

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

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J.R., Appellant)	
)	
and)	Docket No. 21-0485
)	Issued: December 10, 2021
U.S. POSTAL SERVICE, TAHLEQUAH POST OFFICE, Tahlequah, OK, Employer)	
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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 January 28, 2021 appellant filed a timely appeal from a January 4, 2021 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 \$24,943.06, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits for the period November 1, 2016 through

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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.*

December 5, 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 \$547.94 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On June 19, 2003 appellant, then a 52-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 17, 2003 she was involved in a motor vehicle accident and strained her left rotator cuff while in the performance of duty. On August 12, 2003 OWCP accepted the claim for cervical strain. It subsequently expanded the acceptance of the claim to include left shoulder contusion and other affections of left shoulder region, brachial neuritis or radiculitis, lumbar sprain, sprain of the right shoulder and rotator cuff, and aggravation of a preexisting cervical and lumbar degenerative disc disease. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective August 4, 2003, and on the periodic rolls, effective August 8, 2004.

In a notification of personnel action (PS Form-50) dated September 16, 2006, appellant's retirement coverage was noted as Federal Employees Retirement System (FERS).

On September 27, 2019 and November 10, 2020 OWCP forwarded a FERS/SSA dual benefits calculation form to SSA to obtain information as to whether an offset of compensation benefits was required.

On December 1, 2020 OWCP received from SSA a completed FERS/SSA dual benefits calculation form, which indicated that appellant had been in receipt of SSA age-related retirement benefits since November 2016. The form showed SSA benefit rates with and without a FERS offset. Beginning November 2016, the SSA rate with FERS was \$941.90, and without FERS was \$453.70; beginning December 2016, the SSA rate with FERS was \$944.70, and without FERS was \$455.00; beginning December 2017, the SSA rate with FERS was \$963.50, and without FERS was \$464.10; beginning December 2018, the SSA rate with FERS was \$990.40, and without FERS was \$477.00; beginning December 2019, the SSA rate with FERS was \$1,006.20, and without FERS was \$484.60; and beginning December 2020, the SSA rate with FERS was \$1,019.20, and without FERS was \$490.80.

On December 1, 2020 OWCP completed a FERS offset calculation worksheet. It determined the 28-day FERS offset amount for the days in each period and computed a total overpayment amount of \$24,943.06. The offset calculation worksheet indicated that from November 1 through 30, 2016, appellant received an overpayment in the amount of \$482.84; from December 1, 2016 through November 30, 2017, she received an overpayment in the amount of \$5,892.54; from December 1, 2017 through November 30, 2018, appellant received an overpayment in the amount of \$6,009.26; from December 1, 2018 through November 30, 2019, appellant received an overpayment in the amount of \$6,177.73; from December 1, 2019 through November 30, 2020, appellant received an overpayment in the amount of \$6,293.59; and from December 1 through 5, 2020, appellant received an overpayment in the amount of \$87.10.

On December 1, 2020 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$24,943.06 had been created because it had failed to reduce appellant's wage-loss compensation payments for the period November 1, 2016

through December 5, 2020 to offset her SSA age-related retirement benefits that were attributable to federal service. It determined that she was without fault in the creation of the overpayment and advised her that she could request a waiver of the overpayment. OWCP instructed appellant to complete an overpayment recovery questionnaire (Form OWCP-20) to determine whether the overpayment should be waived or if not a reasonable repayment method. It further instructed that she should provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to 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 telephone conference, a final decision based on the written evidence, or a prerecoument hearing. No response was received.

By decision dated January 4, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$24,943.06 for the period November 1, 2016 through December 5, 2020 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without a proper offset. It also found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP noted that no response had been received to the preliminary overpayment decision and appellant had not requested waiver. It further explained that she received gross wage-loss compensation every 28 days of \$3,253.00, following deductions for health benefits and SSI withholdings, her net wage-loss benefit every 28 days was \$2,191.77. OWCP then required recovery of the overpayment at the rate of 25 percent of net wage-loss compensation every 28 days from appellant's continuing compensation payments in the amount of \$547.94.

