

<sup>1</sup> Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.2(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of her request for oral argument appellant contended that OWCP improperly denied waiver of recovery of the overpayment. The Board in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$51,896.44, for the period October 1, 2022 through November 2, 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; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$121.31 from appellant's continuing compensation payments, every 28 days.

### **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<sup>4</sup> The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 12, 2006 appellant, then a 50-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on October 5, 2006 she injured her lower back when pushing a wire container full of bundled magazines while in the performance of duty. She stopped work on October 12, 2006. OWCP accepted the claim for lumbar radiculopathy. It paid appellant wage-loss compensation on the supplemental rolls commencing November 26, 2006, and on the periodic rolls commencing September 30, 2007.

The case record indicates that appellant's retirement coverage is under the Federal Employees Retirement System (FERS).

On October 15, 2024 OWCP provided SSA with a dual benefits form, requesting that it report appellant's SSA age-related retirement benefit rates with and without federal service.

On October 18, 2024 SSA returned the completed form, which reported appellant's SSA age-related retirement benefit rates with and without federal service. Beginning October 2022, the SSA rate with federal service was \$2,000.40 and without federal service was \$119.50. Beginning December 2022, the SSA rate with federal service was \$2,174.40 and without federal service was

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the July 7, 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.*

<sup>4</sup> Docket No. 25-0501 (issued June 2, 2025).

\$129.80. Beginning December 2023, the SSA rate with federal service was \$2,243.90 and without federal service was \$133.90.

In a letter dated November 12, 2024, OWCP advised appellant that, effective November 3, 2024, her FECA wage-loss compensation would be offset by her SSA age-related retirement benefits every 28 days, in the amount of \$1,947.46. Appellant's new net wage-loss compensation payments every 28 days would be \$853.46.

On January 13, 2025 OWCP advised appellant of its preliminary overpayment determination that she had received an overpayment of compensation in the amount of \$51,896.44 for the period October 1, 2022 through November 2, 2024 because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It determined that for the period October 1 through November 30, 2022, appellant received an overpayment in the amount of \$3,782.48; for the period December 1, 2022 through November 30, 2023, she received an overpayment in the amount of \$24,602.56; and for the period December 1, 2023 through November 2, 2024, she received an overpayment in the amount of \$23,511.40. OWCP also made a preliminary determination that appellant 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, to determine a reasonable recovery method, and advised her that she could request waiver of recovery of the overpayment. Additionally, OWCP provided an overpayment action request form and 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 prerecoument hearing.

In an overpayment action request form postmarked February 13, 2025, appellant requested a prerecoument hearing before a representative of OWCP's Branch of Hearings and Review. OWCP also received a completed Form OWCP-20 wherein appellant reported no monthly income, total monthly expenses of up to \$2,860.00, and total assets of \$50.00.

By decision dated February 24, 2025, OWCP's Branch of Hearings and Review denied appellant's prerecoument hearing request, finding that it was not made within 30 days of the January 13, 2025 preliminary overpayment determination and was, therefore, untimely filed.

Appellant appealed to the Board. By decision dated June 2, 2025,<sup>5</sup> the Board affirmed OWCP's February 24, 2025 nonmerit decision.

While her appeal was pending before the Board, OWCP received supporting financial documentation, including appellant's life and automobile insurance policy premiums, loan repayment statements, telephone bill, utility bills, a credit card statement, bank account statements, and a rent receipt.

By decision dated July 7, 2025, OWCP finalized the January 13, 2025 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$51,896.44 for the period October 1, 2022 through November 2, 2024 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation,

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<sup>5</sup> *Id.*

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, noting that “no financial documentation was submitted.” OWCP required recovery of the overpayment by deducting \$121.31 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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$51,896.44, for the period October 1, 2022 through November 2, 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.

The evidence of record indicates that, while appellant was receiving FECA wage-loss compensation, she was also receiving SSA age-related retirement benefits that were attributable to her federal service, without appropriate offset. As noted, a claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>10</sup> The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to her federal service commencing October 1, 2022. No appropriate offset was made to her FECA wage-loss compensation. Thus, the record establishes that he received an overpayment of FECA wage-loss compensation.

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<sup>6</sup> 5 U.S.C. § 8102(a).

<sup>7</sup> *Id.* at § 8116.

<sup>8</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>9</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>10</sup> *Supra* note 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. SSA provided appellant's age-related retirement benefit rates with federal service and without federal service for the period October 1, 2022 through November 2, 2024. OWCP then calculated the overpayments for each relevant period based on the information provided by SSA and determined that she received an overpayment of compensation totaling \$51,896.44.

The Board has reviewed OWCP's calculations for the period October 1, 2022 through November 2, 2024 and finds that appellant received an overpayment of compensation in the amount of \$51,896.44.

### **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.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat,

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<sup>11</sup> 5 U.S.C. § 8129(a)-(b).

<sup>12</sup> *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).

<sup>13</sup> 20 C.F.R. § 10.436(a)(b).

<sup>14</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

<sup>15</sup> *Id.* at Chapter 6.400.4a(2).

<sup>16</sup> *Id.* at Chapter 6.400.4b(3).

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.<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that this case is not in posture for decision regarding 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 would be against equity and good conscience.<sup>20</sup>

In its July 7, 2025 final overpayment determination, OWCP denied waiver of recovery of the overpayment, noting that "no financial documentation was submitted." In the case of *William A. Couch*,<sup>21</sup> the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. While OWCP is not required to list every piece of evidence submitted, the Board notes that the financial documentation received on April 24, 2025 was not considered and addressed by OWCP in the July 7, 2025 final overpayment decision. It is crucial that OWCP consider and address all evidence received prior to the issuance of its final decision, as Board decisions are final regarding the subject matter appealed.<sup>22</sup>

The Board, therefore, finds that this case is not in posture for decision regarding the issue of waiver of recovery of the overpayment. On remand, OWCP shall review all evidence of record

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<sup>17</sup> *Id.* at Chapter 6.400.4b(3)(a), (b).

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

<sup>19</sup> *Supra* note 14 at Chapter 6.400.4c(3).

<sup>20</sup> *Supra* note 12.

<sup>21</sup> 41 ECAB 548 (1990); *see also C.W.*, Docket No. 23-0096 (issued October 2, 2023); *J.R.*, Docket No. 22-0464 (issued April 18, 2023); *S.H.*, Docket No. 19-1582 (issued May 26, 2020).

<sup>22</sup> *See C.W., id.*; *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *William A. Couch, id.*

regarding waiver of recovery of the overpayment.<sup>23</sup> Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>24</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$51,896.44 for the period October 1, 2022 through November 2, 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 the case is not in posture for decision with regard to waiver of recovery of the overpayment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 7, 2025 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 18, 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

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<sup>23</sup> See *M.O.*, Docket No. 22-1376 (issued May 1, 2024).

<sup>24</sup> In light of the Board's disposition of Issue 2, Issue 3 is rendered moot.