

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

K.K., Appellant	)	
	)	
and	)	Docket No. 23-0358
	)	Issued: August 23, 2023
U.S. POSTAL SERVICE, OZONE PARK	)	
CARRIER ANNEX, Brooklyn, NY, Employer	)	
	)	

Appearances: Case Submitted on the Record  
Paul Kalker, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 9, 2023 appellant, through counsel, filed a timely appeal from a September 6, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the September 6, 2022 decision, appellant submitted additional evidence to OWCP. 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.*

## **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$50,681.78, for the period March 1, 2020 through July 16, 2022, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement 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 \$398.31 from appellant's continuing compensation payments every 28 days.

## **FACTUAL HISTORY**

On July 9, 2007 appellant, then a 53-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 28, 2007 she sustained injuries to her right shoulder/arm, left knee, and left ankle when she tripped over a postal container and fell to the floor while in the performance of duty. She stopped work on the same date. On the reverse side of the form, appellant's supervisor checked a box indicating that appellant was under the Civil Service Retirement System. After development of the evidence, OWCP accepted appellant's claim for sprains of the right shoulder/upper arm and left knee/leg, internal derangement of the left knee, and medial meniscus tear of the left knee. It paid her wage-loss compensation on the supplemental rolls, effective August 13, 2007, and on the periodic rolls, effective August 1, 2010.

In an October 25, 2017 letter to OWCP, an employing establishment official indicated that a recent review of the agency file indicated that appellant was under the Federal Employees Retirement System (FERS).

On July 6, 2022 OWCP received from SSA a FERS/SSA dual benefits form, which indicated that appellant received SSA age-related retirement benefit benefits since March 1, 2020. SSA provided age-related retirement benefit rates with and without a FERS offset from March 1, 2020 as follows: beginning March 1, 2020, the SSA rate with FERS was \$1,921.80 and without FERS was \$193.10; beginning December 1, 2020, the SSA rate with FERS was \$1,946.70 and without FERS was \$195.60; and beginning December 1, 2021, the SSA rate with FERS was \$2,061.50 and without FERS was \$207.10.

On July 22, 2022 OWCP completed a FERS offset overpayment calculation worksheet, based on the benefits rates provided by SSA, wherein it noted the calculations of appellant's overpayment from March 1, 2020. It determined that: for the period March 1 through November 30, 2020 appellant received an overpayment of \$15,672.25; for the period December 1, 2020 through November 30, 2021 appellant received an overpayment of \$21,070.93; and for the period December 1, 2021 through July 16, 2022 appellant received an overpayment of \$13,938.54. The total overpayment was determined to be \$50,681.72.

On July 25, 2022 OWCP advised appellant that it was adjusting her wage-loss compensation to offset the portion of her SSA age-related retirement benefits attributable to her federal service. It informed her that the portion of the SSA benefits that she earned as a federal employee was part of the FERS retirement package and that FECA did not allow the simultaneous receipt of workers' compensation and federal retirement benefits.

On July 29, 2022 OWCP issued a preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$50,681.72, for the period March 1, 2020 through July 16, 2022, because she concurrently received SSA age-related retirement benefits attributable to her federal service and FECA wage-loss compensation, without an appropriate offset. It further advised her of its preliminary determination 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 rate of recovery, and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and other records in order to support income, expenses, and assets. Additionally, OWCP provided an overpayment action request form and 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 precouplement hearing.

On August 25, 2022 OWCP received an overpayment action request form, signed on the same date, in which appellant requested waiver of recovery of the overpayment. It also received a Form OWCP-20 in which she listed \$3,790.00 in monthly income, \$6,134.00 in monthly expenses, and \$800.00 in assets. Appellant did not submit any supporting financial documentation.

By decision dated September 6, 2022, OWCP finalized the preliminary overpayment determination finding that appellant received an overpayment of compensation in the amount of \$50,681.72, for the period March 1, 2020 through July 16, 2022, because she concurrently received SSA retirement benefits based on her age and attributable to her federal service, without an appropriate offset being made, while she concurrently received FECA compensation benefits. It further found that she was without fault in the creation of the overpayment but denied waiver of recovery because she failed to submit financial information supporting the provided figures for monthly income, monthly expenses, and assets. OWCP required recovery of the overpayment by deducting \$398.31 from appellant's continuing compensation payments every 28 days.

