

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

K.N., Appellant)	
)	
and)	Docket No. 20-1015
)	Issued: December 7, 2020
)	
DEPARTMENT OF AGRICULTURE,)	
NATIONAL RESOURCES CONSERVATION)	
SERVICE, Phoenix, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 11, 2020 appellant filed a timely appeal from an April 3, 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.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$47,771.87 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 August 1, 2014 to February 1, 2020 without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether it properly

¹ 5 U.S.C. § 8101 *et seq.*

required recovery of the overpayment by deducting \$1,750.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On February 12, 1998 appellant, then a 48-year-old secretary, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right elbow injury when she lifted a 39-pound box of publications to a scale while in the performance of duty. OWCP accepted the claim for right elbow strain and right lateral/medial epicondylitis. It paid appellant wage-loss compensation on the daily rolls beginning July 3, 1998.

On October 11, 2001 appellant underwent authorized right lateral epicondylectomy and debridement. On December 10, 2001 she returned to modified-duty work, two hours per day, and stopped work on October 22, 2003 when she voluntarily resigned from her position.

By decision dated December 13, 2004, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. By decision dated February 16, 2006, an OWCP hearing representative set aside the December 13, 2004 decision and remanded the case to OWCP for further development of the medical evidence as to whether appellant had continuing residuals or disability causally related to her February 12, 1998 employment injury.

In a December 9, 2019 letter, OWCP requested that appellant complete and return an enclosed Form CA-1032 reporting the information requested including any retirement income, disability income, and/or compensation benefits she received from any federal agency.

In response dated December 13, 2019, appellant indicated in a CA-1032 form that she received approximately \$960.00 in SSA benefits.

On January 31, 2020 SSA forwarded a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form to OWCP. The form indicated that, beginning in August 2014, appellant's SSA rate with FERS was \$1,049.00 and without FERS was \$351.00, beginning in November 14, her SSA rate with FERS was \$1,048.90 and without FERS was \$350.90, beginning in December 2014 through November 2016, her SSA rate with FERS was \$1,066.90 and without FERS was \$365.90, beginning in December 2016, her SSA rate with FERS was \$1,070.00 and without FERS was \$358.00; beginning in December 2017, her SSA rate with FERS was \$1,091.00 and without FERS was \$365.00, beginning in December 2018, her SSA rate with FERS was \$1,121.50 and without FERS was \$375.50, and beginning in December, 2019 her SSA rate with FERS was \$1,139.60 and without FERS was \$381.60.

OWCP, in a February 10, 2020 letter, notified appellant that her compensation would be offset by the portion of her SSA age-related retirement benefits attributable to her federal service. It indicated that she would receive net compensation of \$2,578.31 every four weeks.

In a preliminary determination dated February 10, 2020, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$47,771.87 because her wage-loss compensation benefits had not been reduced for the period August 1, 2014 through February 1, 2020 by the portion of her SSA benefits that were attributable to her federal service. It calculated

the overpayment amount by determining the difference between her SSA amount with and without FERS for the stated period and adding this amount to find a total overpayment of \$47,771.87. OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment and requested that she complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit supporting financial documentation. It allotted 30 days for her to respond.

On March 3, 2020 appellant requested a decision based on the written evidence regarding waiver of recovery of the overpayment. She maintained that she was unaware that she received an incorrect payment. On a completed Form OWCP-20 dated February 24, 2020, appellant listed her total monthly income of \$10,019.00 (\$3,329.00, SSA benefits; \$2,578.00, FECA benefits; \$4,389.00, military retirement benefits; and -\$277.00, business losses), total monthly expenses of \$9,806.00 which included \$1,810.00 for rent or mortgage, \$585.00 for food, \$100.00 for clothing, and total assets of \$10,088.00 (\$20.00, cash on hand; \$800.00, checking; and \$9,268.00, savings). She submitted financial documentation, which indicated, among other things, that she had \$9,488.37 in a savings account and \$4,791.87 in a checking account, totaling \$14,280.24.

By decision dated April 3, 2020, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$47,771.87 for the period August 1, 2014 through February 1, 2020 for which she was without fault because her FECA compensation payments were not offset by the portion of her SSA age-related retirement benefits attributable to her federal service. It determined that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as her monthly income of \$10,019.00 exceeded her adjusted monthly expenses of \$7,169.08 by \$2,849.92. Thus, OWCP required recovery of the overpayment by deducting \$1,750.00 every 28 days from appellant's continuing compensation payments until the debt was paid in full.

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 duty.² However, section 8116 also 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.³ When an overpayment 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.⁴

Section 10.421(d) of OWCP's implementing regulations requires that it reduce the amount of compensation by the amount of any SSA benefits that are attributable to the federal service of

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116.

