

² The Board notes that, following the December 3, 2024 decision, OWCP received additional evidence. 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 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 \$117.21 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On July 5, 2018 appellant, then a 64-year-old customer service representative, filed a traumatic injury claim (Form CA-1) alleging that on June 26, 2018 she injured her eye, forehead, chin, wrists, knees, neck, and shoulders when she tripped on a speed bump and fell while in the performance of duty. She stopped work on June 27, 2018 and indicated that her retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for aggravation of preexisting chondrocostal junction or Tietze syndrome, and contusions of the head, knees, and hands. It paid appellant wage-loss compensation for total disability on the supplemental rolls, effective August 28, 2018, and on the periodic rolls, effective March 31, 2019.

On April 15, 2024 OWCP requested information from SSA regarding appellant's potential receipt of FERS/SSA dual benefits.

OWCP thereafter received a completed FERS/SSA dual benefits form from SSA dated April 22, 2024. The form provided appellant's SSA age-related retirement benefits rates with and without a FERS offset. Beginning August 2023, the SSA rate with FERS was \$1,973.50 and without FERS was \$1,477.80. Beginning December 2023, the SSA rate with FERS was \$2,036.60 and without FERS was \$1,524.90. Beginning January 2024, the SSA rate with FERS was \$2,036.60 and without FERS was \$1,583.90.

In a FERS offset overpayment calculation worksheet dated September 3, 2024, OWCP used the information provided by SSA on April 22, 2024 to calculate the 28-day FERS offset for the relevant periods, and calculated a total overpayment in the amount of \$4,591.13. It found that from August 1 through November 30, 2023 appellant received an overpayment in the amount of \$1,993.70; from December 1 through 31, 2023 appellant received an overpayment in the amount of \$552.95; and from January 1 through May 18, 2024 appellant received an overpayment in the amount of \$2,074.48.

In a preliminary overpayment determination dated September 4, 2024, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$4,591.13, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset for the period August 1, 2023 through May 18, 2024. It explained each period in the FERS offset calculation and found a total overpayment of \$4,591.13. OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. It requested that she 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 to support income and expenses. Additionally, OWCP notified appellant that she could request a final decision based on the written evidence or a precoupment hearing within 30 days.

On September 24, 2024 appellant requested waiver of recovery of the overpayment and a decision on the written evidence. She attached a completed Form OWCP-20 dated September 20, 2024, wherein she reported total monthly income of \$2,007.00 and total monthly expenses of \$2,976.00. Appellant also reported a total of \$47,884.00 in assets. She provided additional supportive financial documentation. On October 7, 2024 appellant submitted additional financial information and reported monthly income of \$4,485.00 and monthly expenses of \$3,295.00 resulting in a monthly surplus of \$1,190.00.

By decision dated December 3, 2024, OWCP finalized the overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$4,591.13 for the period August 1, 2023 through May 18, 2024, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits, 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 \$117.21 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 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.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, without an appropriate offset, 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 \$4,591.13 for the period August 1, 2023 through May 18, 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.

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); *L.J.*, 59 ECAB 264 (2007).

⁶ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

The evidence of record indicates that, while appellant received wage-loss compensation benefits under FECA and SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period, without an appropriate offset.⁷ Consequently, fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA's benefits that were attributable to federal service must be calculated. OWCP received information from SSA with respect to appellant's SSA age-related retirement benefit rates with FERS and without FERS for specific periods from August 1, 2023 through May 18, 2024. It provided its overpayment calculations for each relevant period based on SSA's information and determined that she received an overpayment in the amount of \$4,591.13.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period August 1, 2023 through May 18, 2024 and finds that it properly determined that an overpayment of compensation in the amount of \$4,591.13 was created.⁸

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.⁹ 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.¹⁰

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.¹¹ 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 \$50.00.¹² Also, assets must not exceed a resource base of \$6,200.00 for

⁷ *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

⁸ *See R.F.*, Docket No. 20-0159 (issued October 15, 2020); *see D.C.*, Docket No. 17-0559 (issued June 21, 2018).

⁹ 5 U.S.C. § 8129(a)-(b).

¹⁰ *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).

¹¹ 20 C.F.R. § 10.436(a)(b).

¹² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.¹³ 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.¹⁴ Non liquid assets include, but 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.¹⁵

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.¹⁶ 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.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered. As noted above, even if a claimant is found without fault in the creation of the overpayment, recovery of the overpayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹⁸

On the Form OWCP-20 appellant reported total assets of \$47,884.00.

As noted above, in determining whether recovery of the overpayment would defeat the purpose of FECA, OWCP considers whether assets exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent.¹⁹ Accordingly, the Board finds that appellant, who reported total assets of \$47,884.00, has not met the standard for waiver

¹³ *Id.* at Chapter 6.400.4a(2).

¹⁴ *Id.* at Chapter 6.400.4b(3).

¹⁵ *Id.* at Chapter 6.400.4b(3)(a), (b).

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

¹⁷ *Supra* note 12 at Chapter 6.400.4c(3).

¹⁸ *Id.*

¹⁹ *Supra* note 13.

of recovery of the overpayment, because her assets exceed the allowable resource base.²⁰ Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider whether she needs substantially all of her current income to meet ordinary and necessary living expenses.²¹

The Board also finds that appellant has not established that she was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience.

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the overpayment.²²

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.²³

Section 10.441 of OWCP's regulations²⁴ 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 compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.²⁵

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$117.21 from appellant's continuing compensation payments, every 28 days.

In determining whether appellant could repay the overpayment through \$117.21 deductions from continuing compensation payments, OWCP took into account her financial information as well as factors set forth in 20 C.F.R. § 10.441, and found that this method of recovery would minimize any resulting hardship, not necessarily eliminate it, while at the same time liquidating the debt in a reasonably prompt fashion.²⁶ It gave due regard to the financial

²⁰ *S.W.*, Docket No. 20-0363 (issued November 23, 2020); *H.F.*, Docket No. 17-0101 (issued September 5, 2017).

²¹ *S.R.*, Docket No. 20-1416 (issued September 8, 2022); *M.H.*, Docket No. 19-1497 (issued September 9, 2020).

²² *J.R.*, Docket No. 24-0852 (issued November 14, 2024); *S.W.*, Docket No. 20-0363 (issued November 23, 2020).

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

²⁴ *Id.* at § 10.441(a).

²⁵ *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²⁶ *See J.B.*, Docket No. 24-0876 (issued September 26, 2024); *L.F.*, Docket No. 15-0489 (issued May 11, 2015).

information provided on the overpayment recovery questionnaire, and found that her monthly income exceeded monthly expenses by more than \$50.00. Thus, the Board finds that it properly required recovery of the \$4,591.13 overpayment by deducting \$117.21 from appellant's continuing compensation payments every 28 days.²⁷

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,591.13 for the period August 1, 2023 through May 18, 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 of compensation and properly required recovery of the overpayment by deducting \$117.21 from her continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the December 3, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 25, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

²⁷ See *J.B.*, *id.*; *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).