

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

P.O., Appellant))
)
and)	Docket No. 24-0699
		Issued: July 11, 2025
U.S. POSTAL SERVICE, POST OFFICE, Lynbrook, NY, Employer))
)

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 June 3, 2024 appellant filed a timely appeal from an April 22, 2024 nonmerit decision and an April 24, 2024 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.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$40,950.25 for the period January 1, 2018 through September 9, 2023, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 24, 2022 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.*

benefits, without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; (3) whether it properly required recovery of the overpayment by deducting \$807.51 from appellant's continuing compensation payments, every 28 days; and (4) whether OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

FACTUAL HISTORY

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

On April 24, 1992 appellant, then a 38-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her head and neck when a "post con" fell on her head while in the performance of duty. OWCP accepted the claim for cerebral concussion and contusion to the cervical spine. Appellant initially stopped work on the date of injury and returned to part-time work with restrictions, effective November 12, 1992. She stopped work again on June 11, 2002, and OWCP paid her wage-loss compensation for total disability on the periodic rolls, effective June 16, 2002.

On June 24, 2022 OWCP requested information from SSA regarding potential dual benefits.

On July 9, 2022 OWCP received a completed Federal Employees Retirement System (FERS)/SSA dual benefits form from SSA, which reported appellant's SSA age-related retirement benefit rates with and without FERS. On August 17, 2022 it received an additional FERS/SSA dual benefits form from SSA, also dated July 9, 2022, which indicated it was a corrected version of the prior form.

On June 14, 2023 OWCP again requested information from SSA regarding potential dual benefits.

On July 18, 2023 OWCP received a completed and updated dual benefits form from SSA, which reported appellant's SSA age-related retirement benefits rates with and without federal service.

Beginning September 10, 2023, OWCP adjusted appellant's wage-loss compensation to \$2,653.45 per 28-day pay period to include the offset of her SSA age-related retirement benefits attributable to her federal service based upon the July 18, 2023 response from SSA.

On December 4, 2023 OWCP advised SSA of the discrepancies between the July 9, 2022 and July 18, 2023 responses and requested that it provide appropriate SSA age-related retirement benefit rates with and without federal service for each effective date. It also requested that SSA explain why the rates to be provided were accurate for this case, and why the prior rates were incorrect and should be disregarded.

In a response dated December 10, 2023, P.G., an SSA representative, explained that, effective August 2019, appellant was eligible for a survivor benefit but that the amount of the

³ Docket No. 96-740 (issued November 10, 1998).

survivor benefit was not removed from some of the calculations. He advised that the first calculation dated July 9, 2022 was incorrect and should not be used; that the second calculation dated July 9, 2022 was correct through December 2021; and that the third calculation dated July 18, 2023 was incorrect and should not be used. P.G. also provided a revised dual benefits form dated December 10, 2023, which he noted was current and correct.

The December 10, 2023 form reported appellant's SSA age-related retirement benefit rates with and without federal service, as of January 2018. Beginning January 2018, the SSA rate with federal service was \$716.50 and without federal service was \$159.80. Beginning December 2018, the SSA rate with federal service was \$736.50 and without federal service was \$164.20. Beginning December 2019, the SSA rate with federal service was \$748.20 and without federal service was \$166.80. Beginning December 2020, the SSA rate with federal service was \$757.90 and without federal service was \$168.90. Beginning December 2021, the SSA rate with federal service was \$802.50 and without federal service was \$178.80. Beginning December 2022, the SSA rate with federal service was \$872.40 and without federal service was \$194.30. Beginning December 2023, the SSA rate with federal service was \$900.30 and without federal service was \$200.50.

Beginning January 8, 2024, OWCP adjusted appellant's net wage-loss compensation to \$3,106.03 per 28-day pay period to include the offset of her SSA age-related retirement benefits attributable to her federal service based upon the information contained in the December 10, 2023 dual benefits form.⁴

A January 16, 2024 FERS offset overpayment calculation worksheet explained the amount that OWCP should have offset each 28-day compensation period from January 1, 2018 through September 9, 2023. OWCP found that, from January 1 through November 30, 2018, appellant received an overpayment of \$6,129.82; from December 1, 2018 through November 30, 2019, she received an overpayment of \$6,886.47; from December 1, 2019 through November 30, 2020, received an overpayment of \$7,015.13; from December 1, 2020 through November 30, 2021, she received an overpayment of \$7,087.42; from December 1, 2021 through November 30, 2022, she received an overpayment of \$7,504.96; and from December 1, 2022 through September 9, 2023, she received an overpayment of \$6,326.45. It therefore found a total overpayment of \$40,950.25.

In a preliminary overpayment determination dated January 19, 2024, OWCP notified appellant of its preliminary finding that she had received an overpayment of compensation in the amount of \$40,950.25 for the period January 1, 2018 through September 9, 2023 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset.⁵ OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. It requested that she submit a completed 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

⁴ OWCP thereafter adjusted appellant's net compensation rate to \$3,230.03 per 28-day pay period, effective March 24, 2024, the date a cost-of-living adjustment (COLA) took effect.

⁵ OWCP further advised appellant that it owed her \$1,904.13 because it had incorrectly paid her compensation for the period September 10 through December 30, 2023, and that it would "use this amount to offset your overpayment amount when issuing [the] final overpayment decision."

other records supporting income and expenses. Additionally, it 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 prerecoumpt hearing.

By overpayment action request form, postmarked March 5, 2024, appellant requested waiver of recovery of the overpayment and an investigation regarding OWCP's overpayment determination. She provided a Form OWCP-20 which contained annotations regarding her request for an investigation. Appellant did not provide any information regarding her income, assets, or expenses and did not submit any supporting financial documentation.

