

² 5 U.S.C. § 8101 *et seq.*

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

This case has previously been before the Board.³ The facts and circumstances set forth in the Board's prior decisions and order are incorporated herein by reference. The relevant facts are as follows.

On February 3, 2005, appellant, then a 61-year-old modified window clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 31, 2005 she developed post-traumatic stress disorder (PTSD) when she was robbed at gunpoint while in the performance of duty. OWCP accepted her claim for PTSD. It paid appellant wage-loss compensation on the supplemental rolls effective March 18, 2005, and on the periodic rolls effective July 9, 2006. In a claim for compensation (Form CA-7) dated June 26, 2006, she indicated that her retirement coverage was under the Federal Employees Retirement System (FERS).

On December 14, 2006, OWCP received a Request for Withdrawal of Application from SSA dated November 30, 2006. Appellant explained that her reason for withdrawing her application was because her SSA benefits would be deducted from her workers' compensation benefits. She noted that she chose not to receive any benefits from SSA and would repay the benefits she had received for October through November 2006. Appellant submitted a receipt from SSA of a payment that she had made on November 30, 2006, in the amount of \$1,730.00.

On October 16, 2018, OWCP forwarded a FERS/SSA dual benefits form to SSA, requesting that it provide information regarding appellant's receipt of dual benefits.

On October 22, 2018, OWCP received a completed FERS/SSA dual benefits form from SSA, dated October 18, 2018. The form indicated that appellant was entitled to retirement benefits from September 2006 through the present time. It related that appellant received SSA age-related retirement benefits as of September 2006 and provided SSA age-related retirement benefit rates with FERS and without FERS from September 1, 2006 through December 2017. Beginning September 2006, the SSA rate with FERS was \$865.50 and without FERS was \$63.00. Beginning December 2006, the SSA rate with FERS was \$894.00 and without FERS was \$65.00. Beginning January 2007, the SSA rate with FERS was \$905.50 and without FERS was \$65.00. Beginning December 2007, the SSA rate with FERS was \$926.40 and without FERS was \$66.50. Beginning December 2008, the SSA rate with FERS was \$980.00 and without FERS was \$70.30. Beginning December 2011, the SSA rate with FERS was \$1,015.30 and without FERS was \$72.70. Beginning December 2012, the SSA rate with FERS was \$1,032.50 and without FERS was \$73.90. Beginning December 2013, the SSA rate with FERS was \$1,048.00 and without FERS was \$75.00. Beginning December 2014, the SSA rate with FERS was \$1,065.80 and without FERS was \$76.30.

³ Docket No. 21-0873 (issued May 8, 2023); Docket No. 19-0713 (issued October 20, 2020); *Order Denying Request for Oral Argument*, Docket No. 19-0713 (issued July 17, 2020).

Beginning December 2016, the SSA rate with FERS was \$1,068.90 and without FERS was \$76.40. Beginning December 2017, the SSA rate with FERS was \$1,090.30 and without FERS was \$77.90.

In a preliminary overpayment determination dated November 2, 2018, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$136,711.48, for the period September 1, 2006 through October 13, 2018, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

By decision dated December 14, 2018, OWCP finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$136,711.48, for the period September 1, 2006 through October 13, 2018 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits, without an appropriate offset. It also found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment.

Appellant appealed to the Board.⁴ By decision dated October 20, 2020, the Board affirmed in part and set aside in part, finding that OWCP had established the fact of overpayment, for which she was without fault, as she had concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset. However, the Board further found that the case was not in posture for decision regarding the period and amount of the overpayment because the evidence of record was unclear as to when appellant began to receive SSA age-related retirement benefits. The Board also noted that appellant had submitted a Request for Withdrawal of Application from SSA dated November 30, 2006, and that she had submitted a receipt from SSA of a payment she made on November 30, 2006, in the amount of \$1,730.00 purportedly covering the period October to November 2006. The Board remanded the case for OWCP to consult with the Office of Personnel Management (OPM) and SSA to determine the exact amount of the overpayment of compensation and the correct dates during which the overpayment occurred, followed by a *de novo* decision.

On November 17, 2020, OWCP provided SSA with a FERS/SSA dual benefits form. The form requested that an SSA representative verify the correct start date of appellant's SSA retirement payments, taking any returned payments into account. OWCP attached a copy of the November 30, 2006, Request for Withdrawal of Application, wherein she indicated that she was withdrawing her application for SSA benefits and a receipt from SSA of a payment that she had submitted.

