

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

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D.P., Appellant)	
)	Docket No. 23-0374
and)	Issued: August 19, 2024
)	
U.S. POSTAL SERVICE, WAKEFIELD)	
STATION, Bronx, NY, Employer)	
_____)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 21, 2023 appellant filed a timely appeal from August 3 and 16, and September 26, 2022, and January 6, 2023, merit decisions 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 to consider the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include additional conditions as causally related to her accepted October 14, 2020 employment injury; (2) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 16, 2022, as she no longer had disability or residuals causally related to her accepted October 14, 2020 employment injury; (3) whether appellant has met her burden of proof to establish continuing disability or residuals on or after August 16, 2022 causally related to her accepted October 14, 2020 employment injury; (4) whether OWCP properly determined that appellant received an overpayment of wage-loss compensation in the amount of \$1,269.80 for the period December 1,

¹ 5 U.S.C. § 8101 *et seq.*

2020 through July 16, 2022, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and Social Security Administration (SSA) age-related retirement benefits, without an appropriate offset; and (5) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On October 20, 2020 appellant, then a 66-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on October 14, 2020 she injured her head, left elbow, and lower back when a dog jumped on her and knocked her down while in the performance of duty. She stopped work on October 14, 2020. OWCP accepted the claim for lumbosacral sprain, contusion of the left elbow, and sprain of the left elbow. It paid appellant wage-loss compensation on the supplemental rolls as of December 1, 2020, and on the periodic rolls as of January 16, 2021.

Dr. Ranga Krishna, a neurologist, examined appellant beginning on October 23, 2020 and completed an attending physician's report (Form CA-20) diagnosing post-traumatic headaches, lumbar disc syndrome, and left elbow sprain. He noted appellant's history of a backwards fall as the result of a dog attack and indicated by checking a box marked "Yes" that he believed the diagnosed conditions were caused by the employment injury. Dr. Krishna found that appellant was totally disabled from work.

Appellant underwent a lumbar spine magnetic resonance imaging (MRI) scan on October 27, 2020, which demonstrated disc herniations at L2-3, L3-4, and L4-5. A brain MRI scan of even date conducted due to post-injury headaches demonstrated multiple punctate foci of nonspecific abnormal signal within the cerebral white matter bilaterally and recommended clinical correlation with additional testing for mild traumatic brain injury.

On December 2, 2020 OWCP noted that the medical evidence included the additional diagnoses of post-traumatic headaches and lumbar disc syndrome. It informed appellant of the deficiencies of her claim and advised her of the type of factual and medical evidence needed. OWCP afforded her 30 days to submit the necessary evidence.

Appellant's physician, Dr. Robert L. Hecht, a physiatrist, completed a series of reports dated November 12, 2020 through June 10, 2021 diagnosing bulging lumbar disc, contusion of the elbow, and low back strain. He found that she remained totally disabled from work. On March 19, May 6, and June 10, 2021 Dr. Hecht completed Form CA-20 reports diagnosing left elbow and lumbar sprain/strain. He indicated by checking a box marked "Yes" that these conditions were caused by the accepted employment injury. Dr. Hecht found that appellant was totally disabled from work.

In a series of reports dated January 15 through March 26, 2021, Dr. Krishna described appellant's history of injury on October 14, 2020 and recounted her ongoing headaches, dizziness, pain, and stiffness in the lower back. He reviewed her January 15, 2021 electromyogram and nerve conduction velocity (EMG/NCV) study findings, which included left L4-5 radiculopathy and diagnosed traumatic brain injury, multilevel lumbar spine disc bulges and herniation resulting in radiculopathy. Dr. Krishna found that appellant was totally disabled from work. He diagnosed lumbar sprain injury, post-traumatic cephalgia, and left elbow sprain on a March 26, 2021 Form

CA-20 and indicated by checking a box marked “Yes” that these conditions were causally related to the accepted employment injury.

On June 28, 2021 OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions to Dr. Frank J. Corrigan, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding appellant’s remaining residuals, continuing treatment, and work-tolerance limitations. It requested that he provide all current diagnoses and a well-rationalized explanation to confirm or negation a causal relationship between any conditions found and the accepted work injury.

In a July 22, 2021 report, Dr. Hecht diagnosed lower back strain and joint derangements of the left elbow as a result of appellant’s accepted work-related injury. He found that she was totally disabled from work. On August 13, 2021 Dr. Hecht completed a Form CA-20 diagnosing left elbow and lumbar sprains and strains. He indicated by checking a box marked “Yes” that appellant’s diagnosed conditions were caused or aggravated by the October 14, 2020 employment injury and found that she was totally disabled from work.

