

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

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Y.H., Appellant

and

U.S. POSTAL SERVICE, DALLAS NETWORK  
DISTRIBUTION CENTER, Dallas, TX,  
Employer  
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**Docket No. 23-0444  
Issued: August 23, 2023**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 2, 2023 appellant filed a timely appeal from a December 20, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 appellant received an overpayment of wage-loss compensation in the amount of \$16,847.92 for the period October 1, 2021 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; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On April 26, 2011 appellant, then a 55-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained repetitive trauma to the knees, neck, shoulder, and arms due to factors of her federal employment. She indicated that she first became aware of her condition and realized its relationship to her federal employment on March 15, 2011. OWCP accepted the claim for chondromalacia patella, bilateral, and tear of lateral meniscus of knee, current, left. Appellant underwent OWCP-authorized surgery to repair her left chondromalacia patella and lateral meniscal tear on September 9, 2011. OWCP paid appellant wage-loss compensation on the supplemental rolls beginning September 9, 2011 and on the periodic rolls from October 23, 2011 until September 14, 2022.

OWCP received a PS Form 50 dated July 11, 2013, indicating that appellant's retirement system coverage was Federal Employees Retirement System (FERS).

On July 28, 2022 OWCP sent FERS/SSA dual benefits form to SSA for completion. On a completed dual benefits form dated August 4, 2022, SSA reported appellant's SSA age-related retirement benefit rates with and without FERS for the period October 2021 through December 2021. Beginning October 2021, the SSA rate with FERS was \$2,175.50 and without FERS was \$485.50; and beginning December 2021 the SSA rate with FERS was \$2,303.50 and without FERS was \$514.10.

In an August 9, 2022 FERS offset overpayment calculation worksheet, OWCP calculated appellant's FERS/SSA offset for each month from October 1, 2021 through July 16, 2022 for a total overpayment of \$16,847.92. By letter dated August 9, 2022, it notified her that her compensation would be offset by the portion of her SSA age-related retirement benefits attributable to her federal service. Appellant's new net wage-loss compensation benefit was to be \$2,001.43.

On August 14, 2022 appellant elected OPM retirement benefits, effective September 15, 2022, in lieu of FECA wage-loss compensation.

On October 31, 2022 OWCP issued a preliminary overpayment determination, notifying appellant that she had received an overpayment of compensation in the amount of \$16,847.92 because her wage-loss compensation benefits had not been reduced for the period October 1, 2021 through July 16, 2022 by the portion of her SSA benefits that were attributable to her federal service. It calculated the overpayment amount by determining the difference between her SSA age-related retirement benefit rates with and without FERS for the stated period. OWCP found that appellant had received an overpayment of compensation in the amount of \$3,397.96 during the period October 1, 2021 to November 30, 2021, and \$13,449.96 during the period December 1, 2021 to July 16, 2022. It totaled this amount to find an overpayment of \$16,847.92. OWCP also advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. It requested that she complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records which support income and expenses.

Additionally, OWCP notified appellant that she could request a final decision based on the written evidence or a precoupment hearing. It afforded her 30 days to respond.

On November 29, 2022 appellant requested a decision based on the written evidence. She also requested waiver of recovery of the overpayment, asserting that she was not aware that OWCP had incorrectly paid her, she always reported what she received from SSA, and she would experience financial hardship in repaying the overpayment. Appellant did not submit a completed Form OWCP-20 or otherwise provide financial information.

By decision dated December 20, 2022, OWCP finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$16,847.92 for the period October 1, 2021 through July 16, 2022 because her compensation payments were not offset by the portion of her SSA age-related retirement benefits attributable to her federal service. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because she had not responded to the overpayment recovery questionnaire or otherwise provided the financial information necessary to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment in full within 30 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>2</sup> However, section 8116 also 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>3</sup> 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.<sup>4</sup>

Section 10.421(d) of OWCP's implementing regulations requires it reduce the amount of compensation by the amount of any SSA benefits that are attributable to the employee's federal service.<sup>5</sup> 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

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<sup>2</sup> *Id.* at § 8102.

<sup>3</sup> *Id.* at § 8116.

<sup>4</sup> *Id.* at § 8129(a).

<sup>5</sup> 20 C.F.R. § 10.421(d); *see D.F.*, Docket No. 21-0652 (issued January 25, 2023); *B.W.*, Docket No. 21-0277 (issued May 6, 2022); *R.R.*, Docket No. 19-0104 (issued March 9, 2020); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *L.J.*, 59 ECAB 264 (2007).

part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant received an overpayment of compensation in the amount of \$16,847.92 for the period October 1, 2021 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 noted, a claimant cannot receive both compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.<sup>7</sup> The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service beginning October 1, 2021. OWCP, however, neglected to offset her FECA benefits until July 16, 2022. Accordingly, the Board finds that it properly determined that appellant received an overpayment of wage-loss compensation for the period October 1, 2021 through July 16, 2022.

To determine the amount of the overpayment, the portion of SSA age-related retirement benefits attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. The SSA provided appellant's SSA age-related retirement benefit rates with FERS and without FERS for the period commencing October 1, 2021. OWCP provided its calculations showing the amount it should have offset during the relevant period based on the SSA dual benefits form.

The Board has reviewed OWCP's calculations and finds that an overpayment of compensation in the amount of \$16,487.92 was created for the period October 1, 2021 through July 16, 2022.<sup>8</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>9</sup> Section 10.438 of OWCP's regulations provides that the individual who

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<sup>6</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *C.W.*, Docket No. 22-1012 (issued January 20, 2023); *see also P.P.*, Docket No. 22-0819 (issued November 23, 2022); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>7</sup> 5 U.S.C. § 8116(d)(2); *see M.D.*, Docket No. 21-0725 (issued January 25, 2023); *W.C.*, Docket No. 20-1241 (issued February 9, 2021); *R.D.*, Docket No. 19-1598 (issued April 17, 2020); *C.M.*, Docket No. 19-1451 (issued March 4, 2020); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

<sup>8</sup> *See M.D., id.*; *P.M.*, Docket No. 21-0915 (issued December 14, 2021); *K.W.*, Docket No. 20-1169 (issued April 7, 2021); *W.C., id.*; *S.O.*, Docket 20-0753 (issued October 28, 2020).

<sup>9</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see A.S.*, Docket No. 17-0606 (issued December 21, 2017).

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.<sup>10</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 of recovery of the overpayment 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>11</sup> However, appellant had the responsibility to provide financial information and supporting documentation to OWCP.<sup>12</sup> In its October 31, 2022 preliminary overpayment determination, OWCP requested that she complete an overpayment recovery questionnaire and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support her reported income and expenses. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant, however, did not provide a completed Form OWCP-20 or otherwise provide the necessary financial information. 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>13</sup>

Accordingly, 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 compensation.<sup>14</sup>

### CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$16,487.92 for the period October 1, 2021 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.

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<sup>10</sup> 20 C.F.R. § 10.438.

<sup>11</sup> *Id.* at § 10.436.

<sup>12</sup> *Supra* note 10.

<sup>13</sup> *Id.*; *see D.Y.*, Docket No. 22-0932 (issued February 22, 2023).

<sup>14</sup> *See D.Y., id.*; *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 20, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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