On December 1, 2020, SSA responded only that appellant's date of entitlement was September 2006.

On December 16, 2020, OWCP again provided SSA with a FERS/SSA dual benefits form. The form requested that an SSA representative verify the correct start date of appellant's SSA retirement payments, taking any returned payments into account. OWCP again attached a copy of the November 30, 2006, Request for Withdrawal of Application.

⁴ Docket No. 19-0713 (issued October 20, 2020).

On January 26, 2021, OWCP received a FERS/SSA dual benefits form from SSA, completed on even date. The form provided SSA age-related retirement benefit rates with FERS and without FERS for the period September 2006 through December 2020. Beginning September 2006, the SSA rate with FERS was \$865.00 and without FERS was \$1.40. Beginning December 2006, the SSA rate with FERS was \$894.00 and without FERS was \$1.40. Beginning January 2007, the SSA rate with FERS was \$905.00 and without FERS was \$1.40. Beginning December 2007, the SSA rate with FERS was \$926.00 and without FERS was \$1.40. Beginning October 2008, the SSA rate with FERS was \$926.40 and without FERS was \$1.40. Beginning December 2008, the SSA rate with FERS was \$979.50 and without FERS was \$1.50. Beginning December 2009, the SSA rate with FERS was \$979.50 and without FERS was \$1.50. Beginning December 2010, the SSA rate with FERS was \$979.50 and without FERS was \$1.50. Beginning December 2011, the SSA rate with FERS was \$1,014.90 and without FERS was \$1.50. Beginning January 2012, the SSA rate with FERS was \$1,267.90 and without FERS was \$1.50. Beginning December 2012, the SSA rate with FERS was \$1,288.90 and without FERS was \$1.50. Beginning December 2013, the SSA rate with FERS was \$1,308.90 and without FERS was \$1.50. Beginning December 2014, the SSA rate with FERS was \$1,330.90 and without FERS was \$1.50. Beginning December 2015, the SSA rate with FERS was \$1,330.90 and without FERS was \$1.50. Beginning December 2016, the SSA rate with FERS was \$1,335.00 and without FERS was \$1.50. Beginning December 2017, the SSA rate with FERS was \$1,361.00 and without FERS was \$1.50. Beginning December 2018, the SSA rate with FERS was \$1,399.50 and without FERS was \$1.50. Beginning December 2019, the SSA rate with FERS was \$1,421.60 and without FERS was \$1.50. Beginning December 2020, the SSA rate with FERS was \$1,440.50 and without FERS was \$1.50.

In a preliminary overpayment determination dated January 28, 2021, OWCP notified appellant of its preliminary finding that she had received an overpayment of compensation in the amount of \$170,058.72 for the period September 1, 2006 through February 28, 2019, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. It determined that she was without fault in the creation of the overpayment. The decision indicated that the overpayment amount was based on the revised calculations received from SSA on January 26, 2021, and included a computation of overpayment form. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20), to determine a reasonable repayment method, and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation. Additionally, OWCP 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. No response was received.

By decision dated March 3, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$170,058.72, for the period September 1, 2006 through February 28, 2019, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without appropriate offset. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because she had not completed and returned the Form OWCP-20. The final overpayment decision indicated that the overpayment amount was based on the revised calculations received from SSA on January 26, 2021, and included a computation of overpayment form.

Appellant appealed to the Board.⁵ By decision dated May 8, 2023, the Board set aside the March 2, 2021 decision, finding that the case was not in posture for decision regarding the period and amount of the overpayment. The Board noted that the case record contained conflicting information from SSA, and that SSA had not explained the impact of appellant's November 30, 2006, Request for Withdrawal of Application. The Board remanded the case for OWCP to obtain clarification from OPM and SSA to determine the correct period and amount of the overpayment of compensation to be followed by a *de novo* decision.

On October 2, 2023, OWCP provided SSA with a FERS/SSA dual benefits form. The form requested that an SSA representative clarify whether appellant's November 30, 2006, Request for Withdrawal of Application affected receipt of her SSA age-related retirement benefits and whether any returned payments were accounted for. SSA was also asked to explain why the current rates provided were accurate and prior transmittals were incorrect.