In an August 11, 2021 report, Dr. Krishna recounted appellant’s history of injury and reviewed her diagnostic studies. He diagnosed traumatic brain injury, status post right orbital fracture, post-traumatic cephalgia, dizziness, and multilevel lumbar spine disc bulges and herniation resulting in radiculopathy. Dr. Krishna found that appellant was totally disabled from work.

In his August 12, 2021 report, Dr. Corrigan reviewed the SOAF and medical record, and related appellant’s complaints of head, left elbow, and lower back injuries. He performed an orthopedic physical examination. Dr. Corrigan found that appellant exhibited no radicular pathology and that her findings on physical examination were within normal limits despite mechanical low back pain with range of motion. He opined that there were no current diagnoses. Dr. Corrigan determined that appellant had recovered from her accepted employment injuries without residuals and that she could return to work in her date-of-injury position with no restrictions.

In a September 17, 2021 note, Dr. Hecht found appellant totally disabled from work. He completed a Form CA-20 on September 23, 2021 diagnosing left elbow and lumbar spine sprains/strains. Dr. Hecht indicated by checking a box marked “Yes” that appellant’s condition was caused by her employment injury and found that she was totally disabled from work. He repeated his findings and conclusions in notes dated October 29, 2021 through June 2, 2022.

On September 24 and December 17, 2021 Dr. Krishna repeated his findings and conclusions. He completed CA-20 forms on October 4, 2021 and January 31, 2022 wherein he diagnosed mild traumatic brain injury. In notes dated January 3 through June 2, 2022, Dr. Krishna continued to find appellant totally disabled from work.

On November 3, 2021 OWCP found a conflict in the medical opinion evidence between Drs. Hecht and Krishna, appellant’s treating physicians, and Dr. Corrigan, the second opinion examiner, regarding the nature and extent of her accepted employment conditions and work capacity. It referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. Sheldon Manspeizer, a Board-certified orthopedic surgeon, for an impartial medical

examination in order to resolve the conflict. Appellant did not appear for the scheduled appointment.

On June 23, 2022 OWCP sent a Federal Employees Retirement System (FERS)/SSA dual benefits form to SSA for completion.

On July 14, 2022 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits because she no longer had disability or residuals causally related to her accepted October 14, 2020 employment injury. It found that Dr. Corrigan's August 12, 2021 report represented the weight of the medical evidence.

On a dual benefits form dated July 19, 2022, SSA reported appellant's SSA age-related retirement benefit rates with and without FERS for the period October 2020 through December 2021. With FERS, appellant was entitled to the following: \$2,390.10 effective October 2020; \$2,421.10 effective December 2020; \$2,431.70 effective January 2021; and \$2,575.10 effective December 2021. Without FERS, appellant was entitled to the following: \$2,337.50 effective October 2020; \$2,367.50 effective December 2020 and January 2021; and \$2,507.50 effective December 2021.

In an August 2, 2022 letter, OWCP notified appellant that her compensation would be offset by the portion of her SSA age-related retirement benefits attributable to her federal service. It advised that she would receive net wage-loss compensation payment of \$2,688.60 every 28 days.

By decision dated August 3, 2022, OWCP denied appellant's request to expand the acceptance of her claim to include additional medical conditions. It reviewed the medical evidence, including Dr. Corrigan's August 12, 2021 report, and found that she had not provided a well-rationalized report explaining how her accepted employment injury resulted in her diagnosed conditions.

By decision dated August 16, 2022, OWCP finalized its termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence rested with Dr. Corrigan, the second opinion physician.

In an August 23, 2022 FERS offset overpayment calculation worksheet, OWCP calculated appellant's FERS/SSA offset for each pay period from December 1, 2020 through July 16, 2022 and the amount of the overpayment for each period. It found that, from December 1 through 31, 2020, appellant received an overpayment in the amount of \$54.78; from January 1 through November 30, 2021, she received an overpayment in the amount of \$706.91; and from December 1, 2021 through July 16, 2022, she received an overpayment in the amount of \$508.11, for a total overpayment of \$1,269.80.

On August 23, 2022 OWCP issued a preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$1,269.80 because she received wage-loss compensation payments for the period December 1, 2020 through July 16, 2022 that had not been reduced to offset her SSA age-related retirement benefits attributable to her federal service. It determined 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 payment method and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial

documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records which support income and expenses. 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 prerecoumpment hearing. No response was received.

