

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

C.L., Appellant	)	
	)	
and	)	<b>Docket No. 21-0433</b>
	)	<b>Issued: November 16, 2021</b>
U.S. POSTAL SERVICE, GENERAL MAIL	)	
FACILITY BOSTON, Boston, MA, 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 January 28, 2021 appellant filed a timely appeal from a November 20, 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.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$13,381.38 for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security

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

<sup>2</sup> The Board notes that following the November 20, 2020 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.*

Administration (SSA) age-related retirement benefits for the period September 1, 2019 through October 10, 2020, without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On October 18, 1995 appellant, then a 42-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she developed a right arm condition which she attributed to repetitive movements including throwing heavy packages and mail with her right arm while in the performance of duty. She noted that she first became aware of her condition on January 3, 1991.

OWCP accepted the claim for bilateral lateral epicondylitis. Appellant has remained out of work since May 29, 1998. OWCP initially paid her wage-loss compensation on the supplemental rolls. Appellant completed a claim for compensation (Form CA-7) for a schedule award on February 7, 2002. She indicated on the claim form that her retirement coverage was under the Federal Employees Retirement System (FERS). By decision dated March 26, 2002, OWCP granted appellant a schedule award for 16 percent permanent impairment of bilateral upper extremities. The period of the schedule award ran from December 30, 2001 to December 14, 2002. Thereafter, OWCP paid appellant wage-loss compensation on the periodic compensation rolls.

On September 29, 2020 OWCP forwarded a FERS/SSA benefits calculation worksheet to the SSA to obtain information as to whether an offset of compensation benefits was required.

On October 13, 2020 OWCP received from SSA a FERS/SSA dual benefits calculation worksheet which indicated that appellant had been in receipt of SSA age-related retirement benefits since September 2019. The form showed appellant's SSA benefit rates with and without a FERS offset as follows: beginning September 2019, the SSA rate with FERS was \$1,234.50 and without FERS was \$247.00; beginning December 2019, the SSA rate with FERS was \$1,254.20 and without FERS was \$250.90.

OWCP completed FERS offset calculation worksheets on October 15 and 16, 2020. It calculated the overpayment amount by determining the daily FERS offset amount and multiplying that amount by the number of days in each period September 1, 2019 through October 10, 2020, resulting in a total overpayment of \$13,381.38. The form indicated that: from September 1 through November 30, 2019, appellant received an overpayment of \$2,962.50; and from December 1, 2019 through October 10, 2020, she received an overpayment of \$10,418.88.

On October 16, 2020 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$13,381.38 had been created because it had failed to reduce appellant's wage-loss compensation payments for the period September 1, 2019 through October 10, 2020 to offset her SSA age-related retirement benefits that were attributable to federal service. It also determined that she was without fault in the creation of the overpayment. OWCP requested that appellant 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 the overpayment. It further requested that she 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. Additionally, OWCP provided an overpayment action request form and further notified appellant 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 an October 20, 2020 letter, OWCP notified appellant that her FECA benefits were being adjusted based on the FERS portion of SSA benefits that were attributable to federal service. It advised appellant that she would receive \$2,531.23 in net FECA wage-loss compensation every 28 days after the SSA offset.

On November 12, 2020 OWCP received a completed Form OWCP-20 dated October 29, 2020. Appellant requested that OWCP make a decision based on the written evidence regarding possible waiver of the overpayment. She noted that she was requesting waiver as she was found to be without fault in the creation of the overpayment. Appellant listed total monthly income of \$5,820.22. She listed her monthly expenses totaling \$5,668.00. Appellant reported \$100.00 cash and \$400.00 in a checking account. No supporting financial documentation was received as requested.

By decision dated November 20, 2020, OWCP finalized its preliminary overpayment determination finding that appellant received an overpayment in compensation in the amount of \$13,381.38 as she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period September 1, 2019 through October 10, 2020. It 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 was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$250.00 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 of an employee resulting from personal injury sustained while in the performance of his or her federal employment.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8116.

<sup>5</sup> *Id.* at § 8129(a).