On December 22, 2023, OWCP received a dual benefits form, completed by SSA on December 19, 2023. The form provided appellant's SSA age-related retirement benefit rates with FERS and without FERS for the period September 2006 through December 2023. As of September 2006, appellant's SSA rate with FERS was \$865.50 and without FERS was \$1.40. As of December 2006, the SSA rate with FERS was \$894.00 and without FERS was \$1.40. As of January 2007, the SSA rate with FERS was \$905.50 and without FERS was \$1.40. As of December 2007, the SSA rate with FERS was \$926.40 and without FERS was \$1.40. As of December 2008, the SSA rate with FERS was \$980.00 and without FERS was \$1.50. As of December 2011, the SSA rate with FERS was \$1,015.30 and without FERS was \$1.50. As of January 2012, the SSA rate with FERS was \$1,268.20 and without FERS was \$1.50. As of December 2012, the SSA rate with FERS was \$1,289.80 and without FERS was \$1.50. As of December 2013, the SSA rate with FERS was \$1,309.00 and without FERS was \$1.50. As of December 2014, the SSA rate with FERS was \$1,331.30 and without FERS was \$1.50. As of December 2015, the SSA rate with FERS was \$1,335.20 and without FERS was \$1.50. As of December 2017, the SSA rate with FERS was \$1,361.90 and without FERS was \$1.50. As of December 2018, the SSA rate with FERS was \$1,400.00 and without FERS was \$1.50. As of December 2019, the SSA rate with FERS was \$1,422.40 and without FERS was \$1.50. As of December 2020, the SSA rate with FERS was \$1,440.80 and without FERS was \$1.50. As of January 2021, the SSA rate with FERS was \$1,449.50 and without FERS was \$19.70. As of December 2021, the SSA rate with FERS was \$1,535.00 and without FERS was \$20.80. As of December 2022, the SSA rate with FERS was \$1,688.50 and without FERS was \$22.50. As of December 2024, the SSA rate with FERS was \$1,721.80 and without FERS was \$23.20.

On February 7, 2024, OWCP requested clarification from OPM as to whether appellant had elected to receive OPM retirement benefits and the date of her election.

Also, on February 7, 2024, OWCP again provided SSA with a FERS/SSA dual benefits form. The form requested that an SSA representative clarify whether appellant's November 30, 2006, Request for Withdrawal of Application affected receipt of her SSA age-related retirement benefits and whether any returned payments were accounted for. SSA was also asked to address

⁵ Docket No. 21-0873 (issued May 8, 2023).

why the SSA rates without federal service were so low and unchanged from the years 2008 to 2020.

On March 4, 2024, SSA responded that while appellant had requested a withdrawal of her application for SSA disability benefits effective November 2006, her SSA age-related retirement benefit was effective from November 2006 to the present. SSA further related that while appellant had filed the withdrawal of her SSA age-related retirement benefits claim in November 2006, she in December 2006 she decided not to withdraw, and her SSA age-related retirement benefits were reinstated. Appellant had returned \$1,730.00 when she withdrew her application; however, SSA repaid appellant the \$1,730.00. She subsequently requested that she resume SSA disability benefits effective September 2008. SSA further explained that the reported SSA rates without federal service were low because all of appellant's federal earnings were removed from the record from 2006 to 2019, which caused the computation to be low. It noted that the dual benefits forms dated October 22, 2018 and January 26, 2021 used the incorrect monthly benefit amount, before any appropriate deductions were made, such as rounding down or supplemental medical insurance premium. SSA confirmed that the rates on the dual benefits form dated December 22, 2023 were correct.

