

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider 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 \$226,682.32 during the period September 6, 2007 through July 18, 2020, for which she was without fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation benefits, 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 \$300.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 5, 2007 appellant, then a 67-year-old physician, filed an occupational disease claim (Form CA-2) alleging that she developed an emotional condition due to factors of her federal employment including overwork, harassment, discrimination, and actions of her supervisor. OWCP accepted the claim for exacerbation of preexisting hypertension, exacerbation of musculoskeletal pain, exacerbation of right hip osteoarthritis, syncopal episodes, left ventricular hypertrophy, situational anxiety, adjustment disorder with mixed anxiety and depressed mood, and post-traumatic stress disorder. The claim form indicated that appellant's retirement system was the Federal Employees Retirement System (FERS).

On July 19, 2013 appellant elected to receive FECA benefits rather than Office of Personnel Management (OPM) disability retirement benefits effective September 6, 2007. OWCP paid her wage-loss compensation on the supplemental rolls commencing September 6, 2007 and on the periodic rolls commencing May 5, 2014.⁵

On July 1, 2020 OWCP received a FERS/SSA dual benefits form, completed by SSA on that date. It reported appellant's SSA age-related retirement benefit rates with FERS as follows: \$1,871.40 effective January 2007; \$1,914.40 effective December 2007; \$1,955.40 effective January 2008; \$2,068.80 effective December 2008; \$2,082.40 effective January 2009 through

³ 5 U.S.C. § 8101 *et seq.*

⁴ Docket No. 11-233 (issued January 25, 2012).

⁵ On July 11, 2013 OWCP explained that due to appellant's base salary of \$138,373.00 and her additional market pay salary \$38,958.00, her payrate was based on the maximum amount allowed under FECA, the salary of a GS-15, Step-10. *See* 5 U.S.C. § 8114(d)(4). It related that effective February 8, 2008, the FECA maximum pay rate was \$1,788.61 per week. OWCP further related that appellant's benefits were calculated using the 2/3 compensation rate, as if she had an eligible dependent, her compensation benefits would not increase since she was already at the maximum compensation rate.

November 30, 2011; \$2,157.30 effective December 2011; \$2,193.90 effective December 2012; \$2,226.80 effective December 2013; \$2,264.60 effective December 2014 through November 30, 2016; \$2,271.30 effective December 2016; \$2,316.70 effective December 2017; \$2,381.50 effective December 2018 and \$2,419.60 effective December 2019. The form further reported SSA age-related retirement benefit rates without FERS as follows: \$728.20 effective January 2007; \$744.90 effective December 2007 through November 30, 2008; \$788.10 effective December 2008 through November 30, 2011; \$816.40 effective December 2011; \$830.20 effective December 2012; \$842.60 effective December 2013; \$856.90 effective December 2014 through November 30, 2016; \$859.40 effective December 2016; \$876.50 effective December 2017; \$901.00 effective December 2018; and \$915.40 effective December 2019.

In a FERS offset overpayment calculation worksheet completed on July 23, 2020 and certified on July 24, 2020, OWCP determined the overpayment amount by multiplying the daily FERS offset amount by the number of days in each period September 6, 2007 through July 18, 2020, which resulted in a total overpayment of \$226,682.32. It explained that, from September 6 through November 30, 2007, appellant received an overpayment of \$3,241.16; from December 1 through 31, 2007 appellant received an overpayment of \$1,195.20; from January 1 through November 30, 2008 appellant received an overpayment of \$13,368.71; from December 1, 2008 through December 31, 2009 appellant received an overpayment of \$16,719.47; from January 1 through November 30, 2009 appellant received an overpayment of \$14,251.52; from December 1, 2009 through November 30, 2010 appellant received an overpayment of \$15,574.27; from December 1, 2010 through November 30, 2011 appellant received an overpayment of \$15,574.27; from December 1, 2011 through November 30, 2012 appellant received an overpayment of \$16,179.21; from December 1, 2012 through November 30, 2013 appellant received an overpayment of \$16,409.36; from December 1, 2013 through November 30, 2014 appellant received an overpayment of \$16,656.03; from December 1, 2014 through November 30, 2015 appellant received an overpayment of \$16,938.81; from December 1, 2015 through November 30, 2016 appellant received an overpayment of \$16,985.22; from December 1, 2016 through November 30, 2017 appellant received an overpayment of \$16,989.35; from December 1, 2017 through November 30, 2018 appellant received an overpayment of \$17,329.88; from December 1, 2018 through November 30, 2019 appellant received an overpayment \$17,814.81; and from December 1, 2019 through July 18, 2020 appellant received an overpayment of \$11,455.06.

