

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

_____)	
R.R., Appellant)	
)	
and)	Docket No. 20-0635
)	Issued: December 9, 2020
U.S. POSTAL SERVICE, MAIN POST OFFICE,)	
Lake Havasu City, AZ, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 10, 2019¹ appellant filed a timely appeal from an August 29, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ On December 10, 2019 the Board received a letter from appellant, which it docketed as Docket No. 20-0635. In a letter dated January 31, 2020, the Board requested that appellant sign the enclosed AB-1 form pursuant to 20 C.F.R. § 501.3(c)(6). On April 27, 2020 the Board received appellant's signed AB-1 form dated March 10, 2020.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the August 29, 2019 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 appellant received an overpayment of compensation in the amount of \$49,051.53, for which she was without fault, for the period June 1, 2014 through July 20, 2019 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 it properly required recovery of the overpayment by deducting \$560.77 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On September 29, 2010 appellant, then a 62-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day she hurt her left side and back when lifting trays into her long life vehicle (LLV) while in the performance of duty. She stopped work that day. Appellant's retirement coverage was noted as Federal Employees Retirement System (FERS). OWCP initially accepted the claim for lumbar strain, and later expanded acceptance of the claim to include permanent aggravation of lumbar spinal stenosis at the L2-3 and L4-5 levels. Appellant received wage-loss benefits on the supplemental rolls as of November 20, 2010 and on the periodic rolls as of August 28, 2011. She has not returned to work.

Appellant completed, signed, and returned CA-1032 forms dated June 9, 2014,⁴ June 28, 2015, October 10, 2016, July 7, 2017, and July 9, 2018. On the reporting forms appellant did not respond, or responded "No," indicating that she had not received retirement benefits from SSA as part of an annuity for federal service.

On June 18, 2019 OWCP received a FERS/SSA dual benefit calculation form from SSA. The form provided SSA benefit rates with a FERS offset and without a FERS offset June 2014 through December 2018. The form indicated that beginning June 1, 2014, the SSA rate with FERS was \$989.60 and without FERS was \$217.40; beginning December 1, 2014 the SSA rate with FERS was \$1,006.40 and without FERS was \$221.00; beginning December 1, 2015, the SSA rate with FERS was \$1,006.40 and without FERS was \$221.00; beginning December 1, 2016, the SSA rate with FERS was \$1,009.40 and without FERS was \$221.60; beginning December 1, 2017, the SSA rate with FERS was \$1,029.50 and without FERS was \$226.00; and beginning December 1, 2018, the SSA rate with FERS was \$1,058.30 and without FERS was \$232.30.

OWCP completed a FERS offset calculation worksheet on July 18, 2019. It calculated the overpayment amount by determining the daily FERS offset amount and multiplying that amount by the number of days in each period from June 1, 2014 through July 20, 2019 for a total overpayment amount of \$49,051.53. OWCP determined that during the period June 1 through November 30, 2014 an overpayment had been created in the amount of \$4,658.66; during the period December 1, 2014 to November 30, 2015 an amount of \$9,450.69; during the period December 1, 2015 through November 30, 2016 an amount of \$9,476.58; during the period December 1, 2016 through November 30, 2017 an amount of \$9,479.57; during the period

⁴ Appellant did not respond to the question.

December 1, 2017 through November 30, 2018 an amount of \$9,668.49; and during the period December 1, 2018 through July 20, 2019 an amount of \$6,317.54.

In a July 19, 2019 letter, OWCP advised appellant that she had been receiving Federal Employees Retirement Systems (FERS)/Social Security Administration (SSA) dual benefits. It informed her that the portion of SSA benefits earned as a federal employee was part of the FERS retirement package and the receipt of FECA benefits and federal retirement benefits concurrently was a prohibited dual benefit. OWCP notified appellant of the adjustment in her FECA benefits based on the FERS portion of SSA benefits attributable to federal service. The adjustment was effective July 21, 2019.

On a CA-1032 form dated July 19, 2019, appellant responded “No” to the question of whether she had received retirement benefits from SSA as part of an annuity for federal service.

In a preliminary overpayment determination dated July 25, 2019, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$49,051.53 because it had failed to reduce her wage-loss compensation benefits for the period June 1, 2014 through July 20, 2019 by the portion of her SSA age-related retirement benefits that were attributable to federal service. It further advised her of its preliminary determination that she was not at fault in the creation of the overpayment because she could not have reasonably known that an improper payment had occurred given the complexity in benefits administration. OWCP provided appellant an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). Additionally, it notified her 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 precoupment hearing.

