

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

K.C., Appellant	)	
	)	
and	)	<b>Docket No. 21-0430</b>
	)	<b>Issued: August 13, 2021</b>
U.S. POSTAL SERVICE, PACIFIC GROVE	)	
POST OFFICE, Pacific Grove, CA, 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  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On January 28, 2021 appellant filed a timely appeal from a November 23, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 OWCP properly determined that appellant received an overpayment of compensation in the amount of \$43,811.57 for which she was without fault because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset for the period June 1, 2016 through October 19, 2020; (2) whether it properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$400.00 from appellant's continuing compensation payments every 28 days.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On July 14, 2001 appellant, then a 51-year-old retail window clerk, filed an occupational disease claim (Form CA-2) alleging that in February 1997, factors of her federal employment including repetitive motions aggravated her C5-6 degenerative disc disease and radiculopathy. She noted on the claim form that her retirement coverage was Federal Employees' Retirement System (FERS). OWCP accepted the claim for degeneration and displacement of cervical intervertebral disc, brachial neuritis or radiculitis, and closed dislocation of the fifth cervical vertebra. Appellant received wage-loss compensation on the supplemental rolls commencing July 13, 2001 and on the periodic rolls since June 16, 2002.

On July 9, 2020 OWCP requested that SSA provide information as to whether appellant had received FERS/SSA dual benefits.

On July 16, 2020 SSA completed a FERS/SSA dual benefit calculation form setting forth appellant's SSA age-related retirement benefit rates with FERS and without FERS commencing June 2016. With FERS, appellant was entitled to the following monthly rates: \$1,615.10 effective June 2016; \$1,619.90 effective December 2016; \$1,652.20 effective December 2017; \$1,698.40 effective December 2018; and \$1,725.50 effective December 2019. Without FERS, she would have been entitled the following monthly rates: \$806.20 effective June 2016; \$808.60 effective December 2016; \$824.70 effective December 2017; \$847.70 effective December 2018; and \$861.20 effective December 2019.

On October 19, 2020 OWCP completed a FERS offset calculation form wherein it tabulated the overpayment from June 1, 2016 to October 10, 2020. It determined the overpayment amount by multiplying the daily FERS offset amount by the number of days in each period. OWCP found: from June 1 to November 30, 2016 an overpayment of \$4,880.07; December 1, 2016 to November 30, 2017 an overpayment of \$9,762.35; from December 1, 2017 to November 30, 2018 an overpayment of \$9,957.28; from December 1, 2018 to November 30, 2019 an overpayment of \$10,236.45; and from December 1, 2019 to October 10, 2020 an overpayment of \$8,975.42. It found that the overpayment totaled \$43,811.57.

In a memorandum dated October 19, 2020, OWCP related that appellant had collected age-related SSA benefits attributed to her federal service under the FERS retirement program.

By letter dated October 19, 2020, OWCP advised appellant that beginning October 11, 2020, she would be paid FECA wage-loss compensation at the adjusted amount of \$1,988.36 every 28 days to offset her SSA age-related retirement benefits attributed to her federal service.

In a preliminary overpayment notice dated October 19, 2020, OWCP advised appellant that she received a \$43,811.57 overpayment of compensation for the period June 1, 2016 through October 10, 2020 because her wage-loss compensation benefits had not been reduced by her SSA age-related retirement benefits attributable to federal service. It also made a preliminary determination that she was at fault in the creation of this overpayment. OWCP advised appellant that she could submit evidence challenging the fact or amount of the overpayment. It instructed her to complete an overpayment recovery questionnaire (Form OWCP-20) to determine whether waiver should be granted, and if not, a reasonable repayment schedule. OWCP informed appellant

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. 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 prerecoupment hearing.

On November 19, 2020 OWCP received appellant's overpayment action request form wherein she requested waiver and noted that the overpayment occurred through no fault of her own. Appellant also related that her husband had passed away on July 12, 2011 and her SSA benefits were based upon her deceased husband's survivor benefits. No additional evidence was received.

