

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

days; (4) and whether OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

### **FACTUAL HISTORY**

On September 28, 1994 appellant, then a 37-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome due to factors of her federal employment including continuous fine manipulation and grasping. OWCP accepted the claim for bilateral wrist tendinitis.<sup>2</sup> Appellant returned to full-time work in May 1998. She filed a notice of recurrence (Form CA-2a) claiming disability from work commencing June 5, 2001. OWCP paid appellant wage-loss compensation on the supplemental rolls commencing June 21, 2006, and on the periodic rolls commencing May 13, 2007.<sup>3</sup>

On January 28, 2025 OWCP requested information from SSA regarding potential dual benefits.

On January 29, 2025 OWCP received a completed dual benefits form from SSA. The form reported appellant's SSA age-related retirement benefit rates with and without federal service, as of May 2024. Beginning May 2024, the SSA rate with federal service was \$1,959.50 and without federal service was \$163.70. Beginning December 2024, the SSA rate with federal service was \$2,008.40 and without federal service was \$167.70. Beginning January 2025, the SSA rate with federal service was \$2,008.40 and without federal service was \$263.20.

In a February 5, 2025 Federal Employees Retirement System (FERS) offset overpayment calculation worksheet, OWCP computed a total overpayment amount of \$12,721.48 for the period May 1, 2024 through January 2, 2025.<sup>4</sup> It determined that for the period May 1 through 18, 2024, appellant received an overpayment in the amount of \$1,065.64; for the period May 19 through June 15, 2024, she received an overpayment in the amount of \$1,419.84; for the period June 16 through July 13, 2024, she received an overpayment in the amount of \$1,419.84; for the period July 14 through August 10, 2024, she received an overpayment in the amount of \$1,419.84; for the period August 11 through September 7, 2024, she received an overpayment in the amount of \$1,419.84; for the period September 8 through October 5, 2024, she received an overpayment in the amount of \$1,419.84; for the period October 6 through November 2, 2024, she received an overpayment in the amount of \$1,419.84; for the period November 3 through 30, 2024, she received an overpayment in the amount of \$1,419.84; for the period December 1 through 28, 2024,

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<sup>2</sup> OWCP assigned the present claim OWCP File No. xxxxxx604. Appellant had a January 30, 2002 occupational disease claim, which OWCP denied for right carpal tunnel syndrome under OWCP File No. xxxxxx407. She also had subsequently accepted February 18, 2002 occupational disease claim, which OWCP accepted for right carpal tunnel syndrome under OWCP File No. xxxxxx592 and a subsequent January 2, 2003 occupational disease claim, which OWCP accepted for left carpal tunnel syndrome under OWCP File No. xxxxxx589. OWCP has administratively combined OWCP File Nos. xxxxxx592; xxxxxx407; xxxxxx589 and xxxxxx604, with the latter serving as the master file.

<sup>3</sup> By decision dated May 28, 2009, OWCP adjusted appellant's compensation based on its determination that she was capable of earning wages in the constructed position of concierge, transportation clerk, and travel clerk. By decision dated December 14, 2009, OWCP's hearing representative affirmed that decision.

<sup>4</sup> The record indicates that appellant's retirement coverage was under FERS.

she received an overpayment in the amount of \$1,419.84; for the period December 29 through 31, 2024, she received an overpayment in the amount of \$182.05; and for the period January 1 through 2, 2025, she received an overpayment in the amount of \$115.07.

In a February 26, 2025 preliminary overpayment determination, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$12,525.01 because it had failed to reduce her wage-loss compensation payments for the period May 1, 2024 through January 2, 2025 by the portion of her SSA age-related retirement benefits attributable to her federal service. It advised appellant of its preliminary determination that she was without fault in the creation of the overpayment and requested that she complete an overpayment action request form and an updated Form OWCP-20, and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records to support income and expenses. Additionally, OWCP notified her that she could request a final decision based on the written evidence or a prerecoupment hearing within 30 days.

