

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$21,658.49, for the period June 1, 2021 through May 9, 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 \$299.19 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On December 11, 2019 appellant, then a 61-year-old mark-up automated clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 9, 2019 she felt a severe, sharp pain, spasms and a burning sensation in the left side of her neck, left upper arm, and left shoulder when she reached to place mail in a tray while keying mail in the performance of duty. Appellant's supervisor noted on the claim form that appellant's retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for medical conditions, including cervical spine ligament and left shoulder joint sprains. It paid appellant wage-loss compensation on the supplemental rolls effective January 24, 2020, and on the periodic rolls effective February 2, 2020.

On February 6 2024 OWCP provided SSA with a dual benefits form.

On April 12, 2024 SSA completed the dual benefits form, reporting appellant's SSA age-related retirement benefit rates with federal service and without federal service. Beginning June 2021, the SSA rate with federal service was \$1,462.70 and without federal service was \$906.40. Beginning December 2021, the SSA rate with federal service was \$1,549.00 and without federal service was \$959.90. Beginning December 2022, the SSA rate with federal service was \$1,683.70 and without federal service was \$1,043.30. Beginning December 2023, the SSA rate with federal service was \$1,737.60 and without federal service was \$1,076.70.

In a FERS offset overpayment calculation worksheet dated June 28, 2024, OWCP applied the information provided by SSA to calculate the 28-day FERS offset for the relevant periods. It found that, for the period June 1, 2021 through May 9, 2024 appellant received the following: an overpayment in the amount of \$3,356.15 for the period June 1, 2021 through November 30, 2021; an overpayment in the amount of \$7,088.56 for the period December 1, 2021 through November 30, 2022; an overpayment in the amount of \$7,705.93 for the period December 1, 2022 through November 30, 2023; and an overpayment in the amount of \$3,507.85 for the period December 1, 2023 through May 9, 2024. This resulted in a total overpayment of \$21,658.49.

In a June 28, 2024 preliminary overpayment determination, OWCP advised appellant that she had received an overpayment of compensation in the amount of \$21,658.49, for the period June 1, 2021 through May 9, 2024, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It further determined that she was without fault in the creation of the overpayment. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20), and submit

supporting financial documentation, including income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records to support her reported 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 prerecoupmment hearing.

On July 17, 2024 appellant requested waiver of recovery of the overpayment and a decision on the written evidence. She attached a completed Form OWCP-20 dated July 16, 2024, wherein she reported total monthly income of \$7,130.21, total monthly expenses of \$3,856.00, and total assets of \$2,024.85. Supporting financial documentation was also received.

By decision dated September 26, 2024, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$21,658.49 for the period June 1, 2021 through May 9, 2024, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits, without an appropriate offset. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery. OWCP required recovery of the overpayment by deducting \$299.19 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.³ 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.⁴

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.⁵ 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.⁶

³ *Id.* at § 8102(a).

⁴ *Id.* at § 8116(a).

⁵ 20 C.F.R. § 10.421(d); *S.T.*, Docket No. 25-0168 (issued March 13, 2025); *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).

⁶ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also S.T., id.; 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 \$21,658.49 for the period June 1, 2021 through May 9, 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 establishes that, while appellant received FECA wage-loss compensation, she also received SSA age-related retirement benefits based upon her federal service. As explained above, a claimant cannot receive both compensation for wage loss under FECA and SSA age-related retirement benefits attributable to federal service for the same period, without an appropriate offset.⁷ Consequently, fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA's benefits that were attributable to federal service must be calculated. OWCP received information from SSA with respect to appellant's SSA age-related retirement benefit rates with federal service and without federal service for specific periods from June 1, 2021 through May 9, 2024. It provided its overpayment calculations for each relevant period based on SSA's information and determined that she received an overpayment in the amount of \$21,658.49.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period June 1, 2021 through May 9, 2024, and finds that it properly determined that an overpayment of compensation in the amount of \$21,658.49 was created.⁸

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.⁹ 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.¹⁰

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

⁷ See also *L.O.*, Docket No. 25-0183 (issued February 25, 2025); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

⁸ See *L.O.*, *id.*; *R.F.*, Docket No. 20-0159 (issued October 15, 2020); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

⁹ 5 U.S.C. § 8129(b).

¹⁰ 20 C.F.R. § 10.436.

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.¹¹

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.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.¹³ 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.¹⁴

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.¹⁵

On her Form OWCP-20, appellant reported total monthly income of \$7,130.21 and total monthly expenses of \$3,856.00. As her total monthly income exceeded her total monthly expenses by more than \$50.00, appellant has not shown that she needs substantially all her current income to meet current ordinary and necessary living expenses.¹⁶ Consequently, she has not demonstrated that recovery of the overpayment would defeat the purpose of FECA.

¹¹ *Id.* OWCP's 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).

¹² 20 C.F.R. § 10.437; *see S.T.*, *supra* note 5; *E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹³ *Id.* at 10.438(a).

¹⁴ *Id.* *S.T.*, *supra* note 5; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁵ *Supra* note 11 at Chapter 6.400.4c(3).

¹⁶ *C.B.*, Docket No. 25-0246 (issued February 19, 2025); *M.R.*, Docket No. 20-1622 (issued June 30, 2021); *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

Additionally, the evidence does not demonstrate that recovery of the overpayment would be against equity and good conscience. The record does not support that appellant would experience severe financial hardship in attempting to repay the debt.¹⁷ Moreover, appellant has not presented evidence that she relinquished a valuable right or changed her position for the worse in reliance on the overpayment.¹⁸ As the evidence fails to support that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP did not abuse its discretion by denying waiver of recovery of the overpayment.

For these reasons, the Board thus finds that OWCP properly denied waiver of recovery of the overpayment.

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.¹⁹

Section 10.441 of OWCP's regulations²⁰ 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.²¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$299.19 from appellant's continuing compensation payments every 28 days.

In determining whether appellant could repay the overpayment through \$299.19 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.²² It gave due regard to the financial

¹⁷ 20 C.F.R. § 10.436(a); *supra* note 11 at Chapter 6.400.4a(2) (September 2020); *see also D.P.*, Docket No. 25-0068 (issued January 30, 2025); *D.D.*, Docket No. 12-675 (issued October 9, 2012); *Jan K. Fitzgerald*, 51 ECAB 659 (2000).

¹⁸ *Id.* at § 10.437(b).

¹⁹ *Id.* at § 10.441; *see S.T.*, *supra* note 5; *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²⁰ *Id.* at § 10.441(a).

²¹ *Id.*; *see S.T.*, *supra* note 5; *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²² *See L.O.*, *supra* note 7; *J.B.*, Docket No. 24-0876 (issued September 26, 2024); *L.F.*, Docket No. 15-0489 (issued May 11, 2015).

information provided on the overpayment recovery questionnaire, and found that her monthly income exceeded monthly expenses by more than \$50.00. Thus, the Board finds that it properly required recovery of the \$21,658.49 overpayment by deducting \$299.19 from appellant's continuing compensation payments every 28 days.²³

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$21,658.49 for the period June 1, 2021 through May 9, 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 Board further finds that OWCP properly denied waiver of recovery of the overpayment of compensation, and properly required recovery of the overpayment by deducting \$299.19 from her continuing compensation payments every 28 days

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 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

²³ See *L.O., id.*; *J.B., id.*; *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).