

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

_____)
F.L., Appellant)

and)

U.S. POSTAL SERVICE, LOS ANGELES)
PROCESSING & DISTRIBUTION CENTER,)
Los Angeles, CA, Employer)
_____)

Docket No. 21-0619
Issued: December 16, 2021

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 11, 2021 appellant filed a timely appeal from a February 12, 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 to consider the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$90,771.08 for which she was without fault, for the period May 1, 2013 through August 15, 2020, because she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensations without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the

¹ 5 U.S.C. § 8101 *et seq.*

overpayment by deducting \$457.36 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On September 17, 1999 appellant, then a 48-year-old flat sorter operator, filed an occupational disease claim (Form CA-2) alleging that she sustained overuse syndrome and tendinitis of the right hand while keying in the performance of duty on or before August 14, 1999. OWCP accepted the claim for right hand and wrist tenosynovitis and right carpal tunnel syndrome. Appellant performed full-time limited-duty work from September 16, 1999 through May 11, 2009. OWCP paid her wage-loss compensation for intermittent work absences related to the accepted conditions.

On May 12, 2009 appellant claimed a recurrence of disability (Form CA-2a) commencing that date as there was no work available within her medical limitations. OWCP paid her wage-loss compensation on the periodic rolls, effective June 7, 2009.

Appellant began receiving SSA disability benefits in November 2009.

By decision dated April 28, 2011, OWCP reduced appellant's wage-loss compensation effective May 8, 2011, based on her capacity to earn wages in the constructed position of Gate Guard, Department of Labor, *Dictionary of Occupational Titles* (DOT) #379.367-010, at the rate of \$340.00 per week.

In a January 27, 2012 letter, appellant elected to receive retirement benefits through the Office of Personnel Management retroactive to July 19, 2011. On April 24, 2012 she elected to receive FECA wage-loss compensation in lieu of OPM retirement benefits effective April 20, 2012. OWCP resumed appellant's wage-loss compensation on the periodic rolls.

On December 10, 2012 OWCP informed appellant that section 8116(d)(2) of FECA (5 U.S.C. § 8116(d)(2)) requires that her continuing compensation benefits be reduced if she begins receiving SSA retirement benefits based on her age and federal service. It advised that because she was approaching her 62nd birthday they were notifying her of this requirement. OWCP further advised that failure to report receipt of retirement benefits to OWCP could result in an overpayment of compensation, which could be subject to recovery.

In a June 25, 2013 letter, SSA noted that appellant was entitled to monthly retirement benefits commencing May 2013. Appellant's retirement coverage was listed as Federal Employees Retirement System (FERS).²

On January 17, 2020 OWCP provided SSA a dual benefits calculation form. It listed the computation period as May 11, 2009 to present. On August 4, 2020 OWCP received the completed FERS/SSA dual benefits calculation form, wherein SSA calculated SSA benefit rates

² In a November 28, 2016 letter, SSA notified appellant that her SSA benefits would change from disability retirement to age-related retirement beginning in December 2016 as she would attain the full retirement age on December 9, 2016.

with and without a FERS offset from May 1, 2013 through July 2020. Beginning May 1, 2013, the SSA rate with FERS was \$1,268.80 and without FERS was \$428.10. Beginning December 1, 2013, the SSA rate with FERS was \$1,287.80 and without FERS was \$434.50. Beginning December 1, 2014, the SSA rate with FERS was \$1,309.70 and without FERS was \$441.90. Beginning November 1, 2015, the SSA rate with FERS was \$1,309.70 and without FERS was \$441.90. Beginning December 1, 2016, the SSA rate with FERS was \$1,797.00 and without FERS was \$631.00. Beginning December 1, 2017, the SSA rate with FERS was \$1,832.90 and without FERS was \$643.60. Beginning December 1, 2018, the SSA rate with FERS was \$1,884.20 and without FERS was \$661.60. Beginning December 1, 2019, the SSA rate with FERS was \$1,914.30 and without FERS was \$672.10. Beginning July 1, 2020, the SSA rate with FERS was \$1,914.30 and without FERS was \$672.10. At the bottom of the FERS/SSA dual benefits calculation form, SSA indicated that appellant was entitled to SSA retirement benefits “from May 2013 to November 2015” and “from December 2016 to [p]resent.” SSA noted that “[i]n between that time,” she was entitled to SSA disability benefits, and that the FERS/SSA dual benefit offset applied for the periods in which she received SSA retirement benefits.

On September 4, 2020 OWCP prepared a FERS offset calculation based on the SSA documentation wherein it noted the calculation of appellant’s overpayment from May 1, 2013 through August 15, 2020.³ It determined that: during the period May 1, 2013 through November 30, 2013, she received an overpayment in the amount of \$5,931.09; during the period December 1, 2013 through November 30, 2014, appellant received an overpayment in the amount of \$10,267.73; during the period December 1, 2014 through November 30, 2015, appellant received an overpayment in the amount of \$10,442.21; during the period December 1, 2016 through November 30, 2017, appellant received an overpayment in the amount of \$14,030.44; during the period December 1, 2017 through November 30, 2018, appellant received an overpayment in the amount of \$14,310.81; during the period December 1, 2018 through November 30, 2019, appellant received an overpayment in the amount of \$14,711.51; and during the period December 1, 2019 through August 15, 2020, appellant received an overpayment in the amount of \$10,606.48. The total overpayment was determined to be \$80,300.26.

