

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

V.H., Appellant)
and) Docket No. 25-0787
DEPARTMENT OF VETERANS AFFAIRS,)
MICHAEL E. DeBAKEY VA MEDICAL) Issued: September 18, 2025
CENTER, Houston, TX, Employer)

)

Appearances:
Appellant, pro se
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 20, 2025 appellant filed a timely appeal from a June 30, 2025 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.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$12,541.28, during the period September 14, 2022 through April 19, 2025, for which she was without fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 24, 2020 appellant, then a 65-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on November 19, 2020 she sustained posterior neck pain with paresthesias radiating into her left upper extremity when typing on a two-monitor computer system while in the performance of duty. Appellant's supervisor noted on the claim form that appellant's retirement system was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for cervicalgia, and radiculopathy, cervical region. It subsequently expanded its acceptance of the conditions in the claim to include other cervical disc displacement, unspecified, cervical region.

OWCP paid appellant intermittent wage-loss compensation on the supplemental rolls commencing September 14, 2022. Appellant received FECA wage-loss compensation of \$101.33 for September 14, 2022; \$344.52 for September 16 through 26, 2022; \$101.33 for September 30, 2022; \$162.13 for October 5, 2022; \$324.25 for December 13, 2022; \$133.52 for May 2, 2024; \$122.39 for June 10, 2024; \$4,048.26 for July 26 through August 9, 2024; and \$7,605.23 for the period August 10 through September 7, 2024. OWCP paid appellant wage-loss compensation on the periodic rolls commencing September 8, 2024. During the period September 8 through October 5, 2024 appellant received \$7,342.98; during the period October 6 through November 2, 2024 appellant received \$7,272.68; during the period November 3 through 30, 2024 appellant received \$7,202.38; during the period December 1 through 28, 2024 appellant received \$7,202.38; during the period December 29, 2024 through January 25, 2025 appellant received \$7,272.68; during the period January 26 through February 22, 2025 appellant received \$7,176.96; during the period February 23 through March 22, 2025 appellant received \$7,176.96; and during the period March 23 through April 19, 2025 appellant received \$7,176.96.

On February 24, 2025 OWCP provided the SSA with a dual benefits form. It requested appellant's SSA age-related retirement benefits rates with and without federal service. On March 24, 2025 SSA completed the dual benefits form, which reported that appellant had received SSA age-related retirement benefits commencing June 1, 2022. It noted appellant's SSA age-related retirement rate with federal service and without federal service. Beginning June 2022, the SSA rate with federal service was \$2,351.80 and without federal service was \$1,388.30. Beginning December 2022, the SSA rate with federal service was \$2,556.40 and without federal service was \$1,509.00. Beginning January 2023, the SSA rate with federal service was \$2,741.70 and without federal service was \$1,557.70. Beginning December 2023, the SSA rate with federal service was \$2,829.40 and without federal service was \$1,607.50. Beginning January 2024, the SSA rate with federal service was \$2,945.80 and without federal service was \$1,607.50. Beginning December 2024, the SSA rate with federal service was \$3,019.40 and without federal service was \$1,647.60.

In a SSA offset overpayment calculation worksheet dated April 23, 2025, OWCP applied the information provided by SSA to calculate the offset for the relevant periods. It found that for September 14, 2022 the amount of the overpayment was \$31.76; for the period September 16 through September 26, 2022 the amount of the overpayment was \$344.52; for September 30, 2022 the amount of the overpayment was \$31.76; for October 5, 2022 the amount of the overpayment was \$31.76; for December 13, 2022 the amount of the overpayment was \$34.53; for May 2, 2024 the amount of the overpayment was \$44.12; for June 10, 2024 the amount of the overpayment was \$44.12; for the period July 26 through November 30, 2024 the amount of the overpayment was

\$5,647.31; and for the period December 1, 2024 through April 19, 2025 the amount of the overpayment was \$6,331.40. OWCP found that the total overpayment for the period June 1, 2022 through April 19, 2025 was \$12,541.28.

