

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

S.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Milwaukee, WI, Employer**

Docket No. 25-0168

Issued: March 13, 2025

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

JURISDICTION

On December 5, 2024 appellant, through counsel, filed a timely appeal from a November 20, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the November 20, 2024 decision, OWCP received additional evidence. However, 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.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$55,016.46, for the period January 1, 2021 through August 12, 2023, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement 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 \$467.60 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On December 30, 1994 appellant, then a 38-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she injured her right shoulder and elbow due to factors of her federal employment, including repetitive work activities.⁴ OWCP accepted the claim for lateral epicondylitis of the right elbow, cervical disc displacement, cervical spondylosis with myelopathy, cervicgia, cervical sprain, left shoulder impingement, left acromioclavicular joint sprain, bilateral CTS, and myalgia. It paid appellant wage-loss compensation on the supplemental rolls, effective December 13, 2003 and on the periodic rolls, effective April 17, 2005.

On July 28, 2022, OWCP requested information from SSA regarding potential Federal Employees Retirement System (FERS)/SSA dual benefits.

On August 7, 2022, OWCP received from SSA a completed FERS/SSA dual benefits form, which indicated that appellant had been in receipt of SSA age-related retirement benefits since January 2021. The form reported appellant's SSA age-related retirement benefit rates with and without a FERS offset. Beginning January 2021, the SSA rate with FERS was \$1,646.40 and without FERS was \$1,646.40 and beginning December 2021, the SSA rate with FERS was \$1,743.50 and without FERS was \$1,743.50.

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

On July 13, 2023 OWCP received from SSA a completed FERS/SSA dual benefits form, which indicated that beginning January 2021, the SSA rate with FERS was \$1,646.40 and without FERS was \$0.00. Beginning December 2021, the SSA rate with FERS was \$1,743.50 and without

⁴ OWCP assigned the present claim OWCP File No. xxxxxx898. Appellant has a previously accepted November 2, 1987 traumatic injury claim, which OWCP accepted for neck and back strains, myofascial pain syndrome, and fibrositis under OWCP File No. xxxxxx685. She also had a subsequent January 30, 2002 occupational disease claim, which OWCP accepted for bilateral carpal tunnel syndrome (CTS) under OWCP File No. xxxxxx128 and a subsequent October 23, 2003 traumatic injury claim, which OWCP accepted for left shoulder and neck strains under OWCP File No. xxxxxx133. OWCP has administratively combined OWCP File Nos. xxxxxx685, xxxxxx128, xxxxxx133, and xxxxxx898, with the latter serving as the master file.

FERS was \$0.00. Beginning December 2022, the SSA rate with FERS was \$1,895.10 and without FERS was \$0.00.⁵

On December 4, 2023, OWCP requested clarification from SSA as to why the August 7, 2022 and July 13, 2023 dual benefits forms contained different figures for the SSA rates without FERS. It also requested that SSA advise which figures were correct and provide its reasoning.

In a response received by OWCP on December 17, 2023, SSA advised that the August 7, 2022 and July 13, 2023 figures were incorrect because the benefit amount was less than \$1.00 after federal wages were removed, which was then improperly rounded down to \$0.00. It provided updated calculations, which reflected that beginning January 2021, the SSA rate with FERS was \$1,646.40 and without FERS was \$0.70. Beginning December 2021, the SSA rate with FERS was \$1,743.50 and without FERS was \$0.70. Beginning December 2022, the SSA rate with FERS was \$1,895.10 and without FERS was \$0.70. Beginning April 2023, the SSA rate with FERS was \$1,895.10 and without FERS was \$0.90. Beginning December 2023, the SSA rate with FERS was \$1,955.70 and without FERS was \$0.90.

OWCP completed a FERS offset overpayment calculation worksheet on May 8, 2024. It calculated the overpayment amount by determining the daily FERS offset amount and multiplying that amount by the number of days in each period January 1, 2021 through August 12, 2023, resulting in a total overpayment amount of \$55,016.46. This form indicated that, from January 1, through November 30, 2021, appellant received an overpayment in the amount of \$18,120.81; from December 1, 2021 through November 30, 2022, she received an overpayment in the amount of \$20,971.08; from December 1, 2022 through March 31, 2023 she received an overpayment in the amount of \$7,556.80, and from April 1 through August 12, 2023, she received an overpayment in the amount of \$8,367.77.

On May 22, 2024, OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$55,016.46 had been created because it had failed to reduce appellant's wage-loss compensation payments for the period January 1, 2021 through August 12, 2023, to offset her SSA age-related retirement benefits that were attributable to federal service. It determined 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 recovery method and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and other records to support income and expenses. Additionally, OWCP 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 prerecoupment hearing.