In a letter dated July 24, 2020, OWCP advised appellant that her compensation benefits would be offset by her SSA benefits attributable to her federal service. It indicated that her net wage-loss compensation every 28 days would be \$6,814.23.

In a July 30, 2020 preliminary overpayment determination, OWCP found that appellant had received an overpayment of compensation in the amount of \$226,682.32 for the period September 6, 2007 through July 18, 2020, for which she was without fault, because her wage-loss compensation payments had not been reduced to offset her SSA age-related retirement benefits attributable to federal service. It requested that she submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method. OWCP advised appellant that she could request a waiver of recovery of the overpayment, if she believed that recovery of the overpayment would defeat the purpose of FECA, or would be against equity and good conscience. It further requested supporting financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and

expenses. OWCP further notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a precoupment hearing.

On September 15, 2020 appellant requested that OWCP render a decision based on the written evidence. She disagreed that an overpayment occurred, disagreed with the amount of the overpayment, and requested waiver of recovery of the overpayment as she was found without fault. In an attached Form OWCP-20, appellant advised that her monthly income totaled \$10,874.86 including SSA benefits of \$2,419.00; FERS benefits of \$7,920.34,⁶ and dividends and interest income of \$535.52. She also asserted that she supported two dependent adult daughters. Appellant further advised that her monthly expenses totaled \$11,897.98 including \$401.79 for rent or mortgage, \$2,946.31 for food, \$280.19 for clothing, \$1,796.31 for utilities, \$6,473.38 for medical and dental care, automobile expenses, miscellaneous household expenses, and personal necessities. She listed her funds including \$12,882.24 in her checking account, \$204,640.99 in her savings account, and stocks and bonds worth \$1,745,999.04 for total assets of \$1,963,522.27.

Appellant provided documentation including her savings account statements for March through December 2019, and January through August 2020. She also provided her checking account statements for January through December 2019. Appellant listed check numbers and amounts then averaged her rent, mortgage, and property taxes from May 2, 2018 through April 24, 2020 to reach the average monthly cost of \$401.79. She provided a list of payments for food, groceries, household supplies, and personal hygiene supplies from January 3, 2018 through August 25, 2020 reaching an average monthly cost of \$2,946.31. Appellant also provide a list of clothing expenses from September 2018 through January 24, 2019 averaging \$280.19 a month. She listed utilities costs and the cost of lawn care from January 2018 through June 15, 2020 reaching an average monthly cost of \$1,796.31. Appellant also provided a September 2, 2020 portfolio appraisal. She provided letters accepting her daughters into the state Medicaid system dated July 31 and August 20, 2020.

By decision dated September 28, 2020, OWCP finalized its preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$226,682.32 during the period September 6, 2007 through July 18, 2020. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, finding that the evidence was insufficient to support waiver as her total assets were reported as \$1,963,522.27. OWCP required repayment 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.⁷ Section 8116 limits the right of an employee to receive compensation. While an employee

⁶ The record indicates that appellant's ongoing FECA compensation benefits were reduced to \$6,814.23 rather than \$7,920.34 as reported on the September 15, 2020 Form OWCP-20.

⁷ 5 U.S.C. § 8102(a).

is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁸

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.⁹ 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP has established that appellant received an overpayment of compensation in the amount of \$226,682.32 during the period September 6, 2007 through July 18, 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, without an appropriate offset.¹¹ The evidence of record establishes that appellant concurrently received wage-loss compensation and SSA age-related retirement benefits that were attributable to federal service during the period September 6, 2007 through July 18, 2020. Consequently, fact of overpayment has been established.¹²

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 September 6, 2007 through July 18, 2020. In the September 28, 2020 final decision, OWCP provided its calculations for each relevant period based on SSA's FERS overpayment calculation worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period September 6, 2007 through July 18, 2020 and finds that an overpayment of compensation in the amount of \$226,682.32 has been established. OWCP obtained documentation from SSA

⁸ *Id.* at § 8116.

