

FACTUAL HISTORY

On June 16, 2018 appellant, then a 62 year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained injury to her left hand and arm due to factors of her federal employment including casing mail. Appellant's supervisor noted on the claim form that appellant's retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for left forearm strain, and left forearm sprain. It paid appellant wage-loss compensation on the supplemental rolls as of August 1, 2018, and on the periodic rolls as of April 26, 2020.

On December 1, 2022 OWCP provided SSA with a FERS/SSA dual benefits form requesting information concerning a potential overpayment.

On February 6, 2023 SSA completed the dual benefits calculation form which reflected appellant's SSA age-related retirement benefit rates with and without a FERS offset as of August 1, 2022. Beginning August 2022, the SSA rate with FERS was \$2,488.90 and without FERS was \$1,024.60; and beginning December 2022, the SSA rate with FERS was \$2,705.40 and without FERS was \$1,113.70.

OWCP completed a FERS offset computation on November 17, 2023, which indicated that appellant had received an overpayment of compensation from August 1 through 13, 2022 in the amount of \$627.56; from August 14 through September 10, 2022 in the amount of \$1,351.66; from September 11 through October 8, 2022 in the amount of \$1,351.66; from October 9 through November 5, 2022 in the amount of \$1,351.66; from November 6 through 30, 2022 in the amount of \$1,206.84; from December 1 through 3, 2022 in the amount of \$157.42; from December 4 through 31, 2022 in the amount of \$1,469.26; from January 1 through 28, 2023 in the amount of \$1,469.26; from January 29 through February 25, 2023 in the amount of \$1,469.26; from February 26 through March 25, 2023 in the amount of \$1,469.26; from March 26 through April 22, 2023 in the amount of \$1,469.26; from April 23 through May 20, 2023 in the amount of \$1,469.26; from May 21 through June 17, 2023 in the amount of \$1,469.26; from June 18 through July 15, 2023 in the amount of \$1,469.26; from July 16 through August 12, 2023 in the amount of \$1,469.26; from August 13 through September 9, 2023 in the amount of \$1,469.26; from September 10 through October 7, 2023 in the amount of \$1,469.26; and from October 8 through November 4, 2023 in the amount of \$1,469.26; resulting in a total overpayment amount of \$23,677.92.

On November 21, 2023 OWCP issued a preliminary overpayment determination finding that an overpayment of compensation in the amount of \$23,677.92 had been created because it had failed to reduce appellant's wage-loss compensation payments for the period August 1, 2022 through November 4, 2023 to offset the SSA age-related retirement benefits that were attributable to federal service. It determined that she was without fault in the creation of the overpayment because the evidence did not support that she was aware that the receipt of full SSA age-related retirement benefits concurrent with the disability/wage-loss compensation would result in an overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised that she could request waiver of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to 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 prerecoupment hearing.

On December 6, 2023 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on March 1, 2024. During the hearing, appellant explained that at most, she could afford to pay for recovery of the overpayment was \$300.00 per month. She testified that her monthly expenses ranged from \$4,500.00 to \$4,900.00.

On April 12, 2024 appellant completed the Form OWCP-20 and noted that she had monthly income of \$4,797.20, and monthly expenses of \$1,675.00 for rent; credit card payments of \$125.00; auto insurance of \$586.00; telephone bill of \$154.43; renter's insurance of \$16.50; electric of \$124.05; toll expenses of \$30.00; undocumented expenses of \$30.00; undocumented food expenses of \$756.96; clothing of \$242.48; and miscellaneous expenses of \$464.32. She indicated that she had approximately \$79,653.09 in checking, savings, and retirement accounts. Appellant provided billing statements for credit card, utility, and insurance expenses, but did not provide bank statements.