On April 23, 2025 OWCP advised appellant that it was adjusting her wage-loss compensation to offset the portion of her SSA age-related retirement benefits attributable to her federal service. It informed her that the SSA offset every 28 days would be \$1,266.28.

On May 7, 2025 appellant returned to work in her date-of-injury position. OWCP terminated her wage-loss compensation effective that date. It issued a payment on the supplemental rolls for the period April 20 through May 6, 2025 which included an appropriate SSA offset.

On May 9, 2025 OWCP issued a preliminary overpayment determination that an overpayment of compensation was created in the amount of \$12,541.28 for the period September 14, 2022 through April 19, 2025. It explained that the overpayment occurred as OWCP had not deducted the SSA offset from her FECA compensation payments for that period. OWCP further determined that appellant was without fault in the creation of the overpayment because there was no evidence of record to demonstrate that she knew or should have known that the payments were incorrect at the time that she received them. It requested that she 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, 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. No response was received.

By decision dated June 30, 2025, OWCP finalized the May 9, 2025 preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$12,541.28 for the period September 14, 2022 through April 19, 2025 because it had failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to federal service. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP required recovery of the overpayment by payment in the full amount of the overpayment, \$12,541.28, within 30 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.² 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.³

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116.

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to federal service of the employee.⁴ 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 wage-loss compensation and federal retirement concurrently is a prohibited dual benefit.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$12,541.28, for the period September 14, 2022 through April 19, 2025, 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 information provided by SSA indicated that appellant continued to receive SSA age-related retirement benefits that were attributable to federal service during the period September 14, 2022 through April 19, 2025. The case record establishes that no appropriate offset was made. A claimant cannot receive both compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁶ Consequently, the fact of overpayment has been established.⁷

With regard to the amount of the overpayment, in its April 23, 2025 SSA offset overpayment calculation worksheet, OWCP properly calculated the amount of the overpayment by determining the difference between the SSA age-related retirement benefit rates with and without federal service for the period September 14, 2022 through April 19, 2025, to find a total overpayment of \$12,541.28. The Board has reviewed OWCP's calculation of benefits received by appellant for the period September 14, 2022 through April 19, 2025, and finds that an overpayment of compensation in the amount of \$12,541.28 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.⁸ 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.⁹

⁴ 20 C.F.R. § 10.421(d).

⁵ FECA Bulletin No. 97-09 (issued February 3, 1997).

⁶ *C.B.*, Docket No. 25-0275 (issued March 24, 2025); *P.B.*, Docket No. 23-0955 (issued March 13, 2024); *see E.M.*, Docket No. 21-1231 (issued April 19, 2023); *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

⁷ *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

⁸ 5 U.S.C. § 8129(a)-(b).

⁹ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

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.¹⁰ 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 made, gives up a valuable right or changes his or her position for the worse.¹¹

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 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.¹²

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 recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹³ Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.¹⁴

In its preliminary overpayment determination dated May 9, 2025, OWCP provided a Form OWCP-20 for appellant's completion and requested supporting financial documentation regarding any reported monthly income, monthly expenses, and assets, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support the reported income, expenses, and assets. Appellant, however, did not respond. 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.¹⁵

¹⁰ *Supra* note 4 at § 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).

¹¹ *Id.* at § 10.437(a)(b).

¹² *Id.* at § 10.438(a); *M.D.*, Docket No. 22-1391 (issued June 20, 2023); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹³ 5 U.S.C. § 8129.

¹⁴ See *M.D.*, *supra* note 12; *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

¹⁵ See *K.H.*, Docket No. 18-0171 (issued August 2, 2018).

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.¹⁶

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$12,541.28 for the period September 14, 2022 through April 19, 2025, for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.¹⁷

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2025
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁶ See *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

¹⁷ The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA. 20 C.F.R. § 10.441; see *S.D.*, Docket No. 22-1111 (issued December 9, 2022); *A.S.*, Docket No. 22-0281 (issued September 26, 2022); *M.P.*, Docket No. 18-0902 (issued October 16, 2018). As appellant is not in receipt of continuing compensation under FECA, the Board has no jurisdiction to review the method of recovery.