By decision dated September 26, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$1,269.80 for the period December 1, 2020 through July 16, 2022 because it failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were 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 the evidence of record failed to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP determined that appellant should forward the entire amount as repayment of the overpayment.

On September 28, 2022 appellant requested reconsideration of the August 16, 2022 termination decision and resubmitted Dr. Krishna's June 2, 2022 note. She also provided an unsigned September 16, 2022 note finding that she was totally disabled from work due to left elbow and lumbar spine sprains.

Appellant subsequently submitted additional evidence. In a September 7, 2022 report, Dr. Krishna diagnosed traumatic brain injury, post-traumatic cephalgia, dizziness, status post right orbital fracture, and multilevel lumbar disc bulge herniation resulting in left L4-5 radiculopathy.

On September 8, 2022 Dr. Hecht diagnosed lumbar spine sprain, bulging lumbar disc, low back sprain, and elbow sprain. He found that appellant was totally disabled from work.

On November 30, 2022 appellant requested waiver of recovery of the overpayment.

In a December 7, 2022 note, Dr. Sarah Gaballah, a Board-certified physiatrist, described appellant's October 14, 2020 employment injury and diagnosed low back pain, lumbar sprain, disc herniation at L3-4, L2-3, and L4-5, lumbar sprain, and bulging lumbar disc. She opined that the employment injury was the competent medical cause of the diagnosed injuries and that she was totally disabled from work.

By decision dated January 6, 2023, OWCP denied modification of its August 16, 2022 termination decision.

LEGAL PRECEDENT -- ISSUE 1

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.²

² *P.T.*, Docket No. 22-0841 (issued January 26, 2023); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.³ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁴ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.⁵

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States, and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical examiner (IME)) who shall make an examination.⁶ For a conflict to arise, the opposing physicians' viewpoints must be of virtually equal weight and rationale.⁷ When OWCP has referred the case to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for a decision.

In a series of reports beginning on October 23, 2020, Dr. Krishna completed a Form CA-20 diagnosing post-traumatic headaches and checked "Yes" that the condition was caused by the identified employment activity of a fall after a dog attack. An MRI scan of the brain obtained on October 27, 2020 showed multiple punctate foci of nonspecific abnormal signal within the cerebral white matter bilaterally and recommended clinical correlation with additional testing for mild traumatic brain injury. Dr. Krishna continued to submit reports and CA-20 forms recounting appellant's history of injury and diagnosing traumatic brain injury, status post right orbital fracture, post-traumatic cephalgia, dizziness, and multilevel lumbar spine disc bulges and herniation resulting in radiculopathy.

Appellant also provided reports dated November 12, 2020 through June 10, 2021 from Dr. Hecht diagnosing bulging lumbar disc as a result of the accepted employment injury which rendered her totally disabled from work.

³ *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁴ *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *Id.*

⁶ 5 U.S.C. § 8123(a); *see A.P.*, Docket No. 22-1054 (issued January 6, 2023); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

⁷ *H.B.*, Docket No. 19-0926 (issued September 10, 2020); *C.H.*, Docket No. 18-1065 (issued November 29, 2018); *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006); *James P. Roberts*, 31 ECAB 1010 (1980).

⁸ *S.S.*, Docket No. 19-0766 (issued December 13, 2019); *W.M.*, Docket No. 18-0957 (issued October 15, 2018); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

Dr. Corrigan, OWCP's second opinion physician, on the other hand, in his August 12, 2021 report, found no additional conditions as there were no objective findings on physical examination. He concluded that appellant had no additional or ongoing employment-related conditions caused by the accepted employment injury of October 14, 2020.

As noted above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint a referee physician or IME who shall make an examination.⁹ The Board finds that a conflict in medical opinion exists between Drs. Hecht, Krishna, and Corrigan regarding whether the acceptance of appellant's claim should be expanded to include additional conditions as causally related to the accepted October 14, 2020 employment injury.¹⁰

The Board, therefore, will remand the case for OWCP to refer appellant to an IME for resolution of the conflict in medical opinion evidence pursuant to 5 U.S.C. § 8123(a).¹¹ After such further development as OWCP deems necessary, it shall issue *de novo* decision.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.¹² It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.¹³ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹⁵ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.¹⁶

⁹ See *E.B.*, Docket No. 23-0169 (issued August 24, 2023); *S.S.*, Docket No. 19-1658 (issued November 12, 2020); *C.S.*, Docket No. 19-0731 (issued August 22, 2019).