By decision dated May 15, 2024, OWCP's hearing representative finalized the preliminary overpayment determination and found that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$23,677.92, for the period August 1, 2022 through November 4, 2023. The decision further determined that appellant was without fault in the creation of the overpayment, but denied waiver of recovery, noting that appellant's Form OWCP-20 indicated that she had total monthly income of \$4,797.20, appellant testified that she had monthly expenses between \$4,500.00 and \$4,900.00, and \$79,000.00 in checking, savings, and retirement accounts. The hearing representative directed that the overpayment amount be recovered by deducting \$300.00 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.² 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.³

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁴ 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

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116.

⁴ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

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.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$23,677.92, for the period August 1, 2022 through November 4, 2023, 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 evidence of record indicates that while appellant was receiving compensation for wage loss under FECA, she also was receiving SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both compensation for wage loss under FECA and SSA age-related retirement benefits attributable to federal service for the same period without an appropriate offset.⁶ The information provided by SSA established that, during the period August 1, 2022 through November 4, 2023, appellant received SSA age-related retirement benefits that were attributable to federal service while she also received FECA benefits that were not reduced by the appropriate offset. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA's benefits that were 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 appellant's federal service. SSA provided appellant's age-related retirement benefit rates with FERS and without FERS for specific periods from August 1, 2022 through November 4, 2023. OWCP provided its calculations for each relevant period based on the SSA worksheet which showed that appellant received an overpayment in the amount of \$23,677.92. The Board has reviewed OWCP's calculations and finds that it properly calculated that appellant received prohibited dual benefits for the period August 1, 2022 through November 4, 2023, totaling \$23,677.92.

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.⁷ 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.⁸

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

⁵ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁶ 20 C.F.R. § 10.421(d); *see S.M.*, *supra* note 4; *L.J.*, *supra* note 4.

⁷ 5 U.S.C. § 8129(a)-(b).

⁸ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

not exceed a specified amount as determined by OWCP.⁹ An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁰ 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.¹¹

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.¹²

OWCP 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.¹³

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

The fact that OWCP may have been negligent in the creation of the overpayment does not entitle appellant to waiver of recovery of the overpayment.¹⁴ As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁵ In order to establish that repayment of the overpayment would defeat the purpose of FECA, appellant must show that she requires substantially all of his income to meet current ordinary and necessary living expenses, and that her assets do not exceed the established limit as determined by OWCP procedures.¹⁶

On April 12, 2024 appellant completed the Form OWCP-20 and noted that she had total monthly income of \$4,797.00, she testified that she had monthly expenses between \$4,500.00 and \$4,900.00 and assets of approximately \$79,000.00. The Board finds that appellant's assets exceed

⁹ 20 C.F.R. § 10.436(a)(b). Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) (September 2020).

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

¹¹ *Supra* note 9.

¹² *Id.* at § 10.437(a)(b).

¹³ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁴ *See L.D.*, Docket No. 19-0606 (issued November 21, 2019); *R.B.*, Docket No. 15-0808 (issued October 26, 2015).

¹⁵ 5 U.S.C. § 8129.

¹⁶ 20 C.F.R. § 10.436; *supra* note 9.

the allotted amount \$6,200.00 for an individual with no spouse or dependents, and therefore she has not established that recovery of the overpayment would defeat the purpose of FECA.¹⁷ Appellant has also not shown that recovery of the overpayment would cause severe financial hardship in attempting to repay the debt, or that in reliance on such payment or on notice that such payments would be made, she gave up a valuable right or changes her position for the worse.¹⁸ She has therefore not established that recovery of the overpayment would be against equity and good conscience. 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.¹⁹ Appellant is therefore not entitled to waiver of the recovery of the overpayment.²⁰

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.²¹ Section 10.441(a) of OWCP's implementing regulations provides that if 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.²² 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.²³

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by repayment of \$300.00 from appellant's continuing compensation payments every 28 days.

As noted, on the April 12, 2024 Form OWCP-20 appellant reported her monthly income, expenses, and assets of approximately \$79,000.00. OWCP took into consideration the financial information she provided and that she indicated during the precoupment hearing that she could pay \$300.00 per month, as well as the factors set forth in 20 C.F.R. § 10.441, and found that this method of recovery would minimize the resulting hardship.²⁴ The Board