United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 24-0787**
	)	**Issued: September 2, 2026**
U.S. POSTAL SERVICE, SUSSEX POST OFFICE, Sussex, NJ, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant[1]
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 July 22, 2024 appellant, through counsel, filed a timely appeal from a June 21, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over 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 June 21, 2024 decision, OWCP received additional evidence. 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.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the total net amount of $103,035.29 for the periods November 1, 2009 through November 30, 2011 and December 1, 2012 through September 9, 2023, 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 $1,751.58 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On December 17, 2007 appellant, then a 61-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 21, 2007 she experienced low back pain and spasms lifting and delivering a heavy package while in the performance of duty. OWCP accepted the claim for thoracic or lumbosacral neuritis or radiculitis, not otherwise specified. It paid appellant wage-loss compensation on the supplemental and periodic rolls.

On August 30, 2019 OWCP sent a Federal Employees Retirement System (FERS)/SSA dual benefits calculations form to SSA for completion.

In a response dated September 5, 2019, SSA provided appellant's SSA age-related retirement benefits rates with and without FERS. Beginning November 2009, the SSA rate with FERS was $1,046.60 and without FERS was $812.40; beginning December 2009 and 2010, the SSA rate with FERS was $883.60 and without FERS was $812.40 without FERS, beginning December 2011, the SSA rate with FERS was $1,150.50 and without FERS was $841.60; beginning December 2012, the SSA rate with FERS was $1,170.00 and without FERS was $855.90; beginning December 2013, the SSA rate with FERS was $1,187.50 and without FERS was $868.70; beginning December 2014 and December 2015, the SSA rate with FERS was $1,207.60 and without FERS was $883.40; beginning December 2016, the SSA rate with FERS was $1,211.20 and without FERS was $886.00, beginning December 2017, the SSA rate with FERS was $1,235.40 and without FERS was $903.70; and beginning December 2018, the SSA rate with FERS was $1,269.90 and without FERS was $929.00.

In a notice dated October 18, 2019, OWCP advised appellant of its preliminary overpayment determination that she had received a $32,556.63 overpayment of compensation for the period November 1, 2009 through October 12, 2019 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It further advised her of its preliminary determination that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) and supporting financial documentation. 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 prerecoupment hearing.

On November 14, 2019 appellant requested a decision based on the written evidence. She submitted a completed OWCP-20 form but no supporting financial documentation.

By decision dated November 18, 2019, OWCP finalized its preliminary overpayment determination finding that appellant had received a $32,556.63 overpayment of compensation for the period November 1, 2009 through October 12, 2019 as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It further finalized its determination that she was without fault in the creation of the overpayment but denied waiver of recovery of the overpayment, finding that she had not responded to its preliminary overpayment determination. OWCP determined that it would recover the overpayment by deducting $772.48 from appellant's continuing compensation payments every 28 days.

OWCP withheld $772.48 from appellant's continuing compensation payments every 28 days from December 8, 2019 through May 28, 2021.

By decision dated May 28, 2021, OWCP terminated appellant's wage-loss compensation and entitlement to a schedule award, effective that date, as she had refused an offer of suitable work under 5 U.S.C. § 8106(c)(2).[4]

On December 14, 2021 OWCP advised appellant that its deductions for the overpayment of $32,556.63 had ceased on May 28, 2021, the date it terminated her wage-loss compensation. It noted a balance of $18,349.95 and requested that she pay $772.48 monthly to repay the overpayment.

On January 4, 2022 appellant's counsel asserted that she had received disability retirement rather than age-related retirement from SSA until December 2012. He enclosed a form from SSA advising her that she was no longer entitled to disability benefits as of December 2012 as she had reached her full retirement age.

In a letter dated January 31, 2022, OWCP advised appellant's counsel that it had suspended collection of the overpayment of compensation pending verification from SSA regarding the beginning date of appellant's retirement benefits. It indicated that it would set aside the November 18, 2019 overpayment decision depending on the information received.

By decision dated May 5, 2022, OWCP vacated its May 28, 2021 decision terminating appellant's wage-loss benefits for refusal of suitable work under 5 U.S.C. § 8106(c)(2).

On May 5, 2022 OWCP sent a FERS/SSA dual benefits calculations form to SSA for completion.

On August 9, 2022 OWCP reinstated appellant's wage-loss compensation retroactive to May 28, 2021.

