

**United States Department of Labor
Employees' Compensation Appeals Board**

V.H., Appellant

and

**U.S. POSTAL SERVICE, WEATHERS POST
OFFICE, St. Louis, MO, Employer**

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**Docket No. 25-0063
Issued: January 13, 2025**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 26, 2024 appellant filed a timely appeal from an October 23, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,322.23, for the period November 1, 2022 through March 23, 2024, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement

¹ The Board notes that, following the October 23, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* provides: "The Board's review of a case is limited to the evidence in the caserecord 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.*

² 5 U.S.C. § 8101 *et seq.*

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 \$909.39 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

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

On September 16, 2016 appellant, then a 55-year-old supervisor of customer services filed a traumatic injury claim (Form CA-1) alleging that on September 15, 2016 she developed anxiety, panic attacks, and depression when she was "suddenly informed that [she] would be returning to a hostile and abusive work environment -- after the postmaster told [her] that [she] would not be returning back there."⁴ On September 8, 2022 OWCP accepted the claim for post-traumatic stress disorder (PTSD). It paid appellant wage-loss compensation on the supplemental rolls commencing April 22, 2017, and on the periodic rolls commencing October 8, 2023.

On February 6, 2024, OWCP requested information from SSA regarding potential Federal Employees Retirement System (FERS)/SSA dual benefits.

On April 8, 2024, OWCP received a completed FERS/SSA dual benefits form, wherein SSA reported appellant's SSA age-related retirement benefit rates with FERS and without FERS. Beginning November 2022, the SSA rate with FERS was \$1,166.10 and without FERS was \$546.90. Beginning December 2022, the SSA rate with FERS was \$1,267.50 and without FERS was \$594.40. Beginning December 2023, the SSA rate with FERS was \$1,308.00 and without FERS was \$613.40.

A FERS offset overpayment calculation worksheet indicated that appellant received a \$11,322.23 overpayment of compensation for the period November 1, 2022 through March 23, 2024. The overpayment calculation was based on the information that SSA had provided.

In a preliminary overpayment determination dated April 10, 2024, OWCP advised appellant that she received an overpayment of compensation in the amount of \$11,322.23 for the period November 1, 2022 through March 23, 2024, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation based on her federal service without an appropriate offset. It explained its calculations for the period November 1, 2022 through March 23, 2024. OWCP also made a preliminary determination that appellant was without fault in the creation of the overpayment. It requested that she submit a completed

³ *Order Remanding Case*, Docket No. 23-1013 (issued February 15, 2024); Docket No. 19-0827 (issued November 20, 2019); Docket No. 18-0273 (issued July 27, 2018).

⁴ On September 22, 2000, appellant filed an occupational disease claim (Form CA-2) alleging that she developed constant pain in her neck and down her left shoulder and arm in the course of her federal employment. OWCP assigned that claim OWCP File No. xxxxxx535 and accepted it for a cervical myofasciitis on May 9, 2002 and major depressive disorder on October 8, 2003. Appellant's claims have been administratively combined by OWCP, with OWCP File No. xxxxxx535 serving as the master file.

overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method and advised her that she could request waiver of recovery of the overpayment. OWCP further requested that appellant provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records that support income and expenses. Additionally, it provided an overpayment action request form and further notified her 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.

In a letter dated April 10, 2024, OWCP advised appellant that it had been determined that she had been receiving FERS/SSA dual benefits, therefore, her FECA wage-loss compensation would be offset by \$641.17 every 28-day payment cycle beginning March 24, 2024 for a net wage-loss compensation payment of \$3,682.81.

On May 1, 2024, appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She contested the amount of the overpayment and requested waiver of recovery of the overpayment.

In a completed Form OWCP-20 dated April 28, 2024, appellant reported total monthly income of \$6,032.81 and total monthly expenses of \$5,240.00. She further noted that she had no cash on hand, \$100.00 in checking, and a savings account balance of \$96,000.00 designated as a down payment at closing.

