

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

_____)	
I.U., Appellant)	
)	
and)	Docket No. 20-0129
)	Issued: July 31, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Los Angeles, CA, 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 October 21, 2019 appellant filed a timely appeal from a September 26, 2019 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 appellant received an overpayment of compensation in the amount of \$100,536.75 for the period May 16, 2009 through August 18, 2018, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without proper offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 18, 1994 appellant, then a 50-year-old letter sorting mail operator clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome causally related to factors of her federal employment, including repetitive keying at a high rate of speed. She did not initially stop work. OWCP accepted the claim for bilateral carpal tunnel syndrome. It paid appellant intermittent wage-loss compensation on the supplemental rolls as of May 16, 2009, and then on the periodic rolls as of September 27, 2009 through February 13, 2010. Appellant returned to work and then stopped work again. OWCP paid her on the supplemental rolls from May 8 through July 31, 2010 and on the periodic rolls commencing August 1, 2010.

On an EN1032 form dated May 24, 2011, appellant indicated that she did not believe that she received any SSA age-related retirement benefits as part of an annuity for federal service because she was not retired.

On EN1032 forms dated May 25, 2012; May 31, 2013; May 14 and 16, 2014; May 14, 2015; May 24, 2016; May 23, 2017; May 20, 2018; and May 27, 2019 appellant indicated that she received SSA age-related retirement benefits as part of an annuity for federal service.

On July 6, 2018 OWCP received a June 28, 2018 Federal Employees Retirement System (FERS)/SSA dual benefits calculation form showing appellant's SSA rate with and without offset from FERS for the period March 2009 to August 2018. The form indicated that: as of March 2009, appellant's SSA rate with FERS was \$1,641.80 and without FERS \$766.60; as of December 2009, her SSA rate with FERS was \$1,641.80 and without FERS \$766.60; as of January and December 2010, appellant's SSA rate with FERS was \$1,655.10 and without FERS \$766.60; as of December 2011, her SSA rate with FERS was \$1,714.60 and without FERS \$794.20; as of December 2012, appellant's SSA rate with FERS was \$1,743.70 and without FERS \$807.70; as of December 2013, her SSA rate with FERS was \$1,769.80 and without FERS \$819.70; as of December 2014, appellant's SSA rate with FERS was \$1,799.80 and without FERS \$833.60; as of December 2016, her SSA rate with FERS was \$1,805.20 and without FERS \$836.10; and as of December 2017, appellant's SSA rate with FERS was \$1,841.30 and without FERS \$852.80.

OWCP prepared a FERS offset calculation worksheet reflecting the SSA offset every 28 days from March 1, 2009 through August 18, 2018. It calculated the total overpayment as \$106,555.31.

In a letter dated August 28, 2018, OWCP notified appellant that, based on information provided by SSA regarding the amount of her SSA benefits attributable to federal service, her FECA wage-loss compensation had been adjusted and her new net compensation payment every 28 days of \$971.56 would begin on September 15, 2018.

On October 2, 2018 OWCP issued a preliminary determination that an overpayment of compensation in the amount of \$106,555.31 had been created. It determined that appellant was not at fault in the creation of the overpayment. OWCP forwarded an overpayment action request form and an overpayment recovery questionnaire (Form CA-20). It explained its calculation of

the overpayment, informed appellant of the actions she could take, and afforded her 30 days to respond.

On November 6, 2018 OWCP received appellant's completed Form OWCP-20 and request for a prerecouplement hearing. Appellant did not dispute the overpayment calculation, but indicated that the overpayment occurred through no fault of her own and requested a waiver. She listed her income as \$4,442.00 and her expenses as \$7,557.00, with a large amount of her expenses being attributed to in-home health care for her husband. Appellant listed her assets as \$145,299.65, which included a savings account balance of \$139,179.77.

In a January 17, 2019 decision, OWCP set aside the October 2, 2018 preliminary overpayment determination and remanded the case for further development regarding the amount of the overpayment. It noted that appellant did not receive continuous wage-loss compensation for the period March 1, 2009 through August 18, 2018. The hearing representative also noted that her FECA compensation benefits began on May 16, 2009. He also noted that appellant had returned to work for a period of time beginning February 10, 2010 and sustained a recurrence of disability beginning May 8, 2010, but had used annual leave for dates after her recurrence of disability.

OWCP prepared a February 12, 2019 FERS offset calculation worksheet verifying its calculations. It calculated the total overpayment as \$100,536.75. For the period May 16 to July 3, 2009, appellant received an overpayment in the amount of \$1,413.78, for the period July 30 to November 30, 2009, she received an overpayment in the amount of \$3,577.74; for the period December 1 to 31, 2009, she received an overpayment in the amount of \$894.44; for the period January 1 to February 12, 2010, she received an overpayment in the amount of 1,259.52; for the period May 8 to July 2, 2010, she received an overpayment in the amount of \$1,640.31; for the period July 17 to 23, 2010, she received an overpayment in the amount of \$205.04; for the period July 31 to November 30, 2010, she received an overpayment in the amount of \$3,602.82; for the period December 1, 2010 to November 30, 2011, she received an overpayment in the amount of \$10,691.29; for the period December 1, 2011 to November 30, 2012, she received an overpayment in the amount of \$11,105.49; for the period December 1, 2012 to November 30, 2013, she received an overpayment in the amount of \$11,262.86; for the period December 1, 2013 to November 30, 2014, she received an overpayment in the amount of \$11,432.52; for the period December 1, 2014 to November 30, 2015, she received an overpayment in the amount of \$11,626.25; for the period December 1, 2015 to November 30, 2016, she received an overpayment in the amount of \$11,658.11; for the period December 1, 2016 to November 30, 2017, she received an overpayment in the amount of \$11,661.15; and for the period December 1, 2017 to August 18, 2018, she received an overpayment in the amount of \$8,505.45. The total overpayment was calculated to be \$100,536.75.

