

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

P.J., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
MICHAEL E. DEBAKEY VA MEDICAL
CENTER, Houston, TX, Employer**

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**Docket No. 21-1107
Issued: January 31, 2022**

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

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 12, 2021 appellant filed a timely appeal from a July 1, 2021 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 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 \$4,193.19, 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 October 1, 2019 through May 23, 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

¹ 5 U.S.C. § 8101 *et seq.*

overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

This case was previously before the Board on a different issue.² The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On December 28, 2018 appellant, then a 65-year-old medical technician, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her back, left shoulder, left eye, head, and both legs when she fell over a dolly in the cafeteria doorway while in the performance of duty.³ She stopped work on December 28, 2018, and did not return. Appellant received continuation of pay (COP) from December 31, 2018 to January 14, 2019.

OWCP accepted appellant's claim for lower back, left shoulder and upper arm strains, bilateral knee contusions, left knee lateral meniscus derangement, tear of the left knee medial meniscus, other injuries of the left eye and orbit, and other specified injuries of the head. It paid appellant compensation on the supplemental rolls effective March 30, 2019, and on the periodic rolls effective October 13, 2019.

The record reflects that appellant elected Office of Personnel Management (OPM) retirement benefits in preference to FECA benefits on December 30, 2019. The effective date of her election was December 25, 2019. Consequently, OWCP terminated appellant's periodic rolls benefits on March 29, 2020.

On May 12, 2020 appellant elected FECA benefits, effective May 24, 2020. OWCP again paid her FECA wage-loss compensation on the periodic rolls as of May 24, 2020.

On November 4, 2020 OWCP received from SSA an August 27, 2020 FERS/SSA dual benefits calculation form which indicated that appellant had been in receipt of SSA age-related retirement benefits since October 2019. The form showed SSA benefit rates with and without a FERS offset. Beginning October 2019, the SSA rate with FERS was \$1,778.30, and without FERS was \$1,245.50 and beginning December 2019, the SSA rate with FERS was \$1,806.50, and without FERS was \$1,265.40.

A FERS offset calculation form was completed on November 4, 2020. It calculated the amount that should have been offset from appellant's wage-loss compensation from October 1, 2019 through March 28, 2020. OWCP found that effective October 1, 2019, the monthly offset was \$532.80, or \$491.82 every 28 days, effective December 1, 2019, the monthly offset was \$541.10, or \$499.48 every 28 days. It divided the 28-day offset amount to find the daily amount, which it multiplied by the number of days in each period from October 1, 2019 through March 28, 2020, to find the amount that it had overpaid appellant for each period. OWCP found that appellant

² Docket No. 20-0441 (issued August 19, 2020).

³ Appellant's retirement was listed as Federal Employees Retirement System (FERS).

was overpaid \$1,071.45 during the 61-day period from October 1 through November 30, 2019, and \$2,122.78 during the 119-day period from December 1, 2019 to March 28, 2020. It added the amounts for each period and determined that it should have offset a total of \$3,194.23 from appellant's wage-loss compensation.

On March 12, 2021 OWCP again contacted the SSA to obtain the appropriate information to determine whether an offset of compensation benefits was required.

On May 19, 2021 OWCP received from SSA a May 19, 2021 completed FERS/SSA dual benefits calculation form which indicated that appellant had been in receipt of SSA age-related retirement benefits since October 2019. The form showed SSA benefit rates with and without a FERS offset. Beginning October 2019, the SSA rate with FERS was \$1,778.30, and without FERS was \$1,245.50; beginning December 2019, the SSA rate with FERS was \$1,806.50, and without FERS was \$1,265.40; beginning December 2020 the SSA rate with FERS was \$1,830.00, and without FERS was \$1,281.80.

A FERS offset computation was completed on May 17, 2021. It calculated the amount that it should have offset from appellant's wage-loss compensation from October 1, 2019 through May 23, 2020. OWCP found that effective October 1, 2019 the monthly offset was \$532.80, or \$491.82 every 28 days, effective December 1, 2019, the monthly offset was \$541.10, or \$499.48 every 28 days. It divided the 28-day offset amount to find the daily amount, which it multiplied by the number of days in each period from October 1, 2019 through May 23, 2020, to find the amount that it had overpaid appellant for each period. OWCP found that appellant was overpaid \$1,071.45 during the 61-day period from October 1 through November 30, 2019, and \$3,121.73 during the 175-day period from December 1, 2019 through May 23, 2020. It added the amounts for each period and determined that it should have offset a total of \$4,193.19 from her wage-loss compensation.