On August 25, 2022 SSA provided appellant's SSA age-related retirement benefits rates with and without FERS. Beginning November and December 2009, December 2010, and November 2011, the SSA rate with FERS was $883.80 and without FERS was $278.20; beginning December 2012, the SSA rate with FERS was $1,170.00 and without FERS was $317.00; beginning December 2013, the SSA rate with FERS was $1,187.50 and without FERS was $321.70; beginning December 2014 and December 2015, the SSA rate with FERS was $1,207.60

[4] OWCP issued a prior suitable work termination decision on April 12, 2021.

and without FERS was $327.20; beginning December 2016, the SSA rate with FERS was $1,211.20 and without FERS was $328.10, beginning December 2017, the SSA rate with FERS was $1,235.40 and without FERS was $334.70; beginning December 2018, the SSA rate with FERS was $1,269.90 and without FERS was $344.00; beginning December 2019, the SSA rate with FERS was $1,290.20 and without FERS was $349.40; beginning December 2020, the SSA rate with FERS was $1,306.90 and without FERS was $353.90; and beginning December 2021, the SSA rate with FERS was $1,384.00 and without FERS was $374.70. SSA advised that appellant had received retirement benefits from November 2009 to November 2011 and from December 2012 to the present. It indicated that she had received SSA disability benefits from November 2008 through October 2009 and December 2011 through November 2012. SSA clarified that appellant only received SSA age-related retirement benefits from November 2009 through November 2011, and again commencing December 2012.

On September 20, 2022 OWCP advised SSA that its September 5, 2019 and August 25, 2022 responses regarding appellant's SSA rates with and without FERS varied significantly. It requested that SSA confirm the appropriate SSA rates with and without FERS, and explain why the rates provided were accurate.

On November 23, 2022 SSA asserted that the rates provided on the August 25, 2022 dual benefits calculation form had been verified and were accurate. It maintained that the individual who had provided the rates in September 5, 2019 had made a transcribing error and had also provided rates from November 2008 instead of November 2009. SSA further advised that, effective December 2022, appellant's SSA rate with federal service was $1,504.40 and without federal service was $407.30.

On September 18, 2023 OWCP updated the FERS offset amount from appellant's wage-loss compensation effective September 10, 2023 in accordance with the information received from SSA on November 23, 2022.

On November 14, 2023 OWCP completed a FERS offset overpayment calculation worksheet. It calculated the amount that it should have offset from appellant's compensation for each period from November 1, 2009 through December 1, 2022. OWCP found that she had received the following: an overpayment of $15,173.40 for the period November 1, 2009 through November 30, 2011; an overpayment of $10,264.06 for the period December 1, 2012 through November 30, 2013; an overpayment of $10,418.14 for the period December 1, 2013 through November 30, 2014; an overpayment of $21,216.75 for the period December 1, 2014 through November 30, 2016; an overpayment of $10,626.32 for the period December 1, 2016 through November 30, 2017; an overpayment of $10,838.15 for the period December 1, 2017 through November 30, 2018; an overpayment of $11,141.36 for the period December 1, 2018 through November 30, 2019; an overpayment of $11,351.62 for the period December 1, 2019 through November 30, 2020; an overpayment of $11,467.39 for the period December 1, 2020 through November 30, 2021; an overpayment of $12,144.85 for the period December 1, 2021 through November 30, 2022; and an overpayment of $10,235.60 for the period December 1, 2022 through September 9, 2023. Based on these figures, OWCP calculated the total overpayment amount of $134,877.66. It subtracted the FERS offset it had taken from appellant's wage-loss compensation for the period October 13, 2019 through September 9, 2023 in the amount of $17,165.25 which was based on the 2019 SSA dual benefits form. It also subtracted a total repayment of $14,677.12

collected from December 8, 2019 through May 22, 2021. After considering offset amounts and applied repayments, the total net overpayment amount was $103,035.29.

In a preliminary overpayment determination dated January 11, 2024, OWCP advised appellant of its preliminary finding that she received a $134,877.66 overpayment of compensation for the periods November 1, 2009 through November 30, 2011 and December 1, 2012 to September 9, 2023 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It set forth its calculation of the overpayment of compensation and advised that, after considering offset amounts and applied repayments, the total net overpayment amount was $103,035.29. OWCP further notified appellant of its preliminary determination that she was without fault in the creation of the overpayment. It requested that he complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation including tax returns, bank account statements, bills, cancelled checks, pay slips, and other records which supported income and expenses listed. Additionally, OWCP notified appellant that he could request a final decision based on the written evidence or a prerecoupment hearing within 30 days.

On January 31, 2024 appellant, through counsel, requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review.

In a Form OWCP-20 dated January 31, 2024, appellant reported total monthly income of $8,865.00 and total monthly expenses of $6,842.00. She also listed assets of $3,500.00. Appellant provided supporting financial documentation.

