

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

M.C., Appellant)	
)	
and)	Docket No. 21-0454
)	Issued: December 10, 2021
U.S. POSTAL SERVICE, GATEWAY)	
PROCESSING & DISTRIBUTION)	
CENTER/FACILITY, Springfield, OR, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On February 2, 2021 appellant filed a timely appeal from a November 9, 2020 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 \$8,240.32 for which she was without fault, because

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, appellant submitted additional evidence on appeal and, following the November 9, 2020 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.*

she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits for the period January 1 through August 15, 2020, 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 \$471.39 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On December 30, 1998 appellant, then a 43-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained right hand and wrist conditions causally related to factors of her federal employment, including performing repetitive motions when sorting letter mail. She first noticed her condition on June 1, 1998. OWCP accepted the claim for right trigger finger, bilateral carpal tunnel syndrome, bilateral rupture of flexor tendons of hand and wrist, cellulitis of right upper and forearm, and other tenosynovitis of hand and wrist. Appellant stopped work on November 23, 2005 and has not returned.³ OWCP paid her wage-loss compensation on the periodic rolls as of May 14, 2006.

On March 10, 2020 OWCP requested that SSA provide information as to whether appellant had received FERS/SSA dual benefits.

SSA completed the FERS/SSA dual benefits calculation worksheet on June 27, 2020. It indicated that appellant received age-related retirement benefits effective January 2020. SSA reported that beginning January 2020 the SSA benefit rates with a FERS offset was \$1,956.80 and without a FERS offset was \$860.50.

In an August 20, 2020 letter, OWCP notified appellant that, based on the information provided by SSA regarding the amount of her age-related retirement benefits, which were attributable to federal service, her FECA wage-loss compensation had been adjusted. It advised her that starting August 16, 2020 she would receive \$1,011.91 in FECA wage-loss compensation every 28 days after the SSA offset.

OWCP completed a FERS offset overpayment calculation worksheet on August 21, 2020. It calculated the overpayment amount by determining the daily FERS offset amount and then multiplying that amount by the number of days for the period January 1 through August 15, 2020. The form indicated that, from January 1 through August 15, 2020, appellant received an overpayment of \$8,240.32.

On September 11, 2020 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$8,240.32 had been created. It explained that the overpayment occurred because appellant's SSA age-related retirement benefits that she received from January 1 through August 15, 2020 were partially based on credits earned while working for the Federal Government, and that this portion of her SSA benefit constituted a

³ The current claim, OWCP File No. xxxxxx786, serves as the master file for a appellant's other claims, which are considered subsidiary files. These include OWCP File No. xxxxxx814, OWCP File No. xxxxxx786, OWCP File No. xxxxxx815, and OWCP File No. xxxxxx821. On appellant's claim form dated April 11, 2005 in OWCP File No. xxxxxx821 she noted her retirement system as Federal Employees Retirement System (FERS).

prohibited dual benefit. OWCP found her without fault in the creation of the overpayment and forwarded an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). It requested that appellant provide supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support her reported income and expenses. OWCP afforded her 30 days to respond.

By decision dated November 9, 2020, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$8,240.32, for the period January 1 through August 15, 2020, because it had failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to her federal service. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$471.39 every 28 days from appellant's continuing compensation payments.

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 When an overpayment of compensation has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁶

Section 10.421(d) of FECA implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-based benefits that are attributable to federal service of the employee.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,240.32 for which she was without fault, for the period

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ *Id.* at § 8129(a).

⁷ 20 C.F.R. § 10.421(d); *see T.B.*, Docket No. 18-1449 (issued March 19, 2019); *L.J.*, 59 ECAB 264 (2007).

⁸ FECA Bulletin No. 97-09 (February 3, 1997); *see M.S.*, Docket No. 20-0068 (issued May 14, 2021).

January 1 through August 15, 2020, as she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

As noted, a claimant cannot receive concurrent FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁹ The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to her federal service from January 1 through August 15, 2020. Consequently, the fact of the overpayment has been established.

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits that were 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 its rates with FERS and without FERS during the specific period January 1 through August 15, 2020. OWCP provided its overpayment calculations for each relevant period based on SSA's worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period January 1 through August 15, 2020 and finds that an overpayment of compensation in the amount of \$8,240.32 has been established.

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

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.¹¹

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.¹² Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who

⁹ *Supra* note 5; *see D.W.*, Docket No. 20-1533 (issued May 27, 2021); *M.R.*, Docket No. 20-0427 (issued October 30, 2020); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹⁰ 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).

¹¹ *A.C.*, *supra* note 9; *see Robert Atchison*, 41 ECAB 83, 87 (1989).

¹² 20 C.F.R. § 10.436. 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) (September 2020).

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.¹³

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.¹⁴ 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.¹⁵

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.¹⁶

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not provided the necessary supporting financial information. In its preliminary overpayment determination dated September 11, 2020, OWCP clearly explained the importance of providing the completed overpayment questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income, expenses, and assets. Appellant, however, did not complete the Form OWCP-20 or provide any supporting documentation regarding her income, expenses, or assets. As she did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.¹⁷

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.¹⁸

¹³ *Id.* at § 10.437(a)(b).

¹⁴ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁵ *Id.* at § 10.438(b).

¹⁶ *Id.* at § 10.436.

¹⁷ *D.C.*, Docket No. 19-0118 (issued January 15, 2020); *see S.B.*, Docket No. 16-1795 (issued March 2, 2017).

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

Section 10.441(a) of OWCP's regulations¹⁹ provides in pertinent part:

“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 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.”²⁰

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$471.39 from appellant's continuing compensation payments every 28 days.

OWCP provided appellant a Form OWCP-20 with its September 11, 2020 preliminary overpayment determination. It afforded her the opportunity to provide appropriate financial information and documentation to OWCP.²¹ Appellant did not complete the Form OWCP-20 overpayment recovery questionnaire or provide financial documentation to support her income and expenses prior to the final November 9, 2020 overpayment determination. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²² When an individual fails to provide requested financial information, OWCP shall follow minimum collection guidelines designed to collect the debt promptly and in full.²³ The Board, therefore, finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$471.39 every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,240.32, for the period January 1 through August 15, 2020 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 and properly required recovery of the overpayment by deducting \$471.39 from her continuing compensation payments.

¹⁹ *Id.* at § 10.441(a).

²⁰ *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²¹ *Id.* at § 10.438.

²² *Id.* at § 10.438(a); *see M.S.*, *supra* note 14.

²³ *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); *id.*, *supra* note 12 at Chapter 6.400.3 (September 2020).

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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