By decision dated November 23, 2020, OWCP finalized its determination that appellant received an overpayment of compensation in the amount of \$43,811.57 for the period June 1, 2016 to October 10, 2020, for which she was without fault. It noted that while appellant believed her SSA age-related retirement benefits were based on her deceased husband's survivor benefits, SSA had confirmed that a portion of the SSA benefits appellant received were attributed to her years of federal service as an employee under the FERS retirement program. OWCP also determined that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. It required recovery of the overpayment by deducting \$400.00 from appellant's continuing compensation payments every 28 days.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102 of FECA<sup>2</sup> 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.<sup>3</sup>

Section 8116(a) of FECA defines the limitations on the right to receive compensation benefits. This section of FECA provides that, while an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States, except in limited circumstances.<sup>4</sup>

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of SSA age-related retirement benefits that are attributable to federal service of the employee.<sup>5</sup> 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

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at § 8102.

<sup>4</sup> *Id.* at § 8116(a).

<sup>5</sup> 20 C.F.R. § 10.421(d); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

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.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$43,811.57 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period June 1, 2016 through October 10, 2020 without an appropriate offset.

As noted, a claimant cannot receive concurrent FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>7</sup> The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to her federal service from June 1, 2016 through October 10, 2020.<sup>8</sup>

While appellant alleged that she received SSA benefits based upon her deceased husband's account, SSA confirmed that a portion of the SSA benefits appellant received after June 1, 2016 were attributed to her years of federal service as an employee under the FERS retirement program. Consequently, the fact of the overpayment has been established.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributed to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA benefits that were attributable to federal service. The SSA provided the SSA rate with FERS, and without FERS for the specific period commencing June 2016 through October 2020. OWCP provided its calculations for each relevant period based on the SSA worksheet and in its October 19, 2020 preliminary overpayment determination. No contrary evidence was provided.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period June 1, 2016 through October 10, 2020 and finds that an overpayment in the amount of \$43,811.57 was created.

### **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.<sup>9</sup> Thus, a finding that appellant was without fault does not automatically result in waiver of the

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<sup>6</sup> FECA Bulletin No. 97-09 (February 3, 1997).

<sup>7</sup> *Id.*

<sup>8</sup> *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).

<sup>9</sup> 5 U.S.C. § 8129(a)-(b).

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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

Section 10.438 of the implementing 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 on 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.<sup>13</sup> Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>14</sup>

### 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.<sup>15</sup> Appellant, however, had the responsibility to provide financial information to OWCP.<sup>16</sup>

In its preliminary determination dated October 19, 2020, OWCP explained the importance of provided 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 if she failed to furnish the requested financial information within 30 days. Appellant, however, did not

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<sup>10</sup> *C.B.*, Docket No. 20-0031 (issued July 27, 2020); *L.S.*, 59 ECAB 350 (2008).

<sup>11</sup> 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.400.4(c)(3) (September 2018).

<sup>13</sup> 20 C.F.R. at § 10.438(a).

<sup>14</sup> *Id.* at § 10.438.

<sup>15</sup> *Supra* note 13.

<sup>16</sup> *Supra* note 14.

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.<sup>17</sup>

### **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."<sup>18</sup> When an individual fails to provide requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines. The 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.<sup>19</sup>

### **ANALYSIS -- ISSUE 3**

The record supports that, in requiring recovery of the overpayment by deducting \$400.00 from appellant's compensation payments every 28 days, OWCP took into consideration the factors set forth in section 10.441 and found that this method of recovery would minimize any resulting hardship on appellant. Appellant failed to provide sufficient information regarding her income, expenses, and assets, and OWCP followed minimum collection guidelines by requiring installments large enough to collect the full debt promptly. Therefore, OWCP properly required recovery of the overpayment by deducting \$400.00 from her continuing compensation payments every 28 days.<sup>20</sup>

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$43,811.57 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period June 1, 2016 through October 10, 2020 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 \$400.00 from her continuing compensation payments every 28 days.

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<sup>17</sup> *Id.*

<sup>18</sup> 20 C.F.R. § 10.441.

<sup>19</sup> Federal (FECA) Procedure Manual, *supra* note 12 at 6.500.8(c)(1) (September 2018).

<sup>20</sup> *See id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 23, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 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