On March 4, 2024, OWCP received a February 23, 2024 completed FERS/SSA dual benefits form from SSA. The form provided appellant's SSA age-related retirement benefit rates with FERS and without FERS for the period September 2006 through December 2023. Beginning September 2006, the SSA rate with FERS was \$865.50 and without FERS was \$1.40. Beginning December 2006, the SSA rate with FERS was \$894.00 and without FERS was \$1.40. Beginning January 2007, the SSA rate with FERS was \$905.50 and without FERS was \$1.40. Beginning December 2007, the SSA rate with FERS was \$926.40 and without FERS was \$1.40. It noted that there was no FERS offset from September 2008 through October 2009 as appellant had been entitled to disability benefits. Beginning November 2009, the SSA rate with FERS was \$980.00 and without FERS was \$1.80. Beginning December 2009, the SSA rate with FERS was \$980.00 and without FERS was \$1.80. Beginning December 2011, the SSA rate with FERS was \$1,015.30 and without FERS was \$1.80. Beginning January 2012, the SSA rate with FERS was \$1,268.20 and without FERS was \$1.80. Beginning December 2012, the SSA rate with FERS was \$1,289.80 and without FERS was \$1.80. Beginning December 2013, the SSA rate with FERS was \$1,309.00 and without FERS was \$1.80. Beginning December 2014, the SSA rate with FERS was \$1,331.30 and without FERS was \$1.80. Beginning December 2016, the SSA rate with FERS was \$1,335.20 and without FERS was \$1.80. Beginning December 2017, the SSA rate with FERS was \$1,361.90 and without FERS was \$1.80. Beginning December 2018, the SSA rate with FERS was \$1,400.00 and without FERS was \$1.80. Beginning December 2019, the SSA rate with FERS was \$1,422.40 and without FERS was \$1.80. Beginning December 2020, the SSA rate with FERS was \$1,440.80 and without FERS was \$1.80. Beginning January 2021, the SSA rate with FERS was \$1,449.50 and without FERS was \$24.60. Beginning December 2021, the SSA rate with FERS was \$1,535.00 and without FERS was \$28.00. Beginning December 2022, the SSA rate with FERS was \$1,668.50 and without FERS was \$28.10. Beginning December 2023, the SSA rate with FERS was \$1,721.80 and without FERS was \$29.00.

On March 5, 2024, OPM responded that appellant's request to withdraw her application for SSA benefits had not affected her receipt of SSA age-related retirement benefits. On March 11,

2024, OPM noted she had filed an election of OPM benefits, which were paid beginning September 1, 2019.

In a preliminary overpayment determination dated April 3, 2024, OWCP notified appellant of its preliminary finding that she had received an overpayment of compensation in the amount of \$156,546.42 for the periods September 1, 2006 through August 31, 2008, and November 1, 2009 through February 28, 2019, because it had failed to reduce her wage-loss compensation benefits by the portion of her SSA benefits that were attributable to federal service, without an appropriate offset. It determined that she was without fault in the creation of the overpayment. The decision indicated that the overpayment amount was based on the revised information received from SSA on March 4, 2024, and included a memorandum explaining its calculations.⁶ OWCP requested that appellant submit a completed Form OWCP-20, to determine a reasonable repayment method, and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records to support her reported income and expenses. Additionally, OWCP 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. No response was received.

By decision dated May 6, 2024, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount \$156,546.42 for the periods September 1, 2006 through August 31, 2008, and November 1, 2009 through February 28, 2019, because it had failed to reduce her wage-loss compensation benefits by the portion of her SSA benefits that were attributable to federal service, 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 because she had not completed and returned the Form OWCP-20. OWCP required repayment in full.

⁶ OWCP determined that for the period September 1 through November 30, 2006, appellant received an overpayment of \$2,592.30; for the period December 1 through 31, 2006, appellant received an overpayment of \$912.22; for the period January 1 through November 30, 2007, appellant received an overpayment of \$9,954.99; for the period December 1, 2007 through August 31, 2008, appellant received an overpayment of \$8,386.03; for the period November 1 through 30, 2009, appellant received an overpayment of \$967.45; for the period December 1, 2009 through November 30, 2010, appellant received an overpayment of \$11,770.60; for the period December 1, 2010 through November 30, 2011, appellant received an overpayment of \$11,770.60; for the period December 1 through 31 2011, appellant received an overpayment in the amount of \$1,035.76; for the period January 1 through November 30, 2012, appellant received an overpayment in the amount of \$13,986.01; for the period December 1, 2012 through November 30, 2013, appellant received an overpayment in the amount of \$15,498.42; for the period December 1, 2013 through November 30, 2014, appellant received an overpayment in the amount of \$15,729.54; for the period December 1, 2014 through November 30, 2015, appellant received an overpayment in the amount of \$15,997.82; for the period December 1, 2015 through November 30, 2016, appellant received an overpayment in the amount of \$16,041.64; for the period December 1, 2016 through November 30, 2017, appellant received an overpayment in the amount of \$16,044.75; for the period December 1, 2017 through October 13, 2018, appellant received an overpayment in the amount of \$14,213.83; for the period October 14 through November 30, 2018, appellant received an overpayment in the amount of \$2,152.25; and for the period December 1, 2018 through February 28, 2019, appellant received an overpayment in the amount of \$4,148.52. It determined that the overpayment amount was \$161,202.74. OWCP thereafter applied credits for five periods: \$934.52 for the period October 14 through November 10, 2018, \$934.52 for the period November 11 to December 8, 2018, \$934.52 for the period December 9, 2018 through January 5, 2019, \$960.69 for the period January 6 to February 2, 2019, and \$892.07 for the period February 3 through 28, 2019. It determined that the total overpayment amount was \$156,546.42.

