30, 2021, appellant received an overpayment in the amount of \$5,553.90; for the period December 1 through 31, 2021, she received an overpayment in the amount of \$1,191.63; and for the period January 1 through April 22, 2022, she received an overpayment in the amount of \$4,369.12.

In a September 18, 2024 preliminary overpayment determination, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$11,114.65 for the period July 1, 2021 through April 22, 2022, because she received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. It further made a preliminary determination that appellant was without fault in the creation of the overpayment. OWCP requested that she complete an enclosed overpayment recovery questionnaire and updated Form OWCP-20 and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income and expenses. Additionally, it 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.

On October 29, 2024, OWCP received an overpayment action request form, signed on October 25, 2024, in which appellant requested a prerecoupment hearing before a representative

³ The record reflects that appellant returned to full-time modified-duty work with restrictions on April 23, 2022.

of OWCP's Branch of Hearings and Review. Appellant requested waiver of recovery of the overpayment and submitted a completed Form OWCP-20 dated October 25, 2024 wherein she reported monthly income of \$7,407.00, monthly expenses of \$5,676.50, and assets of \$30.00. Appellant also reported owning property in Stuart, Florida with a mortgage balance of \$122,413.86.

By decision dated November 13, 2024, OWCP's Branch of Hearings and Review denied appellant's request for a prerecoupment hearing, as it was not made within 30 days of the September 18, 2024 preliminary overpayment determination and was therefore untimely filed.

By decision dated December 17, 2024, OWCP finalized the September 18, 2024 preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$11,114.65 for the period July 1, 2021 through April 22, 2022 as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation 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.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) 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 his or her federal employment.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 OWCP to reduce the amount of compensation by the amount of any SSA age-related retirement 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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,114.65, for the period July 1, 2021 through April 22, 2022, 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 evidence of record establishes that appellant received wage-loss compensation under FECA, and SSA age-related retirement benefits based on her federal service for the same period. However, no appropriate offset was made. A claimant cannot receive both compensation for wage-

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d).

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

loss and SSA age-related retirement benefits attributable to federal service for the same period.⁸ Consequently, fact of overpayment has been established.⁹

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. SSA provided appellant's age-related retirement benefit rates with and without federal service for the period July 1, 2021 through April 22, 2022. OWCP provided its overpayment calculations for the relevant period based on SSA's dual benefits form and determined that appellant received an overpayment of compensation in the amount of \$11,114.65.

The Board has reviewed OWCP's calculations for the period July 1, 2021 through April 22, 2022, and finds that it properly determined that an overpayment of compensation in the amount of \$11,114.65 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.¹⁰ Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹¹

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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.¹² An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹³ Also, assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.¹⁴ An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.¹⁵ Non liquid assets include, but

⁸ See *E.M.*, Docket No. 21-1231 (issued April 19, 2023); *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

⁹ *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

¹⁰ 5 U.S.C. § 8129(a)-(b).

¹¹ *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019); *L.S.*, 59 ECAB 350 (2008).

¹² 20 C.F.R. § 10.436(a)(b).

¹³ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

¹⁴ *Id.* at Chapter 6.400.4a(2).

¹⁵ *Id.* at Chapter 6.400.4b(3).

are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.¹⁶

Section 10.437 of OWCP's implementing regulations provides that 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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁷ OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.¹⁸

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.¹⁹

Appellant reported total monthly income of \$7,047.00 and total monthly expenses of \$5,676.50. Based on the information of record, appellant's monthly income exceeds her monthly expenses by approximately \$1,370.50. An individual is deemed to need substantially all of her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.²⁰ Therefore, recovery of the overpayment would not defeat the purpose of FECA.

Additionally, the evidence does not demonstrate that recovery of the overpayment would be against equity and good conscience. The record does not support that appellant would experience severe financial hardship in attempting to repay the debt.²¹ Moreover, appellant has not presented evidence that she relinquished a valuable right or changed her position for the worse in reliance on the overpayment.²²

¹⁶ *Id.* at Chapter 6.400.4b(3)(a), (b).

¹⁷ 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁸ *Supra* note 13 at Chapter 6.400.4c(3).

¹⁹ *See B.G.*, Docket No. 20-0541 (issued April 28, 2021); *R.H.*, Docket No. 15-0392 (issued February 3, 2016).

²⁰ 20 C.F.R. § 10.436(a); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) (September 2020).

²¹ *See supra* note 14; *see also D.D.*, Docket No. 12-675 (issued October 9, 2012); *Jan K. Fitzgerald*, 51 ECAB 659 (2000).

²² 20 C.F.R. § 10.437(b).

As the evidence fails to support that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP did not abuse its discretion by denying waiver of recovery of the overpayment.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$11,114.65 for the period July 1, 2021 through April 22, 2022, for which she was without fault, as 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.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 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