

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

\$883.29 from appellant's continuing compensation payments, every 28 days; and (4) whether OWCP properly denied appellant's request for a prerecoupment hearing.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 20, 2006 appellant, then a 50-year-old secretary, filed a traumatic injury claim (Form CA-1) alleging that on April 20, 2006 she injured her right elbow and tailbone when her chair rolled backward and she fell to the floor, while in the performance of duty. The claim form noted that appellant's retirement system was the Federal Employees Retirement System (FERS). OWCP accepted the claim for contusion of buttock and contusion of right elbow/forearm. It subsequently expanded the acceptance of the claim to include lumbar sprain, left hip trochanteric bursitis, lumbar L3-4 stenosis, and L3-4 spondylolisthesis. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective March 27, 2018, and on the periodic rolls, effective April 29, 2018.

On December 30, 2020 OWCP sent a FERS/SSA dual benefits calculation form to SSA for completion.

On February 2, 2021 SSA notified OWCP that appellant's monthly age-related retirement benefit rates with FERS were: \$1,622.00, effective January 2019; \$1,648.00, effective December 2019; and \$1,669.00, effective December 2020. It further reported that, her monthly age-related retirement benefit rates without FERS were: \$795.00, effective January 2019; \$808.00, effective December 2019; and \$818.00, effective December 2020. SSA noted that appellant received disability benefits during the period August 2018 through December 2019.

In a June 30, 2021 FERS offset overpayment calculation memorandum, OWCP calculated appellant's FERS/SSA offset for each period from January 1, 2019 through July 16, 2021, and the amount of the overpayment for each period. It found that from January 1 through November 30, 2019, she received an overpayment in the amount of \$9,216.25; from December 1, 2019 through November 30, 2020, she received an overpayment in the amount of \$10,135.32; and from December 1, 2020 through July 16, 2021, she received an overpayment in the amount of \$6,396.54. OWCP therefore found a total overpayment of \$25,748.11.

On June 30, 2021 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$25,748.11 for the period January 1, 2019 through July 16, 2021, for which she was without fault, because appellant concurrently received wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable recovery method and advised that she could request waiver of recovery of the overpayment. OWCP further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records which support income and expenses. Additionally, it provided an

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<sup>2</sup> Docket No. 22-1071 (issued April 11, 2023).

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 March 16, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$24,990.63 for the period January 1, 2019 through June 19, 2021 because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery, noting that she had not responded to the preliminary overpayment determination. OWCP required recovery of the overpayment by deducting \$752.00 from appellant's continuing compensation payments, every 28 days.

On April 9, 2022 appellant requested a prerecoupment hearing, arguing that she was without fault in the creation of the overpayment. Appellant further asserted that OWCP erroneously issued the March 16, 2022 overpayment determination without a hearing. She enclosed a completed Form OWCP-20, along with supporting financial documentation.

By decision dated May 9, 2022, OWCP denied appellant's request for a prerecoupment hearing as it was made after the final overpayment determination.

Appellant appealed the March 16 and May 9, 2022 decisions to the Board. By decision dated April 11, 2023,<sup>3</sup> the Board affirmed the March 16, 2022 decision in part, finding that OWCP properly determined that appellant received an overpayment of compensation, for which she was without fault, as she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. The Board also set aside the March 16, 2022 decision in part, finding that the case was not in posture for a decision with regard to the period and amount of the overpayment. The Board explained that the record was unclear as to whether the reported SSA benefit rates represented appellant's SSA disability benefits or her SSA age-related retirement benefits during the period January 1, 2019 through December 2019. The Board remanded the case for further development, followed by a *de novo* decision. As such, the issues of waiver of recovery of the overpayment, and denial of her request for a prerecoupment hearing were rendered moot.

On June 26, 2023 OWCP requested additional information from SSA to calculate FECA offset based on appellant's federal earnings. It requested that SSA clarify whether appellant received SSA disability benefits or SSA age-related retirement benefits during the period January through December 2019. OWCP attached a new dual benefits form for SSA's completion. Under the remarks section, it specifically requested that SSA confirm whether SSA age-related retirement or SSA disability benefits were paid to appellant during the period January through December 2019.