On September 8, 2020 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$90,771.08 had been created because the SSA/FERS offset was not applied to payments for the period May 1, 2013 through August 15, 2020. It determined that: during the period May 1 through November 30, 2013, appellant received an overpayment in the amount of \$5,931.09; during the period December 1, 2013 through November 30, 2014, appellant received an overpayment in the amount of \$10,267.73; during the period December 1, 2014 through November 30, 2016, appellant received an overpayment in the amount of \$20,913.03; during the period December 1, 2016 through November 30, 2017, appellant received an overpayment in the amount of \$14,030.44; during the period December 1, 2017 through November 30, 2018, appellant received an overpayment in the amount of \$14,310.81; during the period December 1, 2018 through November 30, 2019, appellant received an overpayment in the amount of \$14,711.51; and during the period December 1, 2019 through August 15, 2020, appellant received an overpayment in the amount of \$10,606.48.

³ The worksheet notes that the overpayment calculations were certified as correct.

OWCP determined that appellant was without fault in the creation of the overpayment because she relied on misinformation given in writing by OWCP or another government agency, which she had reason to believe was connected with the administration of benefits. It requested that she submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method, and advised her that she could request a waiver of recovery of the overpayment. OWCP further requested financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It further notified appellant that, within 30 days of the date of the letter, she could contest the overpayment and request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

In response, appellant provided a Form OWCP-20 signed on September 16, 2020 requesting a prerecoupment hearing.⁴ She contended that the overpayment should be waived as she was found without fault in the creation of the overpayment and she had fully and accurately reported all SSA benefits to OWCP. Appellant noted monthly household income in the amount of \$4,732.00, including \$1,769.00 in SSA benefits, \$1,119.00 from her spouse who resided with her, and \$1,844.00 in FECA compensation. She listed monthly expenses of \$1,910.00, including \$270.00 in rent or mortgage, \$400.00 for food, \$200.00 for clothing, \$371.00 for utilities, \$300.00 in miscellaneous expenses, \$239.00 for a telecommunications package, and \$130.00 in debt repayment. Appellant also listed assets of \$500.00 cash, noting that she would not disclose her checking or savings account balances. She asserted that she did not own stocks, bonds, or valuable personal property. In an attached statement, appellant noted that she had a Thrift Savings Plan account, but did not disclose the account balance. She did not submit documentation of her income, assets, or expenses.

By decision dated February 12, 2021, an OWCP hearing representative finalized that the September 8, 2020 preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$90,771.08 for the period May 1, 2013 through August 15, 2020, because OWCP had failed to offset her compensation payments by the portion of her SSA benefits that were attributable to federal service and that appellant did not have actual knowledge of the calculation error. The hearing representative 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 failed to establish that recovery of an overpayment would defeat the purpose of FECA as her monthly income exceeded her reported monthly expenses by more than \$50.00. Additionally, appellant did not submit written documentation to support her assets, income, and expenses. The hearing representative further found that recovery of the overpayment would not be against equity and good conscience as appellant had not shown that she would experience severe financial hardship in attempting to repay the debt, and that she had not asserted detrimental

⁴In a notice dated November 10, 2020, OWCP's Branch of Hearings and Review notified appellant that a telephonic hearing would be conducted in her case on January 6, 2021 at 12:00 p.m., Eastern Standard Time (EST) and provided the call-in number and passcode. In a telephone memorandum (Form CA-110) dated January 7, 2021, OWCP's Branch of Hearings and Review noted that she had left a voice mail message at 3:04 p.m. EST indicating that she thought that the hearing was scheduled from 12:00 p.m. Pacific Standard Time. As the hearing could not be rescheduled, the Branch of Hearings and Review conducted a review of the written record.

reliance. OWCP's hearing representative required recovery of the overpayment by deducting \$457.36 every 28 days from appellant's continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 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 duty.⁵ 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.⁶

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related retirement 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.

The evidence of record indicates that, while appellant was receiving wage-loss compensation benefits under FECA, she was also receiving SSA age-related retirement benefits that were attributable to her federal service without appropriate offset. A claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁹ Consequently, fact of overpayment has been established.¹⁰

The Board further finds, however, that this case is not in posture for decision regarding the period(s) and amount of overpayment.

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

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8116.

⁷ 20 C.F.R. § 10.421(d); *M.R.*, Docket No. 20-1622 (issued June 30, 2021); *S.S.*, Docket No. 19-1945 (issued March 25, 2021); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

⁸ FECA Bulletin No. 97-09 (February 3, 1997).

⁹ *Supra* note 6. *M.R.*, *supra* note 7; *M.R.*, Docket No. 20-0427 (issued October 30, 2020). *See also N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹⁰ *See K.H.*, Docket No. 18-0171 (issued August 2, 2018).

documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided age-related retirement benefit rates with and without FERS for specific periods commencing May 1, 2013 through August 15, 2020. SSA also indicated, in the remarks section of the form, that appellant was entitled to SSA age-related retirement benefits “from May 2013 to November 2015” and “from December 2016 to [p]resent.” SSA noted that “[i]n between that time,” appellant was entitled to SSA disability benefits, and that the FERS/SSA dual benefit offset applied for the periods in which appellant received SSA age-related retirement benefits. On September 8, 2020 OWCP issued a preliminary overpayment determination, finding an overpayment in the amount of \$90,771.08. However, it failed to exclude appellant’s receipt of SSA disability benefits from the overpayment period and amount. OWCP, by decision dated February 12, 2021, finalized the preliminary overpayment determination.

Accordingly, the Board finds that the case must be remanded to OWCP. On remand, OWCP shall determine the proper period(s) and amount of overpayment of compensation. It shall then issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, and instructions for appellant to provide supporting financial information. After this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹¹

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation because she concurrently received SSA age-related retirement benefits while also receiving FECA benefits without an appropriate offset. The Board further finds that the case is not in posture for decision with respect to the period(s) and amount of the overpayment.

¹¹ In light of the Board’s disposition regarding Issue 1, Issues 2 and 3 are rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2021 merit decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: December 16, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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