### **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.<sup>4</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>5</sup>

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

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<sup>4</sup> 5 U.S.C. § 8102.

<sup>5</sup> *Id.* at § 8116.

<sup>6</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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 \$50,681.72, for the period March 1, 2020 through July 16, 2022, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

As previously noted, a claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>8</sup> 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 March 1, 2020 through July 16, 2022, without an appropriate offset. Consequently, the fact of overpayment has been established.<sup>9</sup>

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 SSA age-related retirement benefits that were attributable to federal service. The SSA provided its age-related retirement benefits rates with FERS and without FERS during the specific period March 1, 2020 through July 16, 2022. OWCP provided its calculations for each relevant period based on the information provided by SSA and determined that appellant received an overpayment in the amount of \$50,681.72.

The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period March 1, 2020 through July 16, 2022, and finds that she received an overpayment of compensation in the amount of \$50,681.72.<sup>10</sup>

### **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.<sup>11</sup>

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

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

<sup>8</sup> *M.R.*, Docket No. 20-0427 (issued October 30, 2020). *See also N.B., id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>9</sup> *See K.H.*, Docket No. 18-0171 (issued August 2, 2018).

<sup>10</sup> *See L.W.*, Docket No. 19-0787 (issued October 23, 2019); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

<sup>11</sup> 5 U.S.C. § 8129.

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.<sup>12</sup>

### **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.<sup>13</sup>

In its preliminary overpayment determination dated July 29, 2022, OWCP requested a completed overpayment recovery questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support appellant's reported income and expenses. It advised her that it would deny waiver of recovery of the overpayment if she failed to furnish the requested financial information within 30 days. Appellant provided figures for monthly income, monthly expenses, and assets, but she did not provide documentation supporting these figures. She had the responsibility to provide supporting such financial information to OWCP,<sup>14</sup> but she failed to do so. The evidence of record is, therefore, insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>15</sup>

Consequently, as appellant did not submit the supporting financial information required under section 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.<sup>16</sup>

### **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>17</sup> Section 10.441 of Title 20 of the Code of Federal Regulations provides that, if an overpayment of compensation has been made to one entitled to future payments, proper adjustment shall be made by decreasing subsequent payments of compensation, "taking into account the probable extent of future

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<sup>12</sup> 20 C.F.R. § 10.438.

<sup>13</sup> 5 U.S.C. § 8129.

<sup>14</sup> *Supra* note 12.

<sup>15</sup> *Supra* notes 12 and 13.

<sup>16</sup> *Id.* at § 10.438; *see S.A.*, Docket No. 20-0279 (issued June 8, 2021); *M.B.*, Docket No. 19-1108 (issued October 19, 2020).

<sup>17</sup> *R.W.*, Docket No. 19-0451 (issued August 7, 2019); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Albert Pinero*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”<sup>18</sup>

When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>19</sup> The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.<sup>20</sup>

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

The Board finds that OWCP properly required repayment of the overpayment by deducting \$398.31 from appellant’s continuing compensation payments every 28 days.

While appellant requested waiver of recovery of the overpayment, she did not provide the requested supporting financial documentation. OWCP’s regulations provide that the overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP, including supporting financial documentation.<sup>21</sup>

Appellant’s 28-day net compensation amount effective July 17, 2002 and continuing through OWCP’s September 6, 2022 final overpayment determination was \$1,593.23. The Board notes that 25 percent of \$1,593.23 is \$398.31. The Board, therefore, finds that OWCP properly followed minimum collection guidelines and required recovery of the overpayment by deducting \$398.31 from appellant’s continuing compensation payments every 28 days.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$50,681.72, for the period March 1, 2020 through July 16, 2022, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment, and that it properly required recovery of the overpayment by deducting \$398.31 from her continuing compensation payments every 28 days.

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<sup>18</sup> 20 C.F.R. § 10.441; *see A.F.*, Docket No. 19-0054 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>19</sup> *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

<sup>20</sup> *See* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.8c(1) (September 2018); *D.H.*, Docket No. 20-1064 (issued December 14, 2020); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>21</sup> 20 C.F.R. § 10.438. *See also F.B.*, Docket No. 21-0680 (issued February 23, 2022).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 6, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 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