

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,359.78, 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 March 1, 2018 through August 17, 2019, 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 \$578.80 from her continuing compensation payments every 28 days.

FACTUAL HISTORY

On February 20, 2007 appellant, then a 54-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 9, 2007 she sustained a concussion, headaches, and injuries to her neck, back, and legs when her postal vehicle was rear-ended while she was servicing a mail box in the performance of duty. She noted that her retirement coverage was under the Federal Employees' Retirement System (FERS). OWCP accepted the claim for headaches, neck sprain, lumbar sprain, concussion without loss of consciousness, anxiety state, and adjustment disorder with depressed mood. It paid appellant wage-loss compensation on the supplemental rolls, effective February 9, 2007, and on the periodic rolls, effective March 16, 2008.

On June 26, 2019 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form. On July 9, 2019 SSA submitted the completed form, which showed SSA benefit rates with a FERS offset and without a FERS offset from March 2018 through December 2018. Beginning March 2018, the SSA rate with FERS was \$1,086.00 and without FERS was \$786.00. Beginning December 2018, the SSA rate with FERS was \$1,116.50 and without FERS was \$808.50.

OWCP completed a FERS offset calculation worksheet on August 13, 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 March 1, 2018 through August 17, 2019, for a total overpayment amount of \$5,359.78. OWCP determined that during the period March 1 through November 30, 2018, an overpayment of compensation had been created in the amount of \$2,719.78, and for the period December 1, 2018 through August 17, 2019, an overpayment of compensation had been created in the amount of \$2,640.00 for a total of \$5,359.78.

In a letter dated August 22, 2019, OWCP advised appellant that she had been receiving a prohibited dual benefit. It noted that the portion of SSA benefits earned as a federal employee was part of her retirement and that the receipt of wage-loss compensation under FECA and federal retirement was prohibited. OWCP noted that it would adjust appellant's FECA wage-loss compensation to account for her SSA offset, and the 28-day offset of \$284.31 would reduce her net compensation payment every 28 days to \$2,351.21.

On August 22, 2019 OWCP issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$5,359.78, because she received FECA wage-loss compensation benefits concurrently with SSA age-related retirement benefits from March 1, 2018 through August 17, 2019. It found her without fault in the creation of the overpayment because

she was not aware, nor could she reasonably have been expected to know, that it had paid compensation incorrectly. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a fair repayment method. It requested financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. It also noted that she could request waiver of recovery of the overpayment. OWCP provided appellant with appeal rights and afforded her 30 days to respond. No additional evidence relevant to the preliminary overpayment was received.

By decision dated October 25, 2019, OWCP made a final determination that appellant had received an overpayment of compensation in the amount of \$5,359.78, because a portion of her SSA age-related retirement benefits was based on credits earned while working in the Federal Government and that this portion of her SSA benefit was a prohibited dual benefit. It further found that she was not at fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP noted that no response had been received following the preliminary determination. It required recovery of the overpayment of \$5,359.78 by deducting \$578.80 every 28 days from appellant's continuing wage-loss 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.⁴ 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.⁵ 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.⁶

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to federal service of the employee.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

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ *Id.* at § 8129(a).

⁷ 20 C.F.R. § 10.421(d); *see R.R.*, Docket No. 19-0104 (issued March 9, 2020); *see T.B.*, Docket No. 18-1449 (issued March 19, 2019); *L.J.*, 59 ECAB 264 (2007).

⁸ FECA Bulletin No. 97-09 (February 3, 1997).

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$5,359.78, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period March 1, 2018 through August 17, 2019.

The record indicates that, while appellant was receiving compensation for disability under FECA, she also was receiving SSA age-related retirement benefits during the applicable period. A claimant cannot receive both compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.⁹ Consequently, the fact of overpayment has been established.

To determine the amount of overpayment, the SSA provided appellant's SSA rates with FERS and without FERS during the applicable period noting that appellant had received age-related retirement benefits, from March 1, 2018 through August 17, 2019. Based on the information provided by SSA, OWCP calculated that an overpayment of compensation in the amount of \$5,359.78 had occurred during the applicable period. The Board has reviewed OWCP's calculation of the dual benefits that appellant received and finds that it properly determined that she received a \$5,359.78 overpayment of compensation.

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."¹⁰

Section 10.437 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.¹¹

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. The

⁹ See *supra* note 5.

¹⁰ 5 U.S.C. § 8129(b).

¹¹ 20 C.F.R. § 10.437.

information is also used to determine the repayment schedule, if necessary.¹² Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹³

ANALYSIS -- ISSUE 2

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

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.¹⁴ Appellant, however, had the responsibility to provide the appropriate financial information to OWCP.¹⁵

In its preliminary determination dated August 22, 2019, OWCP explained the importance of providing the completed overpayment questionnaire and financial information, 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 if she failed to furnish the requested financial information within 30 days. Appellant, however, did not submit a completed Form OWCP-20 or submit any 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, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁶

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.¹⁷ Section 10.441(a) of the regulations¹⁸ provides:

“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

¹² *Id.* at § 10.438(a); *see T.B., supra* note 7; *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

¹³ *Id.* at § 10.438.

¹⁴ *Id.* at § 10.436.

¹⁵ *Supra* note 12.

¹⁶ *See S.B.*, Docket No. 16-1795 (issued March 2, 2017).

¹⁷ *See E.F.*, Docket No. 18-1320 (issued March 13, 2019); *C.H.*, Docket No. 18-0772 (issued November 14, 2018); *Albert Pineiro*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

¹⁸ 20 C.F.R. § 10.441(a).

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.”¹⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment amount by deducting \$578.80 from appellant’s continuing compensation payments every 28 days.

The record reflects that appellant received wage-loss compensation payments in the amount of \$2,351.21 under FECA. Appellant, as noted, did not provide any relevant information for OWCP to consider in determining the amount to be withheld from her continuing compensation. OWCP gave this factor due regard to the relevant factors noted above in setting the rate of recovery.

The Board finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$578.80 from her continuing compensation payments every 28 days.

CONCLUSION

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$5,359.78 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period March 1, 2018 through August 17, 2019. The Board also finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$578.80 from her continuing compensation payments every 28 days.

¹⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the October 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 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