In a July 22, 2019 letter, appellant disagreed that her FECA benefits were subject to an offset. She did not request waiver. No other documentation was received.

By decision dated August 29, 2019, OWCP finalized the preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$49,051.53 for the period June 1, 2014 through July 20, 2019 because she received SSA age-related retirement benefits in addition to her wage-loss compensation benefits under FECA without an appropriate offset. It also found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because no documentation was received to substantiate that adjustment or recovery would defeat the purpose of FECA or be against equity and good conscience. OWCP determined that recovery of the overpayment would be made by deducting \$560.77 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 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(a).

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 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 \$49,051.53 for the period Jun 1, 2014 through July 20, 2019 because she concurrently received SSA age-related retirement benefits while receiving FECA wage-loss compensation benefits without an appropriate offset.⁹

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 based upon her federal service. As explained, a claimant cannot receive both wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period.¹⁰ The information provided by SSA established that appellant received SSA age-retirement benefits that were attributable to federal service during the period June 1, 2014 through July 20, 2019 while she was receiving wage-loss compensation on the periodic rolls. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA's 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 rate with FERS and without FERS for specific periods from June 1, 2014 through July 20, 2019. OWCP provided its calculations for each relevant period based on SSA's worksheet.

⁶ *Id.* at § 8116.

⁷ 20 C.F.R. § 10.421(d); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁸ FECA Bulletin No. 97-09 (February 3, 1997); *see also M.D.*, Docket No. 19-1500 (issued February 24, 2020); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁹ *E.L.*, Docket No. 20-0723 (issued October 15, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

¹⁰ *E.L.*, *id.*; *supra* note 8.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period June 1, 2014 through July 20, 2019 and finds that an overpayment of compensation in the amount of \$49,051.53 has been established.¹¹

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.¹² 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.¹³

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.¹⁴ 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.¹⁵

OWCP 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.¹⁶ Failure to submit the requested information within 30 days of the request will result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹⁷

¹¹ See *E.L., id.*; *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

¹² 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; see *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

¹³ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); see *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁴ 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 6.400.4(a)(2) (September 2018).

¹⁵ *Id.* at § 10.437(a)(b).

¹⁶ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁷ *Id.* at § 10.438(b).

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.¹⁸

In its preliminary determination dated July 25, 2019, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support reported income and expenses. It advised appellant that it would deny waiver of recovery of the overpayment if she failed to furnish the requested financial information within 30 days. Appellant did not submit a completed Form OWCP-20 or otherwise submit financial information necessary for OWCP to determine whether 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 20 C.F.R. § 10.438 of OWCP's regulations, necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁹

On appeal appellant argues that repayment of the overpayment is a hardship for her and her family. She notes that she had two major surgeries which left her totally disabled from the employment injury. For the reasons set forth herein, OWCP properly denied waiver of recovery of the overpayment as appellant failed to provide any supporting financial information; therefore, OWCP was required to deny waiver of the overpayment.²⁰

LEGAL PRECEDENT -- ISSUE 3

Section 10.411 of OWCP's regulations 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.”²¹

¹⁸ 20 C.F.R. § 10.436; *J.C.*, Docket No. 19-0122 (issued June 11, 2019).

¹⁹ *See T.E.*, Docket No. 19-0348 (issued December 11, 2019).

²⁰ *Supra* note 17.

²¹ 20 C.F.R. § 10.441(a); *see G.G.*, Docket No. 19-0684 (issued December 23, 2019).

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$560.77 from appellant's continuing compensation every 28 days.

OWCP provided appellant a Form OWCP-20 with its July 25, 2019 preliminary determination. It afforded her the opportunity to provide necessary, requested financial information and documentation to OWCP.²² Appellant did not complete the overpayment recovery questionnaire or provide the necessary financial information to support her income and expenses prior to the final August 29, 2019 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²³ When an individual fails to provide requested financial information, OWCP shall follow minimum collection guidelines designed to collect the debt promptly and in full.²⁴ As appellant did not submit supporting financial documentation to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in directing recovery of the \$49,051.53 overpayment at the rate of \$560.77 every 28 days from her continuing compensation payments.²⁵

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$49,051.53, for which she was without fault, for the period June 1, 2014 through July 20, 2019 because 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 \$560.77 from her continuing compensation payments every 28 days.

²² *Id.* at § 10.438.

²³ *Id.* at § 10.438(a); *see M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²⁴ *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, *supra* note 14 at Chapter 6.400.3 (September 2018).

²⁵ *See E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

ORDER

IT IS HEREBY ORDERED THAT the August 29, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2020
Washington, DC

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

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

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