On August 8, 2024, OWCP held appellant's prerecoupment hearing. Appellant subsequently submitted an additional partially completed Form OWCP-20 dated October 12, 2024 and a few pages of unidentified financial documentation.

By decision dated October 23, 2024, OWCP's hearing representative finalized the April 10, 2024 preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$11,322.23 for the period November 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, because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The hearing representative required recovery of the overpayment by deducting 25 percent of appellant's monthly income or \$909.39 from her 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.⁵ 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.⁶

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8116.

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.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,322.23, for the period November 1, 2023 through March 23, 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.

OWCP paid appellant FECA wage-loss compensation on the periodic rolls, effective October 8, 2023. Appellant received SSA age-related retirement benefits beginning November 1, 2023. As noted, a claimant cannot concurrently receive FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁹ The information provided by SSA established that a portion of appellant's benefits were attributable to her federal service. Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.¹⁰

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. OWCP received documentation from SSA with respect to appellant's specific SSA age-related retirement benefits that were attributable to federal service. SSA provided her SSA age-related retirement benefit rates with FERS and without FERS for the period beginning November 1, 2023. OWCP provided its calculations based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$11,322.23.

The Board has reviewed OWCP's calculation of dual benefits received by appellant and finds that an overpayment of compensation in the amount of \$11,322.23 was created.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and

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

⁸ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁹ 20 C.F.R. § 10.421(d); *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *S.M.*, *supra* note 7.

¹⁰ *Id.*

when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹¹

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.¹² An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹³

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.¹⁴

Section 10.438 of OWCP's regulations provides 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.¹⁵

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.¹⁶

Appellant submitted a completed Form OWCP-20, wherein she reported total monthly income \$6,032.81 and total monthly expenses of \$5,240.00. She further noted nothing on hand and checking balance of \$100.00 and savings account balances of \$96,000.00 designated as a down payment.

¹¹ 5 U.S.C. § 8129.

¹² 20 C.F.R. § 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).

¹³ *Id.* at Chapter 6.400.4.a(3); *see also* *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁴ 20 C.F.R. § 10.437(a)(b).

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

¹⁶ 5 U.S.C. § 8129.

The Board finds that as appellant's total monthly income exceeds her total monthly expenses by more than \$50.00, she does not need substantially all of her monthly income to meet current and ordinary living expenses.¹⁷

The Board further finds that appellant has not established that recovery of the overpayment would be against equity and good conscience, because it has not been shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt, or that a valuable right had been relinquished, or that a position had been changed for the worse in reliance on the payment, which created the overpayment.¹⁸ Therefore, OWCP properly denied waiver of recovery of the overpayment.

Because it has not been established that, recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP has not abused its discretion by denying waiver of recovery of the overpayment.

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.¹⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP improperly required recovery of the overpayment by deducting \$909.39 from appellant's continuing compensation payments, every 28 days.

As explained above, OWCP's procedures provide that, in instances where the claimant fails to provide the requested financial information, 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.²⁰ In this case, appellant responded to the preliminary overpayment determination by submitting a completed Form OWCP-20, reporting her income, assets, and expenses. However, OWCP required recovery at a rate based on an individual who did not provide any financial

¹⁷ *Supra* note 13.

¹⁸ *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

¹⁹ 20 C.F.R. § 10.441(a); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

²⁰ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.500.8c(1) (September 2018).

information. The Board, therefore, finds that OWCP abused its discretion by deducting \$909.39 from appellant's continuing compensation payments, every 28 days.²¹

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,322.23, for the period November 1, 2023 through March 23, 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, but improperly required recovery of the overpayment by deducting \$909.39 from appellant's continuing compensation payments, every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2024 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: January 13, 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

²¹ See *J.R.*, Docket No. 24-0852 (issued November 14, 2024); *R.M.*, Docket No. 19-1508 (issued July 6, 2022); *L.M.*, Docket No. 21-0455 (issued February 28, 2022); *M.W.*, Docket No. 20-1107 (issued March 17, 2021).