⁹ 20 C.F.R. § 10.421(d); *see D.B.*, Docket No. 22-0894 (issued June 26, 2023); *T.T.*, Docket No. 20-1257 (issued July 29, 2022); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

¹⁰ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also D.B.*, *T.T.*, *id.*; *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹¹ *D.B.*, *T.T.*, *id.*; *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.*, *id.*

¹² *See D.B.*, *T.T.*, *id.*; *L.B.*, Docket No. 19-1322 (issued January 27, 2020).

establishing that her SSA age-related retirement benefit rates with and without FERS during the relevant period and properly calculated the total overpayment during the period in question. The Board thus finds that appellant received an overpayment of FECA compensation in the amount of \$226,682.32 during the period September 6, 2007 through July 18, 2020.

LEGAL PRECEDENT -- ISSUE 2

Section 8109 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.¹³

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.¹⁴

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,¹⁵ and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹⁶ 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.¹⁷

In order to establish that repayment of the overpayment would defeat the purpose of FECA, appellant must show that he or she requires substantially all of his or her income to meet current ordinary and necessary living expenses, and that his or her assets do not exceed the established limit as determined by OWCP procedures.¹⁸ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁹ Also, assets must not exceed a resource

¹³ 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).

¹⁴ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁵ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

¹⁶ 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. *Id.* at Chapter 6.400.4a(2) (September 2020).

¹⁷ *Id.* at § 10.437(a)(b).

¹⁸ 20 C.F.R. § 10.436.

¹⁹ *Supra* note 16.

base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.²⁰ An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.²¹ Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.²²

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.²³ 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.²⁴

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.²⁵

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not shown both that she needed substantially all of her current income to meet ordinary and necessary living expenses and that her assets do not exceed the allowable resource base. Appellant submitted information regarding her income and expenses including documentation regarding her expenses. The Board finds that as appellant reported \$1,963,522.27 in total assets on the September 15, 2020 Form OWCP-20, she has not met the standard for waiver of recovery of the overpayment because her assets exceed the allowable resource base of \$11,500.00 for an individual with two dependents, such as appellant.²⁶

Because appellant has not met the second prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider

²⁰ *Id.* at Chapter 6.400.4a(2) (September 2018).

²¹ *Id.* at Chapter 6.400.4b(3).

²² *Id.* at Chapter 6.400.4b(3)(a), (b).

²³ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²⁴ *Id.* at § 10.438(b).

²⁵ *Id.* at § 10.436.

²⁶ *See J.H.*, Docket No. 22-1375 (issued May 16, 2023).

the first prong of the test, *i.e.*, whether she needs substantially all of her current income to meet ordinary and necessary living expenses.²⁷ Appellant, therefore, has not established that she was entitled to waiver on the basis of defeating the purpose of FECA.²⁸

Additionally, appellant has not established that recovery of the overpayment would be against equity and good conscience because she has not shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt or that she relinquished a valuable right or changed her position for the worse in reliance on the payment which created the overpayment. Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.²⁹

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the \$226,682.32 overpayment.³⁰

LEGAL PRECEDENT -- ISSUE 2

Section 10.441(a) of OWCP's regulations³¹ 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.”³²

ANALYSIS -- ISSUE 2

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

OWCP gave due regard to the financial information submitted, as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize resulting

²⁷ *J.H., id.; F.K.*, Docket No. 20-1609 (issued June 24, 2021); *S.W.*, Docket No. 20-0363 (issued November 23, 2020); *M.H.*, Docket No. 19-1497 (issued September 9, 2020).

²⁸ *J.H., F.K., id.; N.B.*, Docket No. 20-0727 (issued January 26, 2021); *R.D.*, Docket No. 19-1598 (issued April 17, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020).

²⁹ *J.H., id.; P.M.*, Docket No. 21-0915 (issued December 14, 2021); *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

³⁰ *J.H., P.M., id.; F.K., supra* note 27; *D.M.*, Docket No. 17-0810 (issued October 2, 2017).

³¹ 20 C.F.R. § 10.441(a).

³² *Id.*; *see J.H., supra* note 26; *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

hardship. Therefore, it properly required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments every 28 days.³³

CONCLUSION

The Board finds that OWCP has established that appellant received an overpayment of compensation in the amount of \$226,682.32 during the period September 6, 2007 through July 18, 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 FECA compensation every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2023
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

³³ *J.H., id.; P.M., supra* note 29; *M.S., id.; M.B.*, Docket No. 20-1578 (issued March 25, 2021).