

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 16, 2004, appellant, then a 53-year-old archaeologist, filed an occupational disease claim (Form CA-2) alleging that she developed stress due to factors of her federal employment including an alleged reprisal and a hostile work environment. She noted that she first became aware of this condition and realized its relation to her federal employment on August 1, 2004. The supervisor responded “intermittent” with regard to date and hour appellant stopped work. Appellant’s supervisor noted on the claim form that appellant’s retirement coverage was under the Federal Employees Retirement System (FERS). On August 28, 2007, OWCP accepted major depressive disorder, recurrent. On May 15, 2019, it expanded the acceptance of the claim to include major depressive disorder, recurrent severe without psychotic features; bipolar II disorder with rapid cycling; and major depression, recurrent episode, severe without mention of psychotic behavior. OWCP paid appellant wage-loss compensation on the supplemental rolls effective February 18, 2005, and on the periodic rolls effective June 7, 2009.

On June 3, 2024, OWCP contacted SSA to obtain information as to whether an offset of SSA age-related retirement benefits and FECA wage-loss compensation was required.

On June 8, 2024, OWCP received from SSA a completed dual benefits form, which reported appellant’s SSA age-related retirement benefit rates with and without a FERS offset. Beginning May 2017, the SSA rate with FERS was \$995.10, and without FERS was \$594.40; beginning December 2017, the SSA rate with FERS was \$1,015.00, and without FERS was \$606.20; beginning December 2018, the SSA rate with FERS was \$1,043.40, and without FERS was \$623.10; beginning December 2019, the SSA rate with FERS was \$1,060.00, and without FERS was \$633.00; beginning December 2020, the SSA rate with FERS was \$1,073.70; and without FERS was \$641.20; beginning December 2021, the SSA rate with FERS was \$1,137.00, and without FERS was \$679.00; beginning December 2022, the SSA rate with FERS was \$1,235.90, and without FERS was \$738.00; and beginning December 2023, the SSA rate with FERS was \$1,275.40, and without FERS was \$761.60.

A June 18, 2021 FERS offset overpayment calculation worksheet indicated that appellant had been in receipt of FECA wage-loss compensation and SSA age-related retirement benefits for the period May 1, 2017 through June 15, 2024. The worksheet indicated a FERS offset overpayments in the amount of \$2,826.94, for the period May 1, 2017 through November 30, 2017; \$4,919.03, for the period December 1, 2017 through November 30, 2018; \$5,057.47, for the period December 1, 2018 through November 30, 2019; \$5,152.10, for the period December 1, 2019 through November 30, 2020; \$5,204.25, for the period December 1, 2020 through November 30, 2021; \$5,511.11, for the period December 1, 2021 through November 30, 2022; \$5,991.21, for the period December 1, 2022 through November 30, 2023; \$3,353.84, for the period December 1, 2023 through June 15, 2024, for a total overpayment of \$38,015.95.

On August 15, 2024, OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$38,015.95, had been created for the period May 1, 2017 through June 15, 2024, because appellant had concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. It found that she was without fault in the creation of the overpayment and requested that she submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable recovery method. OWCP further advised that appellant could request waiver of recovery of the overpayment. It requested that she provide supporting financial documentation,

including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP noted that under 20 C.F.R. § 10.438, failure to submit the requested information within 30 days would result in the denial of waiver and no further request for waiver would be considered until the requested information was provided. 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 precoupment hearing. No response was received.

By decision dated November 6, 2024, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$38,015.95, for the period May 1, 2017 through June 15, 2024, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. The hearing representative found appellant without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. Recovery of the overpayment was required by deducting \$760.31 from her continuing compensation payments, every 28 days.²

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA³ 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 of FECA defines the limitations on the right to receive compensation benefits.⁵ Section 8116(a) provides that, while an employee is receiving workers' compensation benefits, he or she may not receive salary, pay, or remuneration of any type.

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.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$38,015.95, for the period May 1, 2017 through June 15, 2024,

² OWCP explained that appellant's 28-day net compensation amount at the time of OWCP's November 6, 2024 final overpayment determination was \$3,041.24.

³ *Supra* note 1.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁷ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 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.

In its November 6, 2024 decision, OWCP found that an overpayment of compensation was created for the period May 1, 2017 through June 15, 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 FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁸ The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service during the period May 1, 2017 through June 15, 2024. The case record establishes that OWCP paid appellant wage-loss compensation for the same periods; however, no appropriate offset was taken. The fact of overpayment is therefore established.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. SSA provided appellant's SSA age-related retirement benefit rates with and without FERS, for specific periods commencing May 1, 2017 through June 15, 2024. In its August 15, 2024 preliminary overpayment determination, OWCP calculated the amount of the overpayment by determining the difference between the SSA age-related retirement benefit rates 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 \$38,015.95. The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period May 1, 2017 through June 15, 2024, and finds that an overpayment of compensation in the amount of \$38,015.95 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.⁹ 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.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

⁸ 5 U.S.C. § 8116(d)(2); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

⁹ *Id.* at § 8129(a)-(b).

¹⁰ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

¹¹ 20 C.F.R. § 10.436(a)(b).

expenses by more than \$50.00.¹² 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.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

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.¹⁵

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.¹⁶

Failure to submit the requested information within 30 days of the request shall result in denial of waiver.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 adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁸ Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.¹⁹

In its preliminary overpayment determination dated August 15, 2024, OWCP requested a completed overpayment recovery questionnaire and supporting financial documentation regarding monthly income, monthly expenses, and assets, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support the reported income, expenses, and assets. It advised appellant that it would deny waiver of recovery if she failed to

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

¹³ *Id.* at Chapter 6.400.4a(2).

¹⁴ *Id.* at Chapter 6.400.4b(3).

¹⁵ 20 C.F.R. § 10.437(a)(b).

¹⁶ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁷ 20 C.F.R. § 10.438. *See also B.C.*, Docket No. 24-0561 (issued December 13, 2024).

¹⁸ *Id.* at § 10.436.

¹⁹ *See L.W.*, *supra* note 8; *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

furnish the requested financial information within 30 days. Appellant, however, did not submit a completed Form OWCP-20, or otherwise provide the requested financial information. 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

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.²² Section 10.441 of Title 20 of the Code of Federal Regulations provides that if an overpayment of compensation has been made to one entitled to future payments, proper adjustment shall be made by decreasing subsequent 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."²³

When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁴ The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.²⁵

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$760.21 from appellant's continuing compensation payments, every 28 days.

As noted above, appellant did not provide the necessary financial information regarding her income, expenses, and assets prior to the final overpayment decision. When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁶ The Federal (FECA) Procedure

²⁰ See *K.H.*, Docket No. 18-0171 (issued August 2, 2018).

²¹ See *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

²² *R.W.*, Docket No. 19-0451 (issued August 7, 2019); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Albert Pinero*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

²³ 20 C.F.R. § 10.441; see *A.F.*, Docket No. 19-0054 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

²⁴ See *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

²⁵ See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.8c(1) (September 2018); *D.H.*, Docket No. 20-1064 (issued December 14, 2020); *M.S.*, *supra* note 16.

²⁶ *Supra* note 24.

Manual provides that, in these instances, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.²⁷

The Board, therefore, finds that OWCP properly required recovery of the overpayment by deducting \$760.31 from appellant's continuing compensation payments, every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$38,015.95, for the period May 1, 2017 through June 15, 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 and properly required recovery of the overpayment by deducting \$760.31 from appellant's compensation payments every 28 days.

ORDER

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

Issued: February 24, 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 *supra* note 25.