By decision dated April 22, 2024, OWCP's Branch of Hearings and Review denied appellant's request for a prerecoumpt hearing as untimely filed.

By decision dated April 24, 2024, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$40,950.25 for the period January 1, 2018 through September 9, 2023 because it had failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to her federal service. It found her without fault in the creation of the overpayment but denied waiver of recovery of the overpayment as she had not provided documentation supporting her claimed expenses. OWCP required recovery of the overpayment by deducting \$807.51 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.⁶ 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.⁷

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.⁸ 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$40,950.25, for which she was without fault, for the period

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8116.

⁸ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

⁹ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

January 1, 2018 through September 9, 2023, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, 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.¹⁰ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to her federal service during the period January 1, 2018 through September 9, 2023. However, no appropriate offset was made. The Board thus finds that fact of overpayment is established.

To determine the amount of the overpayment, the portion of SSA's benefits that were attributable to federal service must be calculated. SSA provided appellant's age-related retirement benefit rates with and without federal service for the period January 1, 2018 through September 9, 2023. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment of compensation in the amount of \$40,950.25.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period January 1, 2018 through September 9, 2023, and finds that an overpayment of compensation in the amount of \$40,950.25 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.¹¹ 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.¹²

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.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

¹⁰ 20 C.F.R. § 10.421(d); *L.D.*, Docket No. 21-0447 (issued September 28, 2021); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, *supra* note 8.

¹¹ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see M.C.*, Docket No. 19-0699 (issued February 12, 2020).

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

¹³ 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).

made, gives up a valuable right or changes his or her position for the worse.¹⁴ To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.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 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 a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.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

In its preliminary overpayment determination dated January 19, 2024, OWCP explained the importance of providing the completed Form OWCP-20 and supporting financial documentation. Appellant, however, did not provide the requested financial information prior to OWCP's issuance of the April 24, 2024 final overpayment determination. 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.¹⁹

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.²⁰

¹⁴ *Id.* at § 10.437(a)(b).

¹⁵ *Id.* at § 10.437(b)(1); *see also C.H.*, Docket No. 16-0968 (issued August 8, 2016).

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

¹⁷ *Id.* at § 10.438(b).

¹⁸ *Supra* note 11.

¹⁹ 20 C.F.R. § 10.438.

²⁰ *See E.T.*, Docket No. 22-0234 (issued August 17, 2022); *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

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.²¹

Section 10.441 of OWCP's regulations²² 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.²³

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$807.51 from appellant's continuing compensation payments, every 28 days.

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.²⁴ In this case, appellant did not submit a completed Form OWCP-20, reporting her income, assets, and expenses with supporting financial documentation prior to OWCP's issuance of the April 24, 2024 final overpayment determination. The Board, therefore, finds that OWCP properly required recovery of the overpayment by deducting \$807.51 from appellant's continuing compensation payments, every 28 days.

LEGAL PRECEDENT -- ISSUE 4

OWCP's regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.²⁵ The date of the request is determined by the postmark or other carrier's date marking, or the date received in the Employees' Compensation Operations and Management Portal (ECOMP).²⁶ Failure to request the prerecoupment hearing within 30 days shall constitute a waiver of the right to a hearing.²⁷ The only right to a review of a final

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

²² *Id.* at § 10.441(a).

²³ *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.8c(1) (September 2018).

²⁵ 20 C.F.R. at § 10.432.

²⁶ *Id.* at §§ 10.439, 10.616(a); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024).

²⁷ *Id.* at § 10.432; *see also D.C.*, Docket No. 21-0913 (issued December 8, 2023); *C.L.*, Docket No. 22-0349 (issued August 20, 2022); *C.R.*, Docket No. 15-0525 (issued July 20, 2015); *Willie C. Howard*, 55 ECAB 564 (2004).

overpayment decision is with the Board.²⁸ The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.²⁹

ANALYSIS -- ISSUE 4

The Board finds that OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

OWCP issued its preliminary overpayment determination on January 19, 2024. It advised appellant that she had 30 days to request a prerecoupment hearing. On March 5, 2024 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. The 30th day following OWCP's January 19, 2024 preliminary overpayment determination was February 18, 2024. There is no provision in FECA or its regulations which allows an exception to the 30-day time limitation for requesting a prerecoupment hearing.³⁰ Since the March 5, 2024 request for a prerecoupment hearing was made more than 30 days after the January 19, 2024 preliminary overpayment determination, it was untimely.³¹ OWCP thus properly denied appellant's request for a prerecoupment hearing.³²

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$40,950.25 for the period January 1, 2018 through September 9, 2023, 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. The Board also finds that OWCP properly required recovery of the overpayment by deducting \$807.51 from appellant's continuing compensation payments every 28 days. The Board additionally finds that OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

²⁸ *Id.* at § 10.440(b).

²⁹ *Id.*

³⁰ *Id.*; *D.R.*, Docket No. 19-1885 (issued April 24, 2020).

³¹ 20 C.F.R. §§ 10.439, 10.616(a); *see D.C.*, *supra* note 27; *S.G.*, Docket No. 22-0476 (issued August 11, 2022); *A.B.*, Docket No. 18-1172 (issued January 15, 2019).

³² *See S.D.*, Docket No. 25-0125 (issued March 5, 2025); *E.G.*, Docket No. 19-0176 (issued February 23, 2021); *E.V.*, Docket No. 17-1328 (issued December 11, 2017). *See also R.U.*, Docket No. 16-0027 (issued March 24, 2017); *Ronald E. Morris*, Docket No. 05-1553 (issued November 23, 2005).

ORDER

IT IS HEREBY ORDERED THAT the April 22 and 24, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 11, 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