

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

_____)	
J.H., Appellant)	
)	
and)	Docket No. 24-0228
)	Issued: April 11, 2024
U.S. POSTAL SERVICE, ATLANTA)	
NETWORK DISTRIBUTION CENTER,)	
Atlanta, GA, Employer)	
_____)	

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 January 3, 2024 appellant filed a timely appeal from a December 14, 2023 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 \$16,947.84 for the period March 1 through July 27, 2023, for which she was without fault, because she concurrently received retirement benefits from the Office of Personnel Management (OPM) and FECA wage-loss compensation; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 16, 2015 appellant, then a 55-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 12, 2016 she injured her right hip/buttock while pushing, pulling, and shaking out heavy sacks while trying to key on the parcel sorting machine in the performance of duty. She stopped work on September 19, 2015 and has not returned. OWCP accepted the claim for right hip sprain, right shoulder sprain, left rotator cuff tear, right rotator cuff tear, aggravation of cervical spine spondylosis, aggravation of lumbar spine facet arthropathy at L4-4, L5-S1 bilaterally, and intervertebral disc displacement at C3-4. It paid appellant wage-loss compensation on the supplemental rolls, effective November 6, 2015, and on the periodic rolls, effective November 13, 2016.

On May 4, 2023 appellant completed an OPM election form wherein she elected to receive OPM benefits, in lieu of FECA wage-loss compensation, effective February 24, 2023.

In a May 18, 2023 letter, OWCP advised appellant of her FECA benefit amount. It also noted that annuity benefits paid by OPM and benefits for wage-loss compensation paid by OWCP were not payable for the same period. OWCP requested that appellant complete OWCP's election form (Form CA-1105), which was attached.

In a signed Form CA-1105 dated June 13, 2023, appellant indicated that she elected OPM benefits, effective July 28, 2023.

In a July 17, 2023 letter, OWCP advised OPM that appellant had elected OPM benefits, effective July 28, 2023. It requested that it commence monthly annuity payments, effective July 28, 2023. OWCP also terminated appellant's compensation, effective July 28, 2023.

On August 22, 2023 OWCP received appellant's "corrected" Form CA-1105 signed and dated August 18, 2023 in which she elected to receive retroactive OPM benefits, effective February 24, 2023.

In an August 25, 2023 "corrected" letter, OWCP advised OPM that appellant had elected to receive OPM retirement benefits, effective February 24, 2023, in lieu of compensation under FECA, and requested that her monthly annuity payments commence, effective February 24, 2023. It enclosed her election form dated August 18, 2023. OWCP also requested that OPM reimburse the amount of \$17,498.18 for FECA benefits paid during the period February 24 through July 27, 2023.

In a September 19, 2023 response, OPM advised that the February 24, 2023 election date occurred prior to appellant's annuity commencement date of March 1, 2023, the date she retired. It requested that OWCP provide an updated overpayment amount for the period March 1 to July 24, 2023. OPM noted that it initially began payments to appellant, effective July 28, 2023, and then corrected the effective date to March 1, 2023. Appellant's net monthly annuity was currently \$2,083.40. It noted that, since the corrected effective date of OPM benefits was prior to the date OWCP terminated benefits, OWCP had found an overpayment and had requested reimbursement from OPM. However, before OPM could collect the balance of the overpayment,

OWCP must certify that appellant had received due process, and OWCP must advise of the amount and number of installments to be collected.

In a September 27, 2023 letter, OWCP advised appellant that the date of March 1, 2023 should be selected as her election date for OPM benefits and provided a Form CA-1105, which it requested be returned within 30 days. It also advised that annuity benefits paid by OPM and benefits for wage loss paid by OWCP were not payable for the same period. Appellant did not respond.

In a fiscal memorandum to file, OWCP indicated that appellant received a total overpayment of \$16,947.84 from March 1 to July 27, 2023, as she should not have been paid after electing OPM benefits effective March 1, 2023. It related the amount of FECA benefits she had received. For the period March 1 through 25, 2023, appellant received \$2,822.13; for the period March 26 through April 22, 2023, appellant received \$3,184.48; for the period April 23 through May 20, 2023, appellant received \$3,184.48; for the period May 21 through June 17, 2023, appellant received \$3,184.48; for the period June 18 through July 15, 2023, appellant received \$3,184.48; and for the period July 16 through 27, 2023, appellant received \$1,187.79.