¹⁰ *S.T.*, Docket No. 21-0906 (issued September 2, 2022); *S.M.*, Docket No. 19-0397 (issued August 7, 2019).

¹¹ *Y.M.*, Docket No. 23-0091 (issued August 4, 2023); *V.B.*, Docket No. 19-1745 (issued February 25, 2021).

¹² *A.P.*, Docket No. 22-1054 (issued January 6, 2023); *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

¹³ *A.G.*, Docket No. 18-0749 (issued November 7, 2018); see also *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

¹⁴ *M.N.*, Docket No. 21-0980 (issued July 24, 2023); *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

¹⁵ *A.V.*, Docket No. 23-0230 (issued July 28, 2023); *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹⁶ *E.H.*, Docket No. 23-0503 (issued July 20, 2023); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

ANALYSIS -- ISSUE 2

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 16, 2022.

In light of the conflict in medical opinion regarding the expansion issue, it was premature for OWCP to terminate.¹⁷ Therefore, OWCP has not met its burden of proof in terminating appellant's wage-loss compensation and medical benefits.¹⁸

LEGAL PRECEDENT -- ISSUE 4

Section 8102(a) of FECA¹⁹ 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.²⁰ 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.²¹

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.²² 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 part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.²³

ANALYSIS -- ISSUE 4

The Board finds that OWCP properly determined that appellant received an overpayment of compensation of \$1,269.80 for the period December 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 noted, a claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period. The receipt of FECA benefits and federal retirement concurrently is a prohibited

¹⁷ *D.P.*, Docket No. 21-0534 (issued December 2, 2021); *N.A.*, Docket No. 21-0542 (issued November 8, 2021); *G.B.*, Docket No. 16-0996 (issued September 14, 2016) (where the Board held that OWCP improperly terminated the claimant's wage-loss compensation and medical benefits as there was an unresolved conflict of medical opinion between her treating physician and a second opinion specialist).

¹⁸ In light of the Board's disposition of Issue 2, Issue 3 is rendered moot.

¹⁹ *Supra* note 1.

²⁰ 5 U.S.C. § 8102.

²¹ *Id.* at § 8116.

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

²³ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

dual benefit.²⁴ In this case, OWCP was notified by SSA in a form received by OWCP on July 19, 2022 that appellant had concurrently received FECA benefits and SSA age-related retirement benefits attributable to her federal service without an appropriate offset beginning December 1, 2020. The Board finds that fact of overpayment is, therefore, established.

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 amount of appellant's SSA age-related retirement benefits that were attributable to her federal service. SSA provided its rates with FERS and without FERS for specific periods December 1, 2020 through July 16, 2022. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$1,269.80.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$1,269.80 for the period December 1, 2020 through July 16, 2022.

LEGAL PRECEDENT -- ISSUE 5

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.²⁵

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.²⁶ An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.²⁷

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

²⁴ *Id.* See also *Z.R.*, Docket No. 22-0028 (issued July 29, 2022); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

²⁵ 5 U.S.C. § 8129.

²⁶ 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).

²⁷ *Id.* at Chapter 6.400.4.a(3); see also *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.²⁸

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 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.²⁹

ANALYSIS -- ISSUE 5

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.³⁰ However, appellant had the responsibility to provide financial information and documentation to OWCP but failed to do so.³¹

In its preliminary overpayment determination, dated August 23, 2022, OWCP requested that appellant provide a completed Form OWCP-20 with supporting financial documentation, including copies of income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records to support income and expenses. It advised her that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant did not submit a Form OWCP-20 or otherwise submit the financial information needed for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

Accordingly, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations, the Board finds that OWCP properly denied waiver of recovery of the overpayment compensation.

CONCLUSION

The Board finds that the case is not in posture for decision in regard to whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include additional conditions as causally related to her October 14, 2020 employment injury. The Board further finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 16, 2022, and thus, it was premature to deny continuing disability and residuals. The Board also finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation in the amount of \$1,269.80 for

²⁸ 20 C.F.R. § 10.437(a), (b).

²⁹ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

³⁰ *Id.* at § 10.436.

³¹ *Id.* at § 10.438; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

the period December 1, 2020 through July 16, 2022, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset. Additionally, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2022 expansion decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further development consistent with this decision of the Board. The August 16, 2022 termination decision of OWCP is reversed, and the January 6, 2023 decision denying continuing disability and residuals is set aside as moot. The September 26, 2022 overpayment decision of OWCP is affirmed.

Issued: August 19, 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