

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

S.M., Appellant

and

**U.S. POSTAL SERVICE, MARTIN LUTHER
KING STATION, Houston, TX, Employer**

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**Docket No. 25-0423
Issued: May 2, 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, 2025 appellant filed a timely appeal from a September 24, 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.

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). She explained that this case presented an issue that she wished to explain directly to those adjudicating her claim. Appellant noted that the alleged overpayment occurred in 2022, but she was not advised of it until 2024. Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument as the case can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$14,179.24, for the period December 1, 2022 through April 20, 2024, 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 \$369.23 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On April 23, 2002 appellant, then a 45-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she was injured when trying to push a mail case while in the performance of duty. OWCP accepted the claim for bilateral carpal tunnel syndrome; right hand and wrist tenosynovitis; and acquired right trigger finger.³ It paid appellant wage-loss compensation on the supplemental rolls effective September 23, 2002, and on the periodic rolls effective December 1, 2022.

On September 8, 2023 and March 20, 2024 OWCP requested information from SSA regarding potential FERS/SSA dual benefits.

On April 8, 2024 OWCP received from SSA a completed FERS/SSA dual benefits form, which reported appellant's SSA age-related retirement benefit rates with and without federal service. Beginning December 2022, the SSA rate with federal service was \$1,742.00 and without federal service was \$901.20 and beginning December 2023, the SSA rate with federal service was \$1,797.70 and without FERS was \$930.00.

A May 1, 2024 compensation adjustment form reflected that appellant received an overpayment of compensation from December 1, 2022 through April 20, 2024 in the amount of \$14,179.24.

OWCP completed a FERS offset overpayment calculation worksheet on May 13, 2024. It calculated that, from December 1, 2022 through November 30, 2023, appellant received an overpayment in the amount of \$10,117.28 and from December 1, 2023 through April 20, 2024, she received an overpayment in the amount of \$4,061.96, which resulted in a total overpayment amount of \$14,179.24.

On May 13, 2024 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$14,179.24 had been created because it had failed to reduce appellant's wage-loss compensation payments for the period December 1, 2022 through April 20, 2024, 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-

³ On a claim for compensation (Form CA-7) dated October 8, 2002, appellant's supervisor indicated that appellant's retirement system was the Federal Employees Retirement System (FERS).

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 June 4, 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 also submitted a completed Form OWCP-20, listing total monthly income of \$1,792.00, total monthly expenses of \$5,113.58, and total assets of \$60.00. Appellant also indicated that she and her siblings had inherited her mother's home.

Appellant attached supporting documentation, including credit card statements, a utility bill, and loan statements.

By letter dated August 8, 2024, OWCP's hearing representative advised appellant that updated financial documentation was needed to support any potential waiver of recovery of the overpayment and to determine a reasonable method of collection of the overpayment. OWCP requested that she complete a new Form OWCP-20 and provide additional supporting financial documentation. No response was received.

An oral hearing was scheduled for September 10, 2024 at 11:00 a.m. Eastern Standard Time (EST). Appellant did not appear for the hearing. She called OWCP at 12:12 p.m. EST and left a voicemail message stating that she just realized that the hearing was supposed to be EST and not her home time zone of Central Standard Time (CST).

On September 11, 2024 OWCP informed appellant that her request for hearing would be converted to a review by an OWCP hearing representative and final decision based on the written evidence.

By decision dated September 24, 2024, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$14,179.24 for the period December 1, 2022 through April 20, 2024, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. The hearing representative found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, because appellant had not submitted an updated Form OWCP-20 and supporting financial documentation as requested. The hearing representative required recovery of the overpayment by deducting \$369.23 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.⁴ Section 8116(a) of FECA provides that, while an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.⁵

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.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$14,179.24 for the period December 1, 2022 through April 20, 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 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.⁸ The information provided by SSA establishes that appellant received SSA age-related retirement benefits that were attributable to federal service during the period December 1, 2022 through April 20, 2024. 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 federal service and without federal service for specific periods from December 1, 2022 through April 20, 2024. OWCP provided its calculations for each relevant period based on the SSA worksheet and determined that appellant received an overpayment in the amount of \$14,179.24.