On October 17, 2023 OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$16,947.84 for the period March 1 through July 27, 2023. It explained that the overpayment occurred because while she elected OPM benefits effective February 24, 2023 and she started receiving OPM compensation, effective March 1, 2023, she was paid FECA wage-loss compensation through July 27, 2023, which resulted in a prohibited dual benefit payment. OWCP further advised appellant of its preliminary determination that she 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 payment method and advised her that she could request waiver of recovery of the overpayment. OWCP requested that appellant submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records supporting 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 final decision based on the written evidence, or a prerecoupment hearing. No response was received.

In a letter dated October 24, 2023, OPM again advised OWCP that it had commenced payments to appellant effective March 1, 2023, and that there were no retroactive benefits payable. However, while OWCP indicated that there was an overpayment of \$17,498.18, it could not collect this overpayment on OWCP's behalf until OWCP provided certification that appellant had been provided due process and a collection schedule was provided. OPM related that as soon as OWCP provided the required information it would promptly begin collecting the overpayment.

By decision dated December 14, 2023, OWCP finalized its determination that appellant received a \$16,947.84 overpayment of compensation, because she was in receipt of OPM compensation effective March 1, 2023, but was paid FECA wage-loss compensation through July 27, 2023. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery, noting that she had not completed Form OWCP-20 or provided financial

documentation. OWCP determined that appellant should forward the full amount of the overpayment, \$16,947.84, within 30 days as repayment.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA² provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.³ Section 8116 of FECA defines the limitations on the right to receive compensation benefits.⁴ Section 8116(a) provides that, while an employee is receiving workers' compensation benefits, he or she may not receive salary, pay, or remuneration of any type from the United States, except in return for services actually performed or for certain payments related to service in the Armed Forces, including benefits administered by the Department of Veterans Affairs, unless such benefits are payable for the same injury or the same death being compensated for under FECA.⁵

Section 10.421(a) of OWCP's implementing regulations provides that a beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.⁶ The beneficiary must elect the benefit that he or she wishes to receive.⁷

OWCP's procedures also explain that the employee must make an election between FECA benefits and OPM benefits. The employee has the right to elect the monetary benefit which is the more advantageous.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$16,947.84 for the period March 1 through July 27, 2023.

In an August 18, 2023 Form CA-1105, appellant elected to receive retroactive OPM benefits effective February 24, 2023. Following communications with OPM, OWCP was advised that her annuity commencement date (the date OPM compensation started) was March 1, 2023 and that her net monthly OPM annuity was currently \$2,083.40.

² *Id.*

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ *Id.* at § 8116(a).

⁶ 20 C.F.R. § 10.421(a).

⁷ *Id.*

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4a (September 2020); *see also Y.M.*, Docket No. 23-0854 (issued November 8, 2023); *D.J.*, Docket No. 20-0004 (issued May 21, 2020); *Harold Weisman*, Docket No. 93-1335 (issued March 30, 1994).

The record reflects that appellant received FECA benefits for the period March 1 through July 27, 2023 in the amount of \$16,947.84. The Board has previously held that the mere fact that a claimant received FECA benefits after the effective date of an OPM election will not establish receipt of a prohibited dual benefit.⁹

The Board finds that OWCP's overpayment decision did not include the payment amounts appellant had received from OPM, if any. The Board has previously explained that, without a record establishing the exact dollar amount of OPM benefits actually paid during the time of the alleged dual benefit period with FECA benefits, the Board is unable to adequately review this aspect of the case.¹⁰ This documentation from OPM is especially important in this case where OWCP simultaneously sought reimbursement of an overpayment from appellant, yet also sought reimbursement from OPM.¹¹ A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.¹² The Board finds that the overpayment decision in this case does not provide such an explanation. Therefore, the fact and amount of overpayment has not been established.

CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$16,947.84 for the period March 1 through July 27, 2023.

⁹ *L.W.*, Docket No. 22-0742 (issued April 25, 2023); *T.M.*, Docket No. 20-0967 (issued April 12, 2022); *J.M.*, Docket No. 15-1604 (issued May 23, 2016); *B.H.*, Docket No. 13-1955 (issued January 29, 2014).

¹⁰ *A.J.*, Docket No. 18-1152 (issued April 1, 2019).

¹¹ *Id.*

¹² *See J.W.*, Docket No. 15-1163 (issued January 13, 2016); *see also O.R.*, 59 ECAB 432 (2008) with respect to overpayment decisions, OWCP must provide clear reasoning showing how the overpayment was calculated); *see Jenny M. Drost*, 56 ECAB 587 (2005) (to comply with OWCP's overpayment procedures, an overpayment decision must contain a clearly written explanation indicating how the overpayment was calculated).

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 11, 2024
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