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<b>M.L., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 25-0198</b>
	)	<b>Issued: February 12, 2025</b>
<b>U.S. POSTAL SERVICE, LINTHICUM</b>	)	
<b>INCOMING MAIL FACILITY, Linthicum, MD,</b>	)	
<b>Employer</b>	)	
	)	

Analese B. Dunn, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

## DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

## JURISDICTION

On December 20, 2024 appellant, through counsel, filed a timely appeal from an August 19, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' 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>

<sup>1</sup> 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 an 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.

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

<sup>3</sup> The Board notes that following the August 19, 2024 decision, appellant submitted additional evidence on appeal to the Board. 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.*

## **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$34,096.27, during the period August 1, 2022 through March 23, 2024, for which she was without fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation, 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 \$369.23 from appellant's continuing compensation payments every 28 days.

## **FACTUAL HISTORY**

On September 12, 2008 appellant, then a 52-year-old mail handler/flat sorter in modified duty status, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome due to factors of her federal employment, including repetitive upper extremity motions.<sup>4</sup> She noted that she first became aware of her condition and realized its relation to her federal employment on May 8, 2007. OWCP accepted the claim for bilateral carpal tunnel syndrome. It paid appellant wage-loss compensation on the supplemental and periodic rolls.

On March 6, 2024 OWCP provided SSA with a FERS/SSA dual benefits form. It requested appellant's SSA age-related retirement benefits rates with and without FERS.

On March 11, 2024 SSA completed the FERS/SSA dual benefits form, which reported appellant's SSA age-related retirement benefits rates with a FERS offset and without a FERS offset, commencing August 2022. Beginning August 2022, the SSA rate with FERS was \$2,388.80 and without FERS \$789.40. Beginning December 2022, the SSA rate with FERS was \$2,596.60 and without FERS \$858.00. Beginning December 2023, the SSA rate with FERS was \$2,679.60 and without FERS \$885.40.

In a FERS offset overpayment calculation worksheet dated March 29, 2024, OWCP used the information provided by SSA to calculate the 28-day FERS offset for the relevant periods. It found that, for the period August 1 through November 30, 2022, appellant received an overpayment in the amount of \$6,432.76; for the period December 1, 2022 through November 30, 2023, she received an overpayment of \$20,920.50; and for the period December 1, 2023 through March 23, 2024, appellant received an overpayment of \$6,743.02. OWCP added these amounts to calculate a total overpayment of \$34,096.27.

Effective April 20, 2024, OWCP offset appellant's FECA wage-loss compensation "benefits by her SSA age-related retirement benefits. Appellant's new net wage-loss compensation payment every 28 days was changed to \$1,482.58.

On March 29, 2024 OWCP notified appellant of its preliminary overpayment determination that she received an overpayment of compensation in the amount of \$34,096.27, for the period August 1, 2022 through March 23, 2024, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It

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<sup>4</sup> The record reveals that appellant is under the Federal Employees Retirement System (FERS).

further determined 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 income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records to support her reported income and expenses. Additionally, it 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 prerecoupment hearing.

On April 24, 2024, appellant, through counsel, requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She requested waiver of recovery of the overpayment.

A prerecoupment hearing was held on July 8, 2024.

In an August 6, 2024 statement, appellant, through counsel, asserted detrimental reliance as she had given \$3,475.65 to a family member to assist them with paying rent, and would not have done so had she realized that her FECA wage-loss compensation was incorrect.

In an August 6, 2024 affidavit, appellant attested that she received \$4,162.16 in monthly income and monthly expenses of \$3,494.01. She listed assets of \$320.44 in bank accounts. Appellant submitted supporting financial documentation.

By decision dated August 19, 2024, OWCP's hearing representative finalized OWCP's June 11, 2019 preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$34,096.27, for the period August 1, 2022 through March 23, 2024, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. He further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. The hearing representative required recovery of the overpayment by deducting \$369.23 every 28 days from appellant's continuing compensation payments.