⁴ *Id.* at § 8129(a).

the employee.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$47,771.87 for which she was without fault, because she concurrently received FECA benefits and SSA age-related retirement benefits without an appropriate offset for the period August 1, 2014 to February 1, 2020.

In its April 3, 2020 decision, OWCP found that an overpayment of compensation was created for the period August 1, 2014 to February 1, 2020. The overpayment was based on the evidence received from SSA with respect to retirement benefits paid to appellant. As noted, a claimant cannot receive both compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁷ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service beginning August 1, 2014. OWCP, however, neglected to offset her FECA benefits until February 1, 2020. Accordingly, the Board finds that it properly determined that appellant received an overpayment of wage-loss compensation for the period August 1, 2014 through February 1, 2020.

To determine the amount of the overpayment, the portion of the SSA 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. The SSA provided appellant's SSA age-related retirement benefit rates with FERS and without FERS for the period August 1, 2014 through February 1, 2020. OWCP provided its calculations of the amount that it should have offset during the relevant period based on the SSA worksheet. No contrary evidence was provided.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period August 1, 2014 through February 1, 2020 and finds that an overpayment of compensation in the amount of \$47,771.87 was created.⁸

⁵ 20 C.F.R. § 10.421(d); *see R.R.*, Docket No. 19-0104 (issued March 9, 2020); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *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).

⁷ 5 U.S.C. § 8116(d)(2); *see L.G.*, Docket No. 19-1274 (issued July 10, 2020); *R.D.*, Docket No. 19-1598 (issued April 17, 2020); *C.M.*, Docket No. 19-1451 (issued March 4, 2020); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

⁸ *L.G., id.; C.M., id.; R.D., id.; L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of FECA states: “Adjustment or recovery [of an overpayment] by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.”⁹

Recovery of an overpayment will defeat the purpose of FECA when 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.¹⁰ 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 \$50.00.¹¹ Also, 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.¹² An individual’s liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.¹³

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 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 right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.¹⁵

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

⁹ 5 U.S.C. § 8129(b).

¹⁰ 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).

¹¹ *Id.* at Chapter 6.400.4.a(3); *R.D.*, *supra* note 8; *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹² *Supra* note 10 at Chapter 6.400.4.a(2) (September 2018).

¹³ *Id.* at Chapter 6.400.4.b(3).

¹⁴ *Supra* note 10 at § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁵ *Supra* note 10 at Chapter 6.400.4c(3) (September 2018).

the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

Although OWCP determined that appellant was not at fault in the creation of the overpayment, she has not established that recovery of the overpayment would defeat the purpose of FECA because her assets exceed the resource base of \$10,300.00 for an individual with one dependent as provided in OWCP's procedures.¹⁷ Appellant's supporting financial information of record documents that she had assets totaling \$14,280.24. It was therefore unnecessary for OWCP to consider whether her monthly income exceeds her monthly ordinary and necessary expenses by more than \$50.00.¹⁸ Appellant did not establish that she was entitled to waiver on the basis of defeating the purpose of FECA.¹⁹ There is also no evidence to support that appellant gave up a valuable right or changed her position for the worse, in reliance on her FECA compensation. Appellant, therefore, did not establish that recovery of the overpayment was against equity and good conscience.²⁰

As appellant failed to establish that recovery of the overpayment of compensation would either defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP did not abuse its discretion in denying waiver of recovery.²¹

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations 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.

¹⁶ *Supra* note 10 at § 10.436; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁷ *See supra* note 12.

¹⁸ *See supra* note 13.

¹⁹ *See R.D.*, *supra* note 7; *L.G.*, Docket No. 19-1274 (issued July 10, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020).

²⁰ *See R.D.*, *supra* note 7; *L.G.*, *id.*; *R.C.*, *id.*; *M.A.*, *supra* note 11; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

²¹ *Id.*

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.²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$1,750.00 from appellant's continuing compensation payments every 28 days.

The record supports that, in requiring repayment of the overpayment by deducting \$1,750.00 from appellant's compensation payments every 28 days, OWCP took into consideration the financial information submitted by appellant as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize resulting hardship on appellant. Therefore, OWCP properly required recovery of the overpayment by deducting \$1,750.00 from appellant's compensation payments, every 28 days.²³

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$47,771.87 for which she was without fault, because she concurrently received FECA benefits and SSA age-related retirement benefits without an appropriate offset for the period August 1, 2014 to February 1, 2020. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$1,750.00 from appellant's continuing compensation payments every 28 days.

²² 20 C.F.R. at § 10.441(a); *R.C.*, *supra* note 19; *C.M.*, *supra* note 7; *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

²³ *L.G.*, *supra* note 19.

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2020
Washington, DC

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

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

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