On February 14, 2019 OWCP issued a preliminary determination that an overpayment of compensation in the amount of \$100,536.75 had been created. It explained that the overpayment occurred because a portion of appellant's SSA age-related retirement benefits for the period May 16, 2009 through August 18, 2018, was based on credits earned while in federal service and that this portion of the benefits was a prohibited dual benefit. OWCP specifically noted that the overpayment occurred during her receipt of FECA wage-loss compensation benefits from May 16 to July 3, 2009, from July 30, 2009 to February 12, 2010, from May 8 to July 2, 2010, from July 17

to 23, 2010, and from July 31, 2010 to August 18, 2018. It found appellant was not at fault in the creation of the overpayment. OWCP explained its calculation of the overpayment, attached its calculation worksheet, and informed her of the actions she could take. It provided an overpayment action request form and a Form OWCP-20. OWCP requested that appellant provide documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records which supported the income and expenses listed, and allotted 30 days for her to respond.

On March 13, 2019 appellant requested a prerecoupment hearing, which was held on July 12, 2019. She requested a waiver because she was without fault, she had reported all earnings and benefits, and she would suffer a financial loss and severe hardship in repaying the overpayment.

At the hearing, appellant documented that her monthly household living expenses (approximately \$7,500.00) were more than double her household monthly income (approximately \$4,500.00) due to home health care and additional necessary medical expenses for her disabled husband. She testified that her savings exceeded \$100,000.

By decision dated September 26 2019, OWCP's hearing representative finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$100,536.75 for the period May 16, 2009 through August 18, 2018, because a portion of her SSA age-related retirement benefits was based on credits earned in federal service, and this portion of the SSA benefit was a prohibited dual benefit. OWCP further found that appellant was without fault in the creation of the overpayment and denied waiver of recovery of the overpayment because her assets of over \$100,000.00 in savings, checking and cash exceeded the allowable resource base of \$10,300.00 for an individual with a spouse or dependent. It further found that there was insufficient evidence to arrive at a monthly repayment agreement.²

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 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.⁵

² OWCP explained that interest would accrue at a rate of one percent per year and that appellant could avoid interest charges by repaying the debt in full within 30 days.

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ *Id.* at § 8129(a).

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.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$100,536.75, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period May 16, 2009 through August 18, 2018 without proper offset. In the preliminary notice of overpayment dated February 14, 2019 OWCP carefully explained each period of overpayment, noting that appellant had not continuously received FECA wage-loss compensation during the entire period in question. The Board has reviewed the record and finds that OWCP has substantiated the periods of overpayment as outlined in its preliminary determination.

Appellant has not challenged the fact or amount of the overpayment. The record indicates that, during the period at issue, appellant was receiving compensation for disability under FECA and SSA age-related retirement benefits attributable to federal service. A claimant cannot receive both compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁸ Consequently, the fact of the overpayment has been established.

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 the SSA rate with FERS and without FERS for specific periods commencing May 16, 2009 through August 18, 2018. In its February 14, 2019 preliminary overpayment determination, OWCP provided its overpayment calculations for each 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 May 16, 2009 through August 18, 2018, and finds that an overpayment of compensation in the amount of \$100,536.75 was created.⁹

⁶ 20 C.F.R. § 10.421(d); *see J.S.*, Docket No. 19-0824 (issued October 4, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁷ FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁸ *See D.M.*, Docket No. 19-1369 (issued June 30, 2020); *D.C.*, Docket No. 19-0118 (issued January 15, 2020).

⁹ *See L.W.*, Docket No. 19-0787 (issued October 23, 2019); *L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, *id.*

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁰ Section 10.438 of OWCP's regulations provides 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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹¹

The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of OWCP's regulations.¹² Section 10.436 provides that recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her income (including compensation benefits) to meet current ordinary and necessary living expense, 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.¹³ For waiver of recovery of the overpayment under the defeat the purpose of FECA standard, appellant must show that he or she needs substantially all of his or her current income to meet current ordinary and necessary living expenses, and that assets do not exceed the resource base.¹⁴ 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 \$50.00.¹⁵

ANALYSIS -- ISSUE 2

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

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

¹⁰ 5 U.S.C. § 8129.

¹¹ 20 C.F.R. § 10.438.

¹² *Id.* at §§ 10.434-10.437.

¹³ *Id.* at § 10.436. OWCP's procedures provide that a claimant is deemed to need substantially all of his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Determinations*, Chapter 6.400.4a(3) (September 2018). OWCP's procedures further provide that 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. *Id.* at Chapter 6.400.4a(2).

¹⁴ *Id.*

¹⁵ *Id.*

dependent as provided in OWCP's procedures.¹⁶ Appellant has testified that she had assets totaling \$100,000.00. It was therefore unnecessary for OWCP to consider whether her monthly income exceeds her monthly ordinary and necessary expenses by more than \$50.00.¹⁷ Appellant did not establish that she was entitled to waiver on the basis of defeating the purpose of FECA.¹⁸ 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.¹⁹

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.²⁰

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$100,536.75, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the period May 16, 2009 through August 18, 2018 without proper offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.²¹

¹⁶ See *supra* note 13 at Chapter 6.400.4.a(2) (September 2018).

¹⁷ *Id.* at Chapter 6.400.4.a(3); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁸ See *R.D.*, Docket No. 19-1598 (issued April 17, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Regarding repayment, OWCP was unable to determine a monthly repayment schedule because the evidence indicated that appellant's monthly expenses exceeded her monthly income.

IT IS HEREBY ORDERED THAT the September 26, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 31, 2020
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