In a February 27, 2025 letter, OWCP notified appellant that her wage-loss compensation would be offset by the portion of her SSA age-related retirement benefits attributable to her federal service. It advised her that her new net wage-loss compensation payments would be \$124.37.

On March 6, 2025 appellant requested a decision based on the written evidence including waiver of recovery of the overpayment. She submitted a completed Form OWCP-20 of even date, wherein she reported total monthly income of \$3,123.00 and total monthly expenses of \$2,666.00. Appellant reported assets of \$1,050.00. She provided supporting financial documentation. In an accompanying statement dated February 28, 2025, appellant alleged that her SSA age-related retirement benefits did not begin until January 15, 2025. She asserted that from May 1 through December 18, 2024 she was receiving SSA disability benefits. Appellant provided a document from the SSA's website showing that from November 15, 2023 through December 18, 2024 she was receiving SSA disability benefits and that beginning January 15, 2025 she received SSA age-related retirement benefits.

In a March 17, 2025 letter, OWCP noted that appellant had submitted the Form OWCP-20, but found that this form was incomplete, as she did not sufficiently list her income, expenses, and assets or provide sufficient supporting documentation. It provided an additional Form OWCP-20, and requested that she submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records to support income and expenses.

Appellant responded on March 25, 2025 and related that she paid her bills from her bank account. She provided a bank statement dated February 8 through March 7, 2025.

In a March 27, 2025 letter, OWCP noted that appellant had submitted the completed Form OWCP-20, but again found that the form was incomplete as she did not sufficiently list her income, expenses, and assets or provide sufficient supporting documentation. It provided an additional Form OWCP-20, and requested that she submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records to support income and expenses.

On April 10, 2025 appellant completed an additional Form OWCP-20. She reported total monthly income of \$3,575.00, total monthly expenses of \$3,251.98, and total assets of \$3,723.37. She provided additional supporting financial documentation.

By decision dated April 22, 2025, OWCP finalized the February 26, 2025 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$12,525.01 (compromised to \$10,697.36) for the period May 1, 2024 through January 2, 2025, because 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, noting that her income exceeded her expenses by more than \$50.00. OWCP required recovery of the overpayment by deducting \$51.05 from appellant's continuing compensation payments every 28 days, as this was 25 percent of \$204.19.

### **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.<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 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.<sup>7</sup> 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 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.<sup>8</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for which she was without fault, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset.

The evidence of record establishes that, while appellant received FECA wage-loss compensation, she also received SSA age-related retirement benefits based upon her federal service. No appropriate offset was made. As explained above, a claimant cannot receive both compensation for wage loss under FECA and SSA age-related retirement benefits attributable to

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<sup>5</sup> 5 U.S.C. § 8102.

<sup>6</sup> *Id.* at § 8116.

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

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

federal service for the same period, without an appropriate offset.<sup>9</sup> Consequently, fact of overpayment has been established.

The Board further finds, however, that the case is not in posture for decision with regard to the period and amount of the overpayment. In a statement dated February 28, 2025, appellant alleged that from May 1 through December 18, 2024 she was receiving SSA disability benefits, and that her SSA age-related retirement benefits did not begin until January 15, 2025. Appellant provided a document from the SSA's website, which showed that from November 15, 2023 through December 18, 2024 she was receiving SSA disability benefits and that she did not receive SSA age-related retirement benefits until January 15, 2025. Therefore, as OWCP has not adequately explained this discrepancy, the case record remains unclear as to how OWCP determined the period and amount of the overpayment.<sup>10</sup> The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated.<sup>11</sup>

Accordingly, the Board finds that the case must be remanded to OWCP.<sup>12</sup> On remand, OWCP shall obtain clarification from SSA regarding appellant's SSA age-related retirement benefit rates with and without federal service for the period in question. It shall then determine the correct period and amount of the overpayment of compensation and issue a new preliminary overpayment determination with an overpayment action request form, a Form OWCP-20, and instructions for appellant to provide supporting financial information. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>13</sup>

#### **LEGAL PRECEDENT -- ISSUE 4**

OWCP's regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.<sup>14</sup> 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).<sup>15</sup> Failure to request the prerecoupment hearing within 30 days

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<sup>9</sup> *Supra* notes 6 and 7.