⁴ *Supra* note 2 at § 8102(a).

⁵ *Id.* at § 8116(a).

⁶ 20 C.F.R. § 10.421(d); *S.T.*, Docket No. 25-0168 (issued March 13, 2025); *PL.*, Docket No. 20-0709 (issued March 18, 2021); *S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

⁷ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also S.T., id.; N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁸ 20 C.F.R. § 10.421(d); *see S.M., supra* note 6; *L.J., supra* note 6.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period December 1, 2022 through April 20, 2024, and finds that it properly determined that an overpayment of compensation in the amount of \$14,179.24 was created.⁹

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.¹⁰ 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.¹¹

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 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.¹²

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.¹³

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.¹⁴ 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

⁹ See *S.T.*, *supra* note 6; *R.F.*, Docket No. 20-0159 (issued October 15, 2020); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹⁰ 5 U.S.C. § 8129(b).

¹¹ 20 C.F.R. § 10.436.

¹² *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 6.400.4a(2) and (3) (September 2020).

¹³ 20 C.F.R. § 10.437; see *S.T.*, *supra* note 6; *E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁴ *Id.* at 10.438(a).

determine the repayment schedule, if necessary.¹⁵ 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.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$14,179.24 overpayment of compensation.¹⁷

As OWCP found appellant without fault in the creation of the overpayment, waiver of recovery of the overpayment 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.¹⁸ Appellant has the responsibility to provide the sufficient financial information and supporting financial documentation to OWCP.¹⁹

In its preliminary determination dated May 13, 2024 OWCP explained the importance of providing the completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Appellant submitted a completed Form OWCP-20 and financial documentation regarding her reported income, expenses, and assets. By letter dated August 8, 2024, OWCP's hearing representative advised appellant that updated financial documentation was needed to support any potential waiver of recovery the overpayment and determine a reasonable method of recovery. However, no response was received. As such, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.²⁰

As appellant did not submit the documentation required under 20 C.F.R. § 10.438, which was necessary to determine her eligibility for waiver of recovery, the Board finds that OWCP properly denied waiver of recovery of the overpayment.²¹

¹⁵ *Id.*; *S.T.*, *supra* note 6; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁶ *Id.* at § 10.438(b); *see S.T.*, *id.*; *G.S.*, Docket No. 20-1580 (issued March 19, 2021).

¹⁷ *FM.*, Docket No. 24-0751 (issued September 24, 2024); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹⁸ 20 C.F.R. § 10.436.

¹⁹ *Id.* at § 10.438; *see FM.*, *supra* note 17; *N.J.*, Docket No. 19-1170 (issued January 10, 2020).

²⁰ *Supra* note 18.

²¹ *PM.*, Docket No. 22-1059 (issued April 28, 2023); *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

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.²²

Section 10.441 of OWCP's regulations²³ 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.²⁴

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$369.23 from appellant's continuing compensation payments, every 28 days.

As noted above, appellant did not provide the necessary financial information regarding her income, expenses, and assets prior to the final overpayment decision. In requiring recovery, OWCP considered the factors set forth at 20 C.F.R. § 10.441(a) in setting the rate of repayment from continuing compensation benefits to minimize hardship, while liquidating the debt.²⁵ The Board finds, therefore, that OWCP properly required recovery of the overpayment by deducting \$369.23 from her 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 \$14,179.24, for which she was without fault, for the period December 1, 2022 through April 20, 2024, 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 \$369.23 from appellant's continuing compensation payments every 28 days.

²² 20 C.F.R. § 10.441; *see S.T.*, *supra* note 6; *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²³ *Id.* at § 10.441(a).

²⁴ *Id.*; *see S.T.*, *supra* note 6; *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²⁵ *See A.N.*, Docket No. 23-0983 (issued January 10, 2024); *P.S.*, Docket No. 21-0859 (issued May 12, 2023); *D.S.*, Docket No. 18-1447 (issued July 22, 2019).

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 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