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.⁷ 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.⁸

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.⁹ 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$156,546.42 for the periods September 1, 2006 through August 31, 2008, and November 1, 2009 through February 28, 2019, 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.

The Board preliminarily notes that it found in its October 20, 2020 decision that appellant received an overpayment of compensation, for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.¹¹

On remand from the Board's May 8, 2023 decision, OWCP obtained clarification from SSA that appellant had returned \$1,730.00 when she withdrew her application for age-related retirement benefits in November 2006; however, SSA indicated that it had repaid appellant the \$1,730.00. SSA explained that while appellant had filed the withdrawal of her SSA claim in November 2006, in December 2006 she decided not to withdraw, and her benefits were reinstated

⁷ 5 U.S.C. § 8102(a).

⁸ *Id.* at § 8116.

⁹ 20 C.F.R. § 10.421(d); *see R.D.*, Docket No. 24-0795 (issued October 28, 2024); *B.M.*, Docket No. 23-0891 (issued January 30, 2024); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

¹⁰ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also R.D., id.; N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹¹ *E.A.*, Docket No. 24-0810 (issued September 26, 2024); *T.S.*, Docket No. 22-1354 (issued May 1, 2023); *T.C.*, Docket No. 21-0612 (issued December 2, 2021); *T.W.*, Docket No. 20-0836 (issued July 21, 2021); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998). *See also* 20 C.F.R. § 501.6(d).

effective September 2006. SSA further explained that the reported SSA rates without federal service were low because all of appellant's federal earnings were removed from the record from 2006 to 2019, which caused the computation to be low. Appellant's SSA rate without federal earnings is based on appellant's employment earnings in private employment, unaffected by her federal earnings record. Furthermore, OWCP explained that the dual benefits forms dated October 22, 2018 and January 26, 2021 used the incorrect monthly benefit amount, before any appropriate deductions were made, such as rounding down or supplemental medical insurance premium. It confirmed that the rates on the subsequent dual benefits form dated December 22, 2023 were correct. On March 4, 2024, OWCP received an updated FERS/SSA dual benefits form from SSA dated February 23, 2024.

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 FERS and without FERS for the periods September 1, 2006 through August 31, 2008, and November 1, 2009 through February 28, 2019. OWCP provided its calculations for each relevant period based on SSA's dual benefits form and determined that appellant received an overpayment in the amount of \$156,546.42. The Board has reviewed OWCP's calculations and finds that it sufficiently clarified the earlier discrepancies and properly determined that appellant received prohibited dual benefits totaling \$156,546.42 for the periods September 1, 2006 through August 31, 2008, and November 1, 2009 through February 28, 2019.¹²

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.¹³ 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.¹⁴

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.¹⁵ Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who

¹² 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).

¹³ 5 U.S.C. § 8129(a)-(b).

¹⁴ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); see *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁵ *Supra* note 9 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).

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.¹⁶

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.¹⁷

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 recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁸ In order to establish that repayment 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, and that her assets do not exceed the established limit as determined by OWCP procedures.¹⁹

In its preliminary overpayment determination dated April 3, 2024, OWCP explained the importance of providing the completed Form OWCP-20 and supporting financial documentation, 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 of recovery of the overpayment if she failed to furnish the requested information within 30 days. Appellant, however, failed to submit a completed Form OWCP-20 and supporting financial documentation. 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.²⁰

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.²¹

¹⁶ *Id.* at § 10.437(a)(b).

¹⁷ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁸ 5 U.S.C. § 8129.

¹⁹ *Supra* note 9 at § 10.436.

²⁰ *Supra* note 9 at § 10.438.

²¹ *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).

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$156,546.42 for the periods September 1, 2006 through August 31, 2008, and November 1, 2009 through February 28, 2019, 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 also finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 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