A prerecoupment hearing was held on April 8, 2024.

By decision dated June 21, 2024, OWCP's hearing representative finalized the January 11, 2024 preliminary overpayment determination. She found that the total net overpayment amount was $103,035.29 for the periods November 1, 2009 to November 30, 2011 and December 1, 2012 to September 9, 2023, 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 hearing representative found that appellant had failed to provide sufficient documentation to establish a connection between the debts listed and expenses claimed. She found, however, that even accepting her listed expenses as ordinary and necessary, she was not entitled to waiver as her monthly income exceeded her monthly expenses by more than $50.00, and thus she did not need substantially all her income to meet ordinary and necessary living expenses. The hearing representative required recovery of the overpayment by deducting $1,751.58 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.[5] Section 8116 limits the right of an employee to receive

[5] 5 U.S.C. § 8102.

compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.[6]

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 benefits that are attributable to the employee's federal service.[7] 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 benefits and federal retirement concurrently is a prohibited dual benefit.[8]

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation in the total net amount of $103,035.29 for the periods November 1, 2009 through November 30, 2011 and December 1, 2012 through September 9, 2023 because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset.

OWCP paid appellant wage-loss compensation for total disability on the supplemental and periodic rolls. Appellant received SSA age-related retirement benefits from November 2009 through November 2011 and commencing December 2012. However, appropriate offsets were not made. As noted, a claimant cannot receive concurrent FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service.[9] The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to her federal service. Accordingly, the Board finds that fact of overpayment has been established.[10]

To determine the amount of the overpayment, the portion of SSA age-related retirement benefits attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided appellant's SSA age-related retirement benefit rates with FERS and without FERS from November 2009 through December 2022. OWCP provided its calculations for each relevant period based on information provided by SSA. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits in the total net amount of $103,035.29.

[6] *Id.* at § 8116.

[7] 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

[9] *Supra* note 7; *see F.K.*, Docket No. 20-1609 (issued June 24, 2021); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

[10] *See L.K.*, Docket No. 20-1574 (issued June 23, 2021); *S.H.*, Docket No. 20-1157 (issued December 23, 2020).

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.[11] 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.[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] 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.[14]

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 adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.[15]

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not shown that she needs substantially all her current income to meet ordinary and necessary living expenses. In a Form OWCP-20 dated January 31, 2024, appellant reported total monthly income of $8,865.00 and total monthly expenses of $6,842.00. As her monthly income exceeds her stated monthly expenses by more than $50.00, she has not shown that she needs substantially all of her current income to meet current ordinary and necessary living expenses.[16] Because appellant has not met the first prong of the two-prong test of whether recovery

[11] 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see M.C.*, Docket No. 19-0699 (issued February 12, 2020).

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

[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 § 10.437(a)-(b).

[15] *See J.R.*, Docket No.17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

[16] *Supra* note 14.

of the overpayment would defeat the purpose of FECA, it is unnecessary for OWCP to consider the second prong of the test based on her assets.[17]

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because she has not shown that she would experience severe financial hardship in attempting to repay the debt or that she relinquished a valuable right or changed her position for the worse in reliance on the payment which created the overpayment.[18] Consequently, 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.[19]

Section 10.441 of OWCP's regulations[20] 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 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 improperly required recovery of the overpayment by deducting $1,751.58 from appellant's continuing compensation payments, every 28 days.

OWCP's procedures provide that, in instances where the claimant fails to provide the requested financial information, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.[22] In this case, OWCP provided a completed Form OWCP-20 and supporting documentation. However, OWCP required recovery at a rate higher than 25 percent. The case record establishes that OWCP paid appellant $3,053.52 in net compensation as of the date of the hearing representative's decision. Twenty-five percent of $3,053.52 is $763.38. The Board, therefore, finds that OWCP abused its discretion by deducting $1,751.58 from appellant's continuing compensation payments, every 28 days.[23]

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[17] *See A.G.*, Docket No. 24-0592 (issued July 10, 2024).

[18] *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).

[19] 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

[20] *Id*. at § 10.441(a).

[21] *Id.*; *see L.G.*, Docket No. 19-1274 (issued July 10, 2020).

[22] Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.8c(1) (September 2018).

[23] *J.R.*, Docket No. 24-0852 (issued November 14, 2024).

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation in the total net amount of $103,035.29 for the periods November 1, 2009 through November 30, 2011 and December 1, 2012 through September 9, 2023, 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. The Board also finds that OWCP improperly required recovery of the overpayment by deducting $1,751.58 from her continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2024 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: September 2, 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