### **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.<sup>5</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>6</sup>

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to federal service of the employee.<sup>7</sup> FECA Bulletin No. 97-09 states that FECA benefits have to be

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Id.* at § 8116.

<sup>7</sup> 20 C.F.R. § 10.421(d).

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 wage-loss compensation and federal retirement concurrently is a prohibited dual benefit.<sup>8</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$34,096.27, during the period August 1, 2022 through March 23, 2024, for which she was without fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset.

In its August 19, 2024 decision, OWCP found that an overpayment of compensation was created for the period August 1, 2022 through March 23, 2024. The overpayment was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant. A claimant cannot receive both compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.<sup>9</sup> The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service during the period August 1, 2022 through March 23, 2024, without an appropriate offset. Consequently, the fact of the overpayment has been established.<sup>10</sup>

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. The SSA provided appellant's SSA age-related retirement benefit rates with FERS, and without FERS, for specific periods commencing August 2022. In its March 29, 2024 preliminary overpayment determination, OWCP calculated the amount of the overpayment by determining the difference between the SSA rate with and without FERS for each period and multiplying the daily offset amount by the number of days in each period, to find a total overpayment of \$34,096.27.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period August 1, 2022 through March 23, 2024, and finds that an overpayment of compensation in the amount of \$34,096.27 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.<sup>11</sup>

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<sup>8</sup> FECA Bulletin No. 97-09 (issued February 3, 1997).

<sup>9</sup> *P.B.*, Docket No. 23-0955 (issued March 13, 2024); *see E.M.*, Docket No. 21-1231 (issued April 19, 2023); *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

<sup>10</sup> *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

<sup>11</sup> 5 U.S.C. § 8129(a)-(b).

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.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup>

### **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.<sup>16</sup> 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.<sup>17</sup>

In an August 6, 2024 affidavit, appellant attested that she received \$4,162.16 in monthly income and monthly expenses of \$3,494.01. As appellant's monthly income exceeded her

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<sup>12</sup> A.C., Docket No. 18-1550 (issued February 21, 2019); see *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>13</sup> *Supra* note 10 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).

<sup>14</sup> *Id.* at § 10.437(a)(b).

<sup>15</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>16</sup> 5 U.S.C. § 8129.

<sup>17</sup> *Supra* note 10 at § 10.436.

ordinary and necessary living expenses by more than \$50.00, she has not shown that she needed substantially all of her income for ordinary and necessary living expenses.<sup>18</sup>

Appellant also did not establish that she was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience. She did not provide any financial information to show that she would experience severe financial hardship in attempting to repay the debt. Although she asserted detrimental reliance, appellant did not provide persuasive evidence that she gave up a valuable right in reliance on her wage-loss compensation benefits. Appellant, therefore, did not establish that recovery of the overpayment was against equity and good conscience.<sup>19</sup>

As appellant has not established that recovery of the overpayment of compensation would either defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP did not abuse its discretion in denying waiver of recovery of the overpayment.<sup>20</sup>

### **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 compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.<sup>21</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$369.23 from appellant's continuing compensation payments every 28 days.

The record supports that, in requiring repayment of the overpayment by deducting \$369.23 from appellant's compensation payments every 28 days, OWCP took into consideration the financial information she submitted as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize resulting hardship. Therefore, OWCP properly required recovery of the overpayment by deducting \$369.23 every 28 days from appellant's continuing compensation.<sup>22</sup>

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<sup>18</sup> See *M.C.*, Docket No. 19-0699 (issued February 12, 2020).

<sup>19</sup> *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

<sup>20</sup> See *supra* note 10 at § 10.437(a)(b).

<sup>21</sup> *Supra* note 10 at § 10.441(a); *W.W.*, Docket No. 22-0745 (issued November 7, 2022); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>22</sup> *W.W.*, *id.*; see *J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.G.*, Docket No. 19-1274 (issued July 10, 2020).

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$34,096.27 during the period August 1, 2022 through March 23, 2024, for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, 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 \$369.23 from appellant's continuing compensation payments every 28 days.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 19, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 12, 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