<sup>10</sup> *See P.B.*, Docket No. 23-0955 (issued March 13, 2024); *L.D.*, Docket 20-1344 (issued March 9, 2023); *S.H.*, Docket No. 20-1189 (issued January 27, 2021); *R.C.*, Docket No. 17-0058 (issued August 3, 2017).

<sup>11</sup> *R.K.*, Docket No. 21-0873 (issued May 8, 2023).

<sup>12</sup> *S.H.*, *supra* note 10.

<sup>13</sup> In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

<sup>14</sup> 20 C.F.R. § 10.432; *see also D.T.*, Docket No. 25-0364 (issued April 9, 2025); *F.R.*, Docket No. 22-0827 (issued October 23, 2023); *S.O.*, Docket No. 20-0753 (issued October 28, 2020); *E.M.*, Docket No. 19-0857 (issued December 31, 2019); *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

<sup>15</sup> *Id.* at § 10.439, 10.616(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024); *see A.B.*, Docket No. 18-1172 (issued January 15, 2019); *see also B.W.*, Docket No. 18-1004 (issued October 24, 2018); *C.R.*, Docket No. 15-0525 (issued July 20, 2015).

constitutes a waiver of the right to a hearing.<sup>16</sup> Section 10.440(b) of OWCP's regulations provides that the only review of a final decision concerning an overpayment is to the Board. The provisions of 5 U.S.C. § 8124(b) (concerning hearings) and 5 U.S.C. § 8128(a) (concerning reconsiderations) do not apply to such a decision.<sup>17</sup> The Board has found that the implementation of this regulation is a proper exercise of the Director's discretion and that a claimant has no further right to review by OWCP once a final decision on the issue of overpayment has been issued.<sup>18</sup>

#### **ANALYSIS -- ISSUE 4**

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

OWCP issued a final overpayment decision in this case on April 22, 2025. Appellant requested a prerecoupment hearing in an overpayment action request form received by OWCP on April 30, 2025. By decision dated May 1, 2025, OWCP denied her request for a prerecoupment hearing.

Section 10.440(b) of OWCP's regulations specifically provides that the only review of a final overpayment determination of OWCP is to the Board and that 5 U.S.C. § 8128(a) does not apply to such a final overpayment determination.<sup>19</sup> As appellant was not entitled to a prerecoupment hearing following the final overpayment decision of April 22, 2025, OWCP properly denied her request on May 1, 2025.<sup>20</sup>

#### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation, for which she was without fault, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. The Board further finds that the case is not in posture for decision with regard to the period and amount of the overpayment. The Board also finds that OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

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<sup>16</sup> *Id.*; *F.P.*, Docket No. 20-1646 (issued August 3, 2021).

<sup>17</sup> 20 C.F.R. § 10.440(b). *See also J.M.*, Docket No. 08-1615 (issued June 3, 2009); *Jan K. Fitzgerald*, 51 ECAB 659 (2000).

<sup>18</sup> *Charles E. Nance*, 54 ECAB 447 (2003); *Philip G. Feland*, 48 ECAB 485 (1997).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*; *see F.R.*, *supra* note 14. *J.B.*, Docket No. 20-0923 (issued February 12, 2021); *E.H.*, Docket No. 19-0016 (issued October 20, 2020); *P.J.*, Docket No. 19-1479 (issued May 8, 2020) (following a final overpayment decision, the only appeal right is an appeal to the Board).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 22, 2025 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The May 1, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 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