

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

S.A., Appellant)

and)

DEPARTMENT OF THE AIR FORCE, AIR)
FORCE INTELLIGENCE, SURVEILLANCE,)
AND RECONNAISSANCE AGENCY,)
San Antonio, TX, Employer)

Docket No. 26-0327
Issued: May 27, 2026

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 February 24, 2026 appellant filed a timely appeal from a January 8, 2026 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.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$30,828.84, for the period January 1, 2024 through September 6, 2025, for which she was without fault, as she concurrently received FECA wage-

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 8, 2026 decision, appellant submitted additional evidence to OWCP and the Board. However, the Board's *Rules of Procedure* 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.*

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 \$34.03 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

On September 29, 2008 appellant, then a 51-year-old human resource specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 24, 2008 she injured her head, arms, and back when she slipped and fell down stairs while in the performance of duty. OWCP accepted the claim for closed fracture of dorsal vertebra without spinal cord injury and contusions of the face, head, and neck. It paid appellant wage-loss compensation on the supplemental rolls commencing November 9, 2008, and on the periodic rolls commencing November 23, 2008.³ On November 8, 2023 OWCP expanded the acceptance of the claim to include stable burst fracture of unspecified thoracic vertebra, head contusion, and chronic pain syndrome.

On August 11, 2025 OWCP provided SSA with a dual benefits form for its completion.

On August 24, 2025 SSA returned the completed form, reporting appellant's SSA age-related retirement benefit rates with and without federal service from January 2024 through December 2024. Beginning January 2024, the SSA rate with federal service was \$1,657.90 and without federal service was \$104.80. Beginning December 2024, the SSA rate with federal service was \$1,699.30 and without federal service was \$107.50.

On September 17, 2025 OWCP notified appellant that her wage-loss compensation payments would be adjusted to reflect an offset of \$1,591.80 per 28-day pay period for her SSA age-related retirement benefits attributable to her federal service. Beginning October 4, 2025, it would adjust her net wage-loss compensation to \$136.13 per 28-day pay period.

In a September 17, 2025 preliminary overpayment determination, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$30,828.84 for the period January 1, 2024 through September 6, 2025, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. It provided detailed calculations of the overpayment for each relevant period, based on the information provided by SSA. OWCP advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. It requested that she complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and other records to support her reported income and expenses. OWCP further advised appellant that failure to submit the requested information within 30 days would result in the denial of waiver and no further request for waiver would be considered until the requested information was furnished. Additionally, OWCP 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 prerecoupment hearing.

On October 10, 2025 appellant requested waiver of recovery of the overpayment and notified OWCP that she had elected to receive Office of Personnel Management (OPM) benefits in lieu of FECA benefits. She also requested a decision on the written evidence. In a completed

³ OWCP paid appellant pursuant to a loss of wage-earning capacity determination commencing August 29, 2010.

Form OWCP-20, appellant reported monthly income totaling \$6,544.00. She also reported total monthly expenses of \$4,655.00 and assets totaling \$8,258.00. Appellant provided credit card statements dated December 2, 2023 through October 1, 2025. She provided additional credit card statements, bank statements, utility bills, and tax returns.

In a November 25, 2025 letter, OWCP requested additional information regarding her reported income and expenses. It afforded appellant 30 days to respond.

On December 22, 2025 appellant requested waiver of recovery of the overpayment and provided supporting financial documentation including bank statements, a security system invoice, and utility bills.

By decision dated January 8, 2026, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$30,828.84 for the period January 1, 2024 through September 6, 2025, because she concurrently 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, but denied waiver of recovery of the overpayment. OWCP required recovery of the overpayment by deducting \$34.03 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 of an employee resulting from personal injury sustained while in the performance of his or her federal employment.⁴ 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.⁵

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.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$30,828.84, for the period January 1, 2024 through September 6,

⁴ *Supra* note 1 at § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see A.P.*, Docket No. 25-0730 (issued April 1, 2026); *R.S.*, Docket No. 24-0068 (issued January 9, 2026); *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).