On May 29, 2024 appellant requested waiver of recovery of the overpayment and a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She submitted a completed Form OWCP-20, listing total monthly income of \$3,116.13 and total

⁵ Beginning August 13, 2023, OWCP adjusted appellant's net wage-loss compensation to \$1,290.02 per 28-day pay period to include the offset of her SSA age-related retirement benefits attributable to her federal service.

monthly expenses of \$2,668.00. Appellant reported assets of \$761.48. She attached supporting documentation.

A hearing was held on September 6, 2024. During the hearing, OWCP's hearing representative explained the need for her to provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and other records to support income and expenses and held the record open for 30 days for appellant to submit additional financial information. No further evidence regarding the overpayment was received.

By decision dated November 20, 2024, the hearing representative finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$55,016.46 for the period January 1, 2021 through August 12, 2023 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without an appropriate offset. The hearing representative 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 was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. The hearing representative required recovery of the overpayment by deducting \$467.60 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(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.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 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.⁹

⁶ *Supra* note 1 at § 8102(a).

⁷ *Id.* at § 8116(a).

⁸ 20 C.F.R. § 10.421(d); *P.L.*, Docket No. 20-0709 (issued March 18, 2021); *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).

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$55,016.46 for the period January 1, 2021 through August 12, 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.¹⁰ The evidence of record indicates that, during this period appellant was paid wage-loss compensation benefits under FECA, and she also received SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period.¹¹ The information provided by SSA establishes that appellant received SSA age-related retirement benefits that were attributable to federal service during the period January 1, 2021 through August 12, 2023. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided its age-related retirement benefit rates with FERS and without FERS for specific periods from January. OWCP provided its calculations for each relevant period based on the SSA worksheet and determined that appellant received an overpayment in the amount of \$55,016.46.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period January 1, 2021 through August 12, 2023 and finds that it properly determined that an overpayment of compensation in the amount of \$55,016.46 was created.¹²

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹³ Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹⁴

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

¹⁰ *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

¹¹ 20 C.F.R. § 10.421(d); *see S.M.*, *supra* note 8; *L.J.*, *supra* note 8.

¹² *See R.F.*, Docket No. 20-0159 (issued October 15, 2020); *see D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹³ 5 U.S.C. § 8129(b).

¹⁴ 20 C.F.R. § 10.436.

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, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹⁵

Section 10.437 of OWCP's implementing regulations provides that 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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁶

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.¹⁷ 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.¹⁸ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery of the overpayment, and no further request for waiver shall be considered until the requested information is furnished.¹⁹

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.²⁰

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not shown that she needs substantially all of her current income to meet ordinary and necessary living expenses. The evidence of record reveals that appellant reported a total monthly income of \$3,116.13 and total monthly expenses of \$2,668.00. As appellant's monthly income exceeds her monthly expenses by more than \$50.00, the Board finds that she does

¹⁵ *Id.*; OWCP procedures provide that a claimant is deemed to need substantially all of his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Its procedures further provide that 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(2) and (3) (September 2020).

¹⁶ 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁷ *Id.* at 10.438(a).

¹⁸ *Id.*; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁹ *Id.* at § 10.438(b); *see G.S.*, Docket No. 20-1580 (issued March 19, 2021).

²⁰ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

not need substantially all of her current income to meet current ordinary and necessary living expenses.²¹

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. Appellant has not shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt, or that she has relinquished a valuable right or changed her position for the worse in reliance on the payments which created the overpayment.²²

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.²³

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.²⁴

Section 10.441 of OWCP's regulations²⁵ 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.²⁶

ANALYSIS -- ISSUE 3

The Board finds that OWCP improperly required recovery of the overpayment by deducting \$467.60 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.²⁷ 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

²¹ *Supra* note 15.

²² *See B.C.*, Docket No. 19-0629 (issued June 2, 2020); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

²³ *S.W.*, Docket No. 20-0363 (issued November 23, 2020).

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

²⁵ *Id.* at § 10.441(a).

²⁶ *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Liquidation*, Chapter 6.500.8c(1) (September 2018).

at a rate based on an individual who did not provide any financial information. The Board, therefore, finds that OWCP abused its discretion by deducting \$467.60 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 \$55,016.46, for which she was without fault, for the period January 1, 2021 through August 12, 2023, 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 improperly required recovery of the overpayment by deducting \$467.60 from appellant's continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2024 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: March 13, 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