

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

C.S., Appellant)
and) Docket No. 23-0587
DEPARTMENT OF TRANSPORTATION,)
FEDERAL AVIATION ADMINISTRATION,)
Omaha, NE, Employer)
Issued: July 9, 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 March 14, 2023 appellant filed a timely appeal from a February 21, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 \$10,158.54 during the period November 1, 2021 through September 10, 2022, 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

¹ 5 U.S.C. § 8101 *et seq.*

overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On August 8, 1998 appellant, then a 39-year-old supervisory air traffic controller, filed an occupational disease claim (Form CA-2) alleging that she developed cervical disc disease as a result of factors of her federal employment. She noted that she first became aware of the condition on February 15, 1995, and realized its relationship to her federal employment on July 8, 1998. OWCP accepted the claim for aggravation of degenerative disc disease at C5-C6, posterior stabilization and cervical fusion of C5-C6; displacement of the cervical intervertebral disc without myelopathy; spasmodic torticollis; and brachial neuritis or radiculitis. It paid appellant wage-loss compensation on the supplemental rolls beginning July 22, 1998, and on the periodic rolls beginning December 31, 2000.

A notification of personnel action (Standard Form (SF) 50-B) dated November 7, 1998, indicated that appellant's retirement coverage was under the Federal Employees Retirement System (FERS) and Federal Insurance Contributions Act (FICA).

In a letter dated February 11, 2022, appellant notified OWCP that she began receiving SSA age-related retirement benefits, effective December 2021.

On March 1 and July 28, 2022 OWCP provided SSA with a FERS/SSA dual benefits form.

On August 14, 2022 SSA completed the dual benefits form and reported appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset. Beginning November 2021, the SSA rate with FERS was \$1,308.20 and without FERS was \$376.60. Beginning December 2021, the SSA rate with FERS was \$1,385.40 and without FERS was \$398.80.

By letter dated September 13, 2022, OWCP advised appellant that, effective October 8, 2022, her FECA wage-loss compensation would be offset by her SSA age-related retirement benefits. Appellant's new net wage-loss compensation payment every 28 days would be \$4,111.97.

On October 18, 2022 OWCP prepared a FERS offset overpayment calculation worksheet wherein it explained that for the period November 1 through 30, 2021, appellant received an overpayment in the amount of \$921.36, and for the period December 1, 2021 through September 10, 2022, appellant received an overpayment of \$9,237.18. It found that she had therefore received a total overpayment of compensation in the amount of \$10,158.54 for the period November 1, 2021 through September 10, 2022.

On October 19, 2022 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$10,158.54 had been created for the period November 1, 2021 through September 10, 2022 because appellant concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It indicated that she was without fault in the creation of the overpayment. 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 a waiver of the overpayment. It further requested that she provide financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income and expenses. Additionally, OWCP further provided an overpayment action request form and 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.

On October 20, 2022 appellant requested that OWCP make a decision based on the written evidence on issue of waiver of recovery of the overpayment, noting that she requested the waiver as she was found to be without fault and would suffer severe financial hardship in trying to repay the debt. Enclosed was a completed Form OWCP-20, wherein appellant reported total monthly income of \$6,774.00; total monthly expenses of \$6,950.00; and assets totaling \$1,369.00. Appellant did not submit supporting financial documentation.

By letter dated December 15, 2022, OWCP requested that appellant submit an updated Form OWCP-20 and provide supporting financial documentation for consideration of waiver. It afforded her 30 days to submit the requested evidence. OWCP later extended the deadline to February 17, 2023.

Appellant subsequently submitted an updated Form OWCP-20, wherein she reported total monthly income of \$5,616.00; total monthly expenses of \$6,836.00; and assets totaling \$5,424.00. In support thereof, appellant submitted the following documentation: a checking account summary, noting that, among other things, on December 20, 2022 appellant received payment of \$25,000.00. On December 20, 2022 appellant transferred \$22,000.00 to another checking account.

By decision dated February 21, 2023, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$10,158.54 during the period November 1, 2021 through September 10, 2022, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation 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. OWCP required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 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 duty.² 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.³

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA benefits that are attributable to federal service of the

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116.

employee.⁴ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA age-related retirement 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.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$10,158.54 for the period November 1, 2021 through September 10, 2022, for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset.

As noted, a claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁶ The information provided by SSA on August 14, 2022 accurately indicated that appellant had received SSA age-related retirement benefits that were attributable to her own federal service from November 1, 2021 through September 10, 2022. Thus, the record establishes fact of overpayment.⁷

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of appellant's SSA age-related retirement benefits that were attributable to her federal service. SSA provided its benefit rates with FERS and without FERS. The Board finds that OWCP properly determined the amount of the overpayment. It found that, since SSA benefits were paid monthly and FECA benefits were paid every 28 days, the monthly offset had to be adjusted to a 28-day payment cycle amount. OWCP provided its calculations for each relevant time period based on the SSA dual benefits form and properly calculated that the lack of offset from November 1, 2021 through September 10, 2022 resulted in an overpayment total of \$10,158.54.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$10,158.54 for the period November 1, 2021 through September 10, 2022.

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

⁴ 20 C.F.R. § 10.421(d); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

⁵ FECA Bulletin No. 97-09 (issued February 3, 1997).

⁶ *Id.*; *See also N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁷ *Id.*

recovery would defeat the purpose of FECA or would be against equity and good conscience.⁸ 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.⁹

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.¹⁰ 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 \$50.00.¹¹

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.¹²

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.¹³ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹⁴

ANALYSIS -- ISSUE 2

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

⁸ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

⁹ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁰ 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).

¹¹ *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *id.* at Chapter 6.400.4.a(3).

¹² 20 C.F.R. § 10.437(a)-(b).

¹³ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁴ *Id.* at § 10.438(b).

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.¹⁵

Appellant submitted a Form OWCP-20, wherein she reported total monthly income of \$5,616.00; total monthly expenses of \$6,836.00; and assets totaling \$5,424.00. However, a checking account summary, noted that on December 20, 2022 appellant received payment of \$25,000.00, and transferred \$22,000.00 to another checking account.

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.¹⁶ Accordingly, the Board finds that appellant has not met the standard for waiver of recovery of the overpayment, because her assets exceed the allowable resource base.¹⁷ 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.¹⁸

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.¹⁹

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.²⁰ Section 10.441(a) of OWCP's implementing regulations²¹ provides that, if 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 same. If no refund is made, OWCP shall decrease later payments of compensation, taking into

¹⁵ *Id.*

¹⁶ *Supra* note 13.

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

¹⁸ *S.R.*, Docket No. 20-1416 (issued September 8, 2022); *M.H.*, Docket No. 19-1497 (issued September 9, 2020).

¹⁹ *J.R.*, Docket No. 24-0852 (issued November 14, 2024); *S.W.*, Docket No. 20-0363 (issued November 23, 2020).

²⁰ See *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

²¹ 20 C.F.R. § 10.441(a).

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.²²

When an individual fails to provide requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines.²³

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

In determining whether appellant could repay the overpayment through \$200.00 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.²⁴ Thus, the Board finds that it properly required recovery of the \$10,158.54 overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.²⁵

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$10,158.54 during the period November 1, 2021 through September 10, 2022, 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 \$200.00 from appellant's continuing compensation payments every 28 days.

²² *Id.*

²³ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.500.8c(1) (September 2020).

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

²⁵ See *J.B.*, *id.*; *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 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