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

2025, 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 evidence of record establishes that appellant received wage-loss compensation under FECA, and SSA age-related retirement benefits based on her federal service for the same period without an appropriate offset. As noted, a claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁸ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to her federal service commencing January 1, 2024. No appropriate offset was made to her FECA wage-loss compensation. Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.⁹

With regard to the amount of the overpayment, OWCP provided its detailed calculations for each relevant period, based on the information provided by SSA, and determined that she received an overpayment in the amount of \$30,828.84. The Board has reviewed OWCP's calculations for the period January 1, 2024 through September 6, 2025, and finds that an overpayment of compensation in the amount of \$30,828.84 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.¹⁰ Section 10.438 of 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.¹¹ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹²

The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of OWCP's regulations.¹³

Section 10.436 provides that recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary

⁸ See *J.Z.*, Docket No. 25-0885 (issued December 1, 2025); *R.B.*, Docket No. 25-0691 (issued August 20, 2025); *E.M.*, Docket No. 21-1231 (issued April 19, 2023); *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

⁹ *J.Z.*, *id.*, *R.B.*, *id.*; *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

¹⁰ *Supra* note 1 at § 8129.

¹¹ *Supra* note 6 at § 10.438(a).

¹² *Supra* note 6 at § 10.438(b).

¹³ *Id.* at §§ 10.434-10.437.

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.¹⁴ For waiver under the defeat the purpose of FECA standard, appellant must show that he or she needs substantially all of his or her current income to meet current ordinary and necessary living expenses, and that assets do not exceed the resource base.¹⁵ An individual is deemed to need substantially all or his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁶

OWCP's procedures provide that the 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.¹⁷ An individual's liquid assets include but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds and certificate of deposits. Nonliquid assets include but are not limited to the fair market value of an owner's equity in property such as a camper, boat, second home, and furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.¹⁸

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.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$30,828.84 overpayment of compensation.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is required unless recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.²⁰

On a completed Form OWCP-20, appellant reported total monthly income of \$6,544.00 and total monthly expenses of \$4,655.00. As her total monthly income exceeded her total monthly expenses by more than \$50.00, she has not shown that she needs substantially all her current

¹⁴ *Id.* at. § 10.436.

¹⁵ *Id.*

¹⁶ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

¹⁷ *Id.* at Chapter 6.400.4a(2).

¹⁸ *Id.* at Chapter 6.400.4b(3)(a), (b).

¹⁹ 20 C.F.R. § 10.437(a)(b).

²⁰ *Supra* note 14; *see D.M.*, Docket No. 24-0502 (issued March 12, 2026); *M.B.*, Docket No. 23-0775 (issued March 11, 2024); *E.H.*, Docket No. 18-1009 (issued January 29, 2019).

income to meet current ordinary and necessary living expenses.²¹ Consequently, she has not demonstrated that recovery of the overpayment would defeat the purpose of FECA.

The Board also finds that appellant has not contended that she was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience.

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

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 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 the error is discovered or his 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 \$34.03 from appellant’s continuing compensation payments, every 28 days.

In determining whether appellant could repay the overpayment through \$34.03 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.²⁵ Thus, the Board finds that it properly required recovery

²¹ *D.M., id.; 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).

²² *Supra* note 14 at § 10.441; *see S.T.*, Docket No. 25-0168 (issued March 13, 2025); *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²³ *Id.* at 10.441(a).

²⁴ *Id.; T.L.*, Docket No. 25-0426 (issued May 14, 2025); *S.T., id.; C.B.*, Docket No. 25-0246 (issued February 19, 2025); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²⁵ *See D.H.*, Docket No. 25-0867 (issued November 25, 2025); *C.S.* Docket No. 23-0587 (issued July 9, 2025); *J.B.*, Docket No. 24-0876 (issued September 26, 2024); *L.F.*, Docket No. 15-0489 (issued May 11, 2015).

of the overpayment by deducting \$34.03 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 \$30,828.84, for the period January 1, 2024 through September 6, 2025, 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 further finds that OWCP properly denied waiver of recovery of the overpayment of compensation, and properly required recovery of the overpayment by deducting \$34.03 from her continuing compensation payments, every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2026 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 27, 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