

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$130,459.31 for the period April 8, 2012 through October 9, 2021, for which she was without fault, as she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation, 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 \$563.08 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On January 22, 2012 appellant, then a 66-year-old food inspector, filed an occupational disease claim (Form CA-2) alleging that she sustained exposure to chemical fumes and stress at work due to factors of her federal employment. She noted that she first became aware of her claimed conditions on January 9, 2012 and realized their relationship to her federal employment on January 11, 2012. On the reverse side of the claim form, the employing establishment noted appellant's retirement system as Federal Employees Retirement System (FERS). OWCP accepted the claim for chronic airway obstruction. Appellant stopped work on April 8, 2012, and did not return. OWCP paid her wage-loss compensation on the supplemental rolls beginning April 8, 2012, and on the periodic rolls beginning July 1, 2012.

On August 31, 2021 OWCP forwarded a FERS/SSA dual benefits form to SSA, requesting information regarding appellant's potential receipt of dual benefits.

On September 15, 2021 OWCP received a completed FERS/SSA dual benefits form from SSA of even date, wherein SSA reported appellant's SSA age-related retirement benefit rates with and without a FERS offset. The form indicated that: beginning July 2011, her SSA rate with FERS was \$1,300.90 and without FERS was \$318.40; beginning December 2011, her SSA rate with FERS was \$1,347.70 and without FERS was \$329.80; beginning January 2012, her SSA rate with FERS was \$1,398.70 and without FERS was \$329.80; beginning December 2012, her SSA rate with FERS was \$1,422.40 and without FERS was \$335.40; beginning January 2013, her SSA rate with FERS was \$1,433.00 and without FERS was \$335.00; beginning December 2013, her SSA rate with FERS was \$1,454.40 and without FERS was \$340.40; beginning December 2014 and December 2015, her SSA rate with FERS was \$1,479.10 and without FERS was \$346.10; beginning December 2016, her SSA rate with FERS was \$1,483.50 and without FERS was \$347.00; beginning January 2017, her SSA rate with FERS was \$1,483.50 and without FERS was \$356.60; beginning December 2017, her SSA rate with FERS was \$1,513.10 and without FERS was \$363.70; beginning January 2018, her SSA rate with FERS was \$1,513.10 and without FERS was \$372.30; beginning December 2018 her SSA rate with FERS was \$1,555.40 and without FERS was \$382.70; beginning January 2019 her SSA rate with FERS was \$1,555.40 and without FERS was \$384.00; beginning December 2019 her SSA rate with FERS was \$1,580.20 and without FERS was \$390.10; and beginning December 2020 her SSA rate with FERS was \$1,600.70 and without FERS was \$395.10.

OWCP provided a FERS offset overpayment calculation worksheet on October 13, 2021. It determined the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$130,459.31 for the period April 8, 2012 through October 9, 2021.

On October 13, 2021 OWCP notified appellant of its preliminary overpayment determination that she received an overpayment of compensation in the amount of \$130,459.31 as she had received FECA wage-loss compensation benefits for the period April 8, 2012 through October 9, 2021 that had not been reduced by the portion of her SSA age-related retirement benefits attributable to her federal service, and that this portion of her SSA benefit was a prohibited dual benefit. It attached the overpayment calculation worksheet, which noted the overpayment amount for each period in question. OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. It requested that she complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including income tax returns, bank account statements, bills, and cancelled checks, pay slips, and any other records to support her reported income and expenses. Additionally, OWCP 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 precoupment hearing.

In a November 12, 2021 letter, appellant requested waiver of recovery of the overpayment. Counsel argued that waiver was appropriate because appellant's monthly income did not exceed her monthly expenses by more than \$50.00, noting that waiver of the overpayment was appropriate "regardless of the assets [appellant] possesses." In an attached Form OWCP-20, appellant reported total monthly income of \$4,800.00 and total monthly expenses of \$5,868.00. She also reported total assets of \$31,982.83. Appellant noted two dependents, a son and grandson. No supporting financial documentation was received.

By decision dated March 30, 2022, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$130,459.31 for the period April 8, 2012 through October 9, 2021. It further found that appellant 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 \$563.08 from her 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.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 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.⁶ 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

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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 has established that appellant received an overpayment of compensation in the amount of \$130,459.31 for the period April 8, 2012 through October 9, 2021, 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.⁸ The evidence of record establishes that appellant concurrently received FECA wage-loss compensation and SSA age-related retirement benefits that were attributable to federal service during the period April 8, 2012 through October 9, 2021. Consequently, the fact of overpayment has been established.⁹

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 appellant's age-related retirement benefit rates with FERS and without FERS during the specific period April 8, 2012 through October 9, 2021. In its March 30, 2022 final decision, OWCP provided its calculations for each relevant period based on SSA's worksheet.

The Board has reviewed OWCP's overpayment calculation, and finds that an overpayment of compensation in the amount of \$130,459.31 has been established. Therefore, appellant received an overpayment of FECA wage-loss compensation in the amount of \$130,459.31 during the period April 8, 2012 through October 9, 2021.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 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.¹⁰

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.¹¹

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

⁸ *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.*, Docket No. 18-0795 (issued January 4, 2019).

⁹ *See L.B.*, Docket No. 19-1322 (issued January 27, 2020).

¹⁰ 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).

¹¹ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

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, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹² 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.¹³

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.¹⁴ 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.¹⁵

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 recovery is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁶ In order to establish that repayment of the overpayment would defeat the purpose of FECA, appellant must show that she requires substantially all of her income to meet current ordinary and necessary living expenses, and that her assets do not exceed the established limit as determined by OWCP's procedures.¹⁷

On her completed Form OWCP-20, appellant reported total monthly income of \$4,800.00 and total monthly expenses of \$5,868.00. She also reported total assets of \$31,982.83. Appellant noted two dependents, a son and grandson. The Board finds that appellant's assets exceed the allotted resource base and, therefore, she is not entitled to waiver of the recovery of the

¹² 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) (September 2020).

¹³ *Id.* at § 10.437(a)(b).

¹⁴ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁵ *Id.* at § 10.438(b).

¹⁶ *Id.* at § 10.436.

¹⁷ *Id.*

overpayment.¹⁸ Thus the evidence of record is insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁹

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.²⁰

Section 10.441(a) of OWCP's regulations²¹ 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."²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$563.08 from appellant's continuing compensation payments every 28 days.

OWCP took into consideration the financial information appellant provided, as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize any resulting hardship.²³ The Board, therefore, finds that OWCP properly required recovery of the overpayment by deducting \$563.08 from appellant's continuing compensation payments every 28 days.²⁴

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$130,459.31 for the period April 8, 2012 through October 9, 2021, for which she was without fault, because 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

¹⁸ *Supra* note 13. *See also M.T.*, Docket No. 24-0344 (issued May 8, 2024).

¹⁹ *Id.*

²⁰ 20 C.F.R. § 10.441; *see also M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²¹ *Id.*

²² *Id.*; *see also C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²³ *J.R.*, Docket No. 21-0485 (issued December 10, 2021); *M.B.*, Docket No. 20-1578 (issued March 25, 2021).

²⁴ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.G.*, Docket No. 19-1274 (issued July 10, 2020).

waiver of the recovery of the overpayment, and properly required recovery of the overpayment by deducting \$563.08 from appellant's continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board