

Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation, without 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 \$300.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On August 24, 2015 appellant, then a 60-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a left shoulder injury when pushing heavy wire cages while in the performance of duty. On the reverse side of the claim form, the employing establishment noted her retirement system as Federal Employees Retirement System (FERS). OWCP accepted the claim for cervical and thoracic strains, bilateral shoulder/upper arm strains, and right shoulder adhesive capsulitis. Appellant stopped work on August 25, 2015 and did not return. OWCP paid her wage-loss compensation on the supplemental rolls commencing November 2, 2015 and on the periodic rolls as of February 7, 2016.

On March 5, 2020 OWCP forwarded a FERS/SSA dual benefits form to SSA requesting information from SSA regarding appellant's potential receipt of dual benefits.

On July 20, 2020 OWCP received a completed FERS/SSA dual benefits memorandum from SSA dated June 30, 2020, wherein SSA reported appellant's SSA age-related retirement benefit rates with and without a FERS offset. The form indicated that the SSA rate with FERS was \$1,236.70, effective January 2017; \$1,261.40, effective December 2017; \$1,296.70, effective December 2018; and \$1,317.40, effective December 2019. The form further indicated that the SSA rate without FERS was \$100.10, effective January 2017; \$102.10, effective December 2017; \$104.90, effective December 2018; and \$106.50, effective December 2019.

OWCP completed a FERS offset overpayment calculation form on September 10, 2020. It determined the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$52,262.78. The form indicated that: from January 1, 2017 to November 30, 2017 appellant received an overpayment in the amount of \$12,515.09; from December 1, 2017 to November 30, 2018 an overpayment of \$13,949.82; from December 1, 2018 to November 30, 2019 an overpayment of \$14,340.89; from December 1, 2019 to September 12, 2020 an overpayment of \$11,456.98. OWCP concluded that from January 1, 2017 through September 12, 2020 she received an overpayment of compensation in the amount of \$52,262.78.

By letter dated August 18, 2020, OWCP informed appellant that it had been recently determined that she was receiving SSA age-related retirement benefits as part of a FERS retirement package and FECA benefits, which was a prohibited dual benefit. It advised appellant that her FECA benefits would be offset by a SSA deduction and that her new four-week FECA benefit after the SSA offset would be \$2,899.22.

On April 8, 2021 OWCP notified appellant of its preliminary overpayment determination that she received an overpayment of compensation in the amount of \$52,262.78 as she had received FECA wage-loss compensation benefits for the period January 1, 2017 through September 12, 2020 that had not been reduced by the portion of her SSA age-related retirement benefits attributable to her federal service, and that this portion of her SSA benefit was a prohibited dual

benefit. It further advised her of its preliminary determination that she was at fault in the creation of the overpayment. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support her reported income and expenses. Additionally, it provided an overpayment action request form and 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 April 23, 2021 appellant filed a partially completed overpayment action request form, wherein she requested waiver of recovery of the overpayment. No additional evidence was received.

By decision dated March 21, 2022, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$52,262.78 for the period January 1, 2017 through September 12, 2020 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. OWCP further found that she 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 \$300.00 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 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 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

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related retirement benefits that are attributable to federal service of the employee.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP has established that appellant received an overpayment of compensation in the amount of \$52,262.78 during the period January 1, 2017 through

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁶ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

September 12, 2020, for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset.

As previously noted, a claimant cannot receive both FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁷ The evidence of record establishes that appellant had concurrently received wage-loss compensation benefits and SSA age-related retirement benefits that were attributable to federal service during the period January 1, 2017 through September 12, 2020. Consequently, the fact of overpayment has been established.⁸

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amounts of SSA age-related retirement benefits that were attributable to federal service. SSA provided its rate with FERS and without FERS during the specific period of January 1, 2017 through September 12, 2020. In the March 21, 2022 final overpayment decision, OWCP provided its calculations for each relevant period based on the information reported on SSA's dual benefits form.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period January 1, 2017 through September 12, 2020 and finds that an overpayment of compensation in the amount of \$52,262.78 has been established.

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."⁹ 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.¹⁰

ANALYSIS -- ISSUE 2

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

⁷ *D.W.*, Docket No. 20-1533 (issued May 27, 2021); *M.R.*, Docket No. 20-0427 (issued October 30, 2020); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁸ *See L.B.*, Docket No. 19-1322 (issued January 27, 2020).

⁹ 5 U.S.C. § 8129.

¹⁰ 20 C.F.R. § 10.438.

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.¹¹ Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.¹²

In its preliminary determination dated April 8, 2021, OWCP requested that appellant provide 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. Appellant, however, did not submit a completed Form OWCP-20 or otherwise provide her financial information. As such, OWCP did not have the financial information necessary for it 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 20 C.F.R. § 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.¹³

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.¹⁴ Section 10.441(a) of OWCP's implementing regulations¹⁵ provides that if 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.¹⁶

When an individual fails to provide requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines. The Federal (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.¹⁷

¹¹ *Id.* at § 10.436.

¹² *Supra* note 11.

¹³ *See T.E.*, Docket No. 19-0348 (issued December 11, 2019).

¹⁴ *See C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

¹⁵ 20 C.F.R. § 10.441(a).

¹⁶ *Id.*

¹⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.500.8(c)(1) (September 2020).

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments every 28 days.

Along with the April 8, 2021 preliminary overpayment determination, OWCP requested that appellant complete a Form OWCP-20 and submit supporting financial documentation. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁸ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.¹⁹ As appellant did not submit the requested financial information and supporting documentation, OWCP properly required recovery of the \$52,262.78 overpayment at the rate of \$300.00 from appellant's continuing compensation payments every 28 days.²⁰

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$52,262.78 during the period January 1, 2017 through September 12, 2020, for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, 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 \$300.00 from appellant's continuing compensation payments every 28 days.

¹⁸ *Supra* note 10.

¹⁹ *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); *supra* note 17 at Chapter 6.400.3 (September 2020).

²⁰ *See E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board