Section 10.421(d) of FECA implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-based benefits that are attributable to federal service of the employee.<sup>6</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 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>7</sup>

### ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$13,381.38 for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period September 1, 2019 through October 10, 2020, without an appropriate offset.<sup>8</sup>

The evidence of record supports that appellant was receiving FECA wage-loss compensation on the periodic rolls while concurrently receiving SSA age-related retirement benefits attributable to her federal service. A claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period.<sup>9</sup> The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service during the period September 1, 2019 through October 10, 2020. Consequently, the Board finds that 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 rates with FERS and without FERS for specific periods from September 1, 2019 through October 10, 2020. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that she received an overpayment in the amount of \$13,381.38.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$13,381.38<sup>10</sup> for the period September 1, 2019 through October 10, 2020.

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<sup>6</sup> 20 C.F.R. § 10.421(d); *see T.B.*, Docket No. 18-1449 (issued March 19, 2019); *L.J.*, 59 ECAB 264 (2007).

<sup>7</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see M.S.*, Docket No. 20-0068 (issued May 14, 2021).

<sup>8</sup> *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>9</sup> *Supra* note 7.

<sup>10</sup> The decision noted the amount of the overpayment as \$13,381.36; however, an overpayment of \$13,381.38 was documented. This *de minimis* error is harmless error.

## 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>11</sup>

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.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup>

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 the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.<sup>15</sup> Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.<sup>16</sup>

## ANALYSIS -- ISSUE 2

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

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<sup>11</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see M.C.*, Docket No. 19-0699 (issued February 12, 2020); *A.F.*, *supra* note 8.

<sup>12</sup> *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>13</sup> 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 2020).

<sup>14</sup> *Id.* at § 10.437(a)(b).

<sup>15</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>16</sup> *Id.* at § 10.438(b).

Although 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>17</sup>

Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.<sup>18</sup>

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not provided the necessary supporting financial information. Appellant submitted a completed Form OWCP-20 on October 29, 2020 and noted a total monthly income of \$5,820.22 and total monthly expenses of \$5,668.00. She indicated that she had \$500.00 in cash and checking accounts. However, appellant did not submit financial documentation to support her reported income or expenses.<sup>19</sup> OWCP, therefore, did not have the financial documentation necessary to determine if appellant needed substantially all of her current income to meet current ordinary and necessary living expenses and, also, if her assets exceeded a specified amount as determined by OWCP.<sup>20</sup>

The Board also finds that appellant has not established that she was entitled to waiver of recovery of the overpayment on the basis that recovery of the overpayment would be against equity and good conscience. As noted, appellant did not provide any financial documentation to support her purported income and expenses.<sup>21</sup>

Appellant, therefore, has not established that recovery of the overpayment was against equity and good conscience.<sup>22</sup>

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, she has not shown that OWCP improperly denied waiver of recovery of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 3**

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.<sup>23</sup>

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<sup>17</sup> 20 C.F.R. § 10.436.

<sup>18</sup> *Id.* at § 10.438.

<sup>19</sup> *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *R.W.*, Docket No. 18-1059 (issued February 6, 2019).

<sup>20</sup> *Supra* notes 15 and 19.

<sup>21</sup> *See P.B.*, *supra* note 19.

<sup>22</sup> *See id.*; *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

<sup>23</sup> 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

Section 10.441(a) of OWCP's regulations<sup>24</sup> 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.”<sup>25</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments every 28 days.

OWCP provided appellant a Form OWCP-20 with its October 16, 2020 preliminary overpayment determination. It afforded her the opportunity to provide appropriate financial information and documentation to OWCP.<sup>26</sup> Although appellant completed the Form OWCP-20 overpayment recovery questionnaire she did not provide financial documentation to support her reported income and expenses prior to the final November 20, 2020 overpayment determination. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>27</sup> When an individual fails to provide requested financial information, OWCP shall follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>28</sup> The Board, therefore, finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$250.00 every 28 days.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$13,381.38 for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period September 1, 2019 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 \$250.00 from her continuing compensation payments every 28 days.

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<sup>24</sup> *Id.* at § 10.441(a).

<sup>25</sup> *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

<sup>26</sup> *Id.* at § 10.438.

<sup>27</sup> *Id.* at § 10.438(a); *see M.S.*, *supra* note 15.

<sup>28</sup> *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, *supra* note 13 at Chapter 6.400.3 (September 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 20, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2021  
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