

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

J.F., Appellant)	
)	
and)	Docket No. 24-0054
)	Issued: May 28, 2026
U.S. POSTAL SERVICE, GRAND CROSSING)	
CARRIER ANNEX, Chicago, IL, Employer)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 27, 2023 appellant filed a timely appeal from a October 17, 2023 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 to consider 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 October 17, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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 \$8,676.40 for the period December 1, 2021 through September 10, 2022, 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 \$95.00 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 19, 2010 appellant, then a 54-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries to her shoulder, hip, and buttocks when she was hit by a vehicle as she was crossing the street to deliver mail while in the performance of duty. She stopped work that day. Appellant's retirement coverage was listed as Federal Employees Retirement System (FERS). OWCP accepted the claim for strain of lumbosacral joint, left hip contusion, and sprain of the left shoulder and upper arm. It subsequently expanded the acceptance of appellant's claim to include complete left rotator cuff tear and displacement of lumbar intervertebral disc without myelopathy. OWCP paid her wage-loss compensation on the supplemental rolls, effective May 4, 2010, and on the periodic rolls, effective August 29, 2010.⁵

On July 28, 2022 OWCP forwarded a FERS/SSA dual benefits form to SSA.

On August 21, 2022 OWCP received a completed FERS/SSA dual benefits form from SSA wherein SSA advised that appellant received SSA age-related retirement benefits effective December 2021. SSA explained that prior to this period, appellant received disability compensation benefits with no offset required. SSA reported appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset. Beginning December 2021, the SSA rate with FERS was \$2,038.60 and without FERS was \$1,111.90.

On October 17, 2022 OWCP notified appellant of its preliminary overpayment determination that she received an overpayment of compensation in the amount of \$8,676.40, for the period December 1, 2021 through September 10, 2022, because she received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. 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

⁴ Docket No. 19-0864 (issued October 25, 2019).

⁵ By decision dated June 5, 2018, OWCP reduced appellant's wage-loss compensation, effective June 6, 2018. It found the position of information clerk with weekly earnings of \$388.00 per week represented her loss of wage-earning capacity (LWEC). By decision dated January 18, 2019, an OWCP hearing representative affirmed the June 5, 2018 LWEC determination. On October 25, 2019, the Board affirmed OWCP's decision dated January 18, 2019. *See id.*

a reasonable payment 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, canceled checks, pay slips, and any other records that 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 precoupment hearing.

On November 1, 2022 appellant submitted an overpayment action request form, wherein she requested waiver and a precoupment hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, OWCP's hearing representative set aside the October 17, 2022 preliminary overpayment determination. The hearing representative remanded the case for OWCP to provide a detailed explanation of how the overpayment was calculated.

On March 13, 2023 OWCP prepared a FERS offset overpayment calculation worksheet wherein it detailed the calculation of appellant's SSA offset overpayment from December 1, 2021 through September 10, 2022 which resulted in a total overpayment amount of \$8,676.40.

On March 13, 2023 OWCP notified appellant of its preliminary overpayment determination that she received an overpayment of compensation in the amount of \$8,676.40, for the period December 1, 2021 through September 10, 2022, because she received FECA wage-loss compensation benefits and SSA age-related retirement, without an appropriate offset. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant 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. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records that support income and expenses. Additionally, OWCP provided an overpayment action request form and further 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 precoupment hearing.

On April 2, 2023 appellant submitted an overpayment action request form and requested waiver of recovery of the overpayment and a precoupment hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted a Form OWCP-20 signed on April 2, 2023 in which she reported total monthly income of \$3,344.35; total monthly expenses of \$3,514.33; and total assets of \$766.14.

On August 7, 2023 OWCP held a precoupment hearing.

Appellant subsequently submitted some supporting financial documentation including statements for her mortgage, homeowner's insurance, and utilities.

By decision dated October 17, 2023, OWCP's hearing representative finalized the March 13, 2023 preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$8,676.40 for the period December 1, 2021 through September 10, 2022, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. The hearing

representative further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. The hearing representative required recovery of the overpayment by deducting \$95.00 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 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.⁷

Section 10.421(d) of OWCP's implementing regulations requires OWCP to 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 age-related retirement 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

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,676.40, for the period December 1, 2021 through September 10, 2022, 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 case record reflects that OWCP paid appellant FECA wage-loss compensation on the periodic rolls, effective August 29, 2010. Appellant received SSA age-related retirement benefits beginning December 1, 2021. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.¹⁰ The information provided by SSA established that a portion of appellant's benefits were attributable to her federal service. However, no appropriate adjustment was made to her wage-loss compensation. Thus, the Board finds that fact of overpayment is established.¹¹

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8116.

⁸ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁹ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹⁰ 20 C.F.R. § 10.421(d), *supra* note 8; *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *S.M.*, *supra* note 8.

¹¹ *Id.*

With regard to the amount of the overpayment, OWCP provided its detailed calculations, which were based on the information provided by SSA. The Board has reviewed OWCP's calculations and finds that appellant received an overpayment of compensation in the amount of \$8,676.40.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless 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.¹²

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.¹³ An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁴

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.¹⁵

Section 10.438 of OWCP's regulations provides 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.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

¹² 5 U.S.C. § 8129.

¹³ 20 C.F.R. § 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).

¹⁴ *Id.* at Chapter 6.400.4.a(3); *see also N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁵ 20 C.F.R. § 10.437(a)(b).

¹⁶ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

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.¹⁷

Appellant submitted a Form OWCP-20 signed on April 2, 2023 in which she reported total monthly income of \$3,344.35; total monthly expenses of \$3,514.33; and total assets of \$766.14. She subsequently submitted some supporting financial documentation including statements for her mortgage, homeowner's insurance, and utilities. However, this documentation was insufficient to establish appellant's need for substantially all her monthly income to meet current and ordinary living expenses.

The Board further finds that appellant has not established that recovery of the overpayment would be against equity and good conscience because it has not been shown that she would experience severe financial hardship in attempting to repay the debt, or that a valuable right had been relinquished, or that a position had been changed for the worse in reliance on the payment, which created the overpayment.¹⁸

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.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations 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.¹⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$95.00 from appellant's continuing compensation payments, every 28 days.

In determining whether appellant could repay the overpayment through \$95.00 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

¹⁷ 5 U.S.C. § 8129.

¹⁸ *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

¹⁹ 20 C.F.R. § 10.441(a); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

the debt in a reasonably prompt fashion.²⁰ Thus, the Board finds that OWCP properly required recovery of the overpayment by deducting \$95.00 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 \$8,676.40 for the period December 1, 2021 through September 10, 2022, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$95.00 from her continuing compensation payments, every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 28, 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

²⁰ See *L.F.*, Docket No. 15-0489 (issued May 11, 2015).