OWCP subsequently received a completed dual benefits form on July 13, 2023, wherein SSA reported appellant's age-related retirement benefit rates with federal service as follows: \$1,622.00, effective January 2019; \$1,648.00, effective December 2019; \$1,669.00, effective

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<sup>3</sup> *Id.*

December 2020; \$1,767.40, effective December 2021; and \$1,921.10, effective December 2022. It also reported appellant's age-related retirement benefit rates without federal service as follows: \$795.00, effective January 2019; \$808.00, effective December 2019; \$818.00, effective December 2020; \$866.20, effective December 2021; and \$941.50, effective December 2022. No response was provided to clarify whether SSA age-related retirement or SSA disability benefits were paid during the period January through December 2019.

On July 19, 2023 OWCP issued a revised preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$24,880.41 for the period January 1, 2019 through June 19, 2021, for which she was without fault, had been created because appellant concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset. It included its calculations for each period from January 1, 2019 through June 19, 2021. OWCP found that during the period January 1 through November 30, 2019 she received an overpayment in the amount of \$9,106.03; during the period December 1, 2019 through November 30, 2020 she received an overpayment in the amount of \$10,135.32; and during the period December 1, 2020 through June 19, 2021 she received an overpayment in the amount of \$5,639.06. It requested that appellant submit a completed Form OWCP-20 to determine a reasonable payment method and advised that she could request waiver of recovery of the overpayment. OWCP further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records which support income and expenses. Additionally, it 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 prerecoumpment hearing. OWCP requested that she submit a completed Form OWCP-20 to determine a reasonable recovery method and advised her that she could request waiver of recovery of the overpayment. Additionally, OWCP 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 prerecoumpment hearing. It advised appellant that if she did not submit the requested information within 30 days, it would issue a final decision. No response was received.

By decision August 23, 2023, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$24,880.41 for the period January 1, 2019 through June 19, 2021 because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. It required recovery of the overpayment by deducting \$883.29 from appellant's continuing compensation payments every 28 days.

On August 26, 2023 appellant requested a prerecoumpment hearing. She disagreed with the amount of the overpayment and requested waiver. Appellant enclosed a completed Form OWCP-20, along with supporting financial documentation.

By decision dated September 15, 2023, OWCP denied appellant's request for a prerecoumpment hearing as it was made after the final overpayment determination.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102 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 duty.<sup>4</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>5</sup>

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related retirement benefits that are attributable to federal service of the employee.<sup>6</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>7</sup>

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

The Board finds that the case is not in posture for decision with regard to the period and amount of the overpayment.

The Board preliminarily notes that it found in its April 11, 2023 decision that appellant received an overpayment of compensation for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.<sup>8</sup>

On June 26, 2023 OWCP requested that SSA clarify whether appellant received SSA disability benefits or SSA age-related retirement benefits during the period January through December 2019. It attached a new dual benefits form for SSA's completion. Under the remarks section, OWCP specifically requested that SSA confirm whether SSA age-related retirement or SSA disability was paid during the period January through December 2019. It subsequently received a completed dual benefits form on July 13, 2023, wherein SSA reported appellant's age-related retirement benefit rates with and without federal service. No response clarifying whether SSA age-related retirement or SSA disability benefits were paid during the period January through

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<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8116.

<sup>6</sup> 20 C.F.R. § 10.421(d); *see T.T.*, Docket No. 20-1257 (issued July 29, 2022); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

<sup>8</sup> *R.K.*, Docket No. 21-0873 (issued May 8, 2023); *T.C.*, Docket No. 21-0612 (issued December 2, 2021); *T.W.*, Docket No. 20-0836 (issued July 21, 2021); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

December 2019. The case record therefore remains unclear as to whether SSA's reported benefit rates represent appellant's SSA disability benefits or her SSA age-related retirement benefits.

The case shall therefore be remanded for further development with regard to the period and amount of the overpayment. On remand, OWCP shall again request that SSA clarify whether appellant received disability benefits or age-related retirement benefits during the period January through December 2019. It shall then recalculate the period and amount of the overpayment of compensation and issue a new preliminary overpayment determination, with an overpayment action request form, a new Form OWCP-20, and instructions for appellant to provide updated supporting financial documentation. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>9</sup>

### **CONCLUSION**

The Board finds that the case is not in posture for decision with regard to the period and amount of the overpayment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 23, 2023 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 9, 2026  
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

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<sup>9</sup> In light of the Board's disposition of Issue 1, Issues 2, 3, and 4 are rendered moot.