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.³ 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.⁴

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁵ FECA Bulletin No. 97-09 states that FECA benefits have to be adjusted for the FERS portion of SSA age-related retirement 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.⁶

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see M.R.*, Docket No. 20-1622 (issued June 30, 2021); *S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

⁶ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$24,936.06, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period November 1, 2016 to December 5, 2020, without an appropriate offset.⁷

The evidence of record indicates that, while appellant was receiving compensation for wage loss under FECA, she also was receiving SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both compensation for wage loss under FECA and SSA age-related retirement benefits attributable to federal service for the same period without an appropriate offset.⁸ The information provided by SSA established that, during the period from November 1, 2016 to December 5, 2020, appellant received SSA age-related retirement benefits that were attributable to federal service, while she also received FECA wage-loss compensation that was not reduced by the appropriate offset. Consequently, the fact of 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 for specific periods from November 1, 2016 to December 5, 2020. OWCP provided its calculations for each relevant period based on the SSA worksheet, which show that appellant received an overpayment in the amount of \$24,936.06. The Board, thus, finds that appellant received prohibited dual benefits for the period November 1, 2016 to December 5, 2020, totaling \$24,936.06.

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.⁹ Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment, OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹⁰

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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

⁷ *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

⁸ 20 C.F.R. § 10.421(d); *see S.M.*, *supra* note 5; *L.J.*, *supra* note 5.

⁹ 5 U.S.C. § 8129(a)-(b).

¹⁰ *L.S.*, 59 ECAB 350 (2008).

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.¹¹ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹²

Section 10.437 of OWCP's implementing regulations provides that 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 attempting to repay the debt and when an individual, in reliance on such payments 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 procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was, in fact, valuable, that he or she was unable to get the it back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.¹⁴

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.¹⁵ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁶

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.¹⁷

In its preliminary overpayment determination dated December 1, 2020, OWCP explained the importance of providing a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver of recovery

¹¹ 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).

¹² Federal (FECA) Procedure Manual, *id.* at Chapter 6.400.4c(3) (September 2020).

¹³ 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁴ FECA Procedure Manual, *supra* note 12 at Chapter 6.400.4c(3) (September 2020).

¹⁵ 20 C.F.R. § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁶ *Id.* at § 10.438.

¹⁷ *Id.*

if she failed to furnish the requested financial information within 30 days. Appellant, however, did not complete the Form OWCP-20 or otherwise submit the financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

Consequently, as appellant 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.¹⁸

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of Title 20 of the Code of Federal Regulations provides that, if an overpayment of compensation has been made to one entitled to future payments, proper adjustment shall be made by decreasing subsequent 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 When an individual fails to provide requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines. The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.²⁰

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$547.94 every 28 days from appellant's continuing compensation payments.

OWCP provided appellant a Form OWCP-20 with its December 1, 2020 preliminary overpayment determination and afforded her the opportunity to provide appropriate financial information and documentation to OWCP.²¹ Appellant did not complete Form OWCP-20 or provide the necessary financial documentation to support her income and expenses prior to the January 4, 2021 final overpayment decision. 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

¹⁸ *Id.*

¹⁹ 20 C.F.R. § 10.441.

²⁰ Federal (FECA) Procedure Manual, *supra* note 11 at 6.500.8(c)(1) (September 2018).

²¹ 20 C.F.R. § 10.438.

²² *Id.* at § 10.438(a); *see M.S., supra* note 15.

²³ *See M.S.*, Docket No. 20-1261 (issued June 10, 2021); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, *supra* note 12 at Chapter 6.400.3 (September 2020).

properly required recovery of the overpayment at the rate of 25 percent from appellant's net continuing compensation payments at the rate of \$547.94 every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$24,943.06, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period November 1, 2016 through December 5, 2020, without an appropriate offset. The Board also finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$547.94 from appellant's continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2021 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