On May 25, 2021 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$4,193.19 had been created because it had failed to reduce appellant's wage-loss compensation payments for the period October 1, 2019 through May 23, 2020, to offset her SSA age-related retirement benefits that were attributable to federal service. It explained that it had reduced her ongoing FECA benefits for the periodic roll cycle effective May 24, 2020. Therefore, OWCP determined that an overpayment occurred for the period October 1, 2019 through May 23, 2020.

OWCP further determined that appellant was without fault in the creation of the overpayment. It requested that she submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised appellant that she could request a waiver of the overpayment. OWCP further requested that appellant 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, it provided an overpayment action request form and further 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 June 9, 2021 OWCP received a Form OWCP-20 from appellant. Appellant requested a waiver and noted that she was “unable to make any repayments due to medical and living expenses, medical insurance, doctor fees, rent, food, and utilities.” She listed monthly income of \$1,700.00 in SSA benefits, and other benefits as \$2,100.00, for total monthly income of \$3,800.00. Appellant listed expenses to include rent or mortgage in the amount of \$3,100.00, food \$500.00, clothing \$300.00, utilities \$824.00, and other expenses of \$1,150.00. She listed a \$12,000.00 medical debt with a monthly payment of \$500.00 per month. Appellant indicated that her total monthly expenses were \$6,374.00. In response to a question regarding her assets, she listed \$0.00 cash on hand, \$100.00 checking account balance, and \$200.00 savings account balance, totaling \$300.00. Appellant did not provide the requested accompanying financial documentation.

By decision dated July 1, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$4,193.19 for the period October 1, 2019 through May 23, 2020, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without an appropriate offset. It also found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP required recovery of the overpayment by deducting \$200.00 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 or death of an employee resulting from personal injury sustained while in the performance of his or her duty.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

Section 10.421(d) of OWCP’s implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement 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 for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

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

The evidence of record indicates that, while appellant was receiving compensation for wage-loss under FECA, she also was receiving SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both compensation for wage loss under FECA and SSA age-related retirement benefits attributable to federal service for the same period.⁸ The information provided by SSA established that during the period October 1, 2019 through March 28, 2020, appellant received SSA age-related retirement benefits that were attributable to federal service, while she also received FECA benefits that were not reduced by the appropriate offset. Consequently, the fact of overpayment has been established.

The Board finds, however, that OWCP improperly determined the period and amount of the overpayment.

To determine the amount of the overpayment, the portion of SSA's benefits that were attributable to federal service must be calculated. However, to constitute a dual benefit, the record must also establish that appellant was in receipt of FECA wage-loss benefits during the period in question. 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 rate with FERS and without FERS for specific periods from October 1, 2019 through March 28, 2020 in the amount of \$3,194.23. SSA provided a second calculation of its rate with and without FERS through May 23, 2020. OWCP calculated the overpayment in the amount of \$4,193.19 through May 23, 2020, but the evidence of record establishes that appellant had elected OPM retirement benefits during a portion of the this time period, and appellant did not receive FECA wage-loss compensation from March 29, 2020 through May 23, 2020.

The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated. Although the record establishes that appellant received SSA age-related retirement benefits, which were attributable to her federal service, OWCP has not offered an accurate explanation for its calculations.

Accordingly, the Board finds that the case must be remanded to OWCP. On remand, OWCP shall clarify the amount of the overpayment of compensation and issue a new preliminary overpayment determination, with an overpayment action request form, a new Form OWCP-20, and instructions for appellant to provide updated supporting documentation. Following this, and other such further development as deemed necessary, it shall issue a *de novo* decision.⁹

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation, for which she was without fault, because she concurrently received SSA age-related retirement benefits while also receiving FECA benefits without an appropriate offset. The

⁸ 20 C.F.R. § 10.421(d); *see S.M., supra* note 6; *L.J., supra* note 6.

⁹ *G.R.*, Docket No. 21-0209 (issued December 20, 2021).

Board further finds that the case is not in posture for decision regarding the period and amount of the overpayment.¹⁰

ORDER

IT IS HEREBY ORDERED THAT the July 1, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part, set aside in part, and remanded for further proceedings consistent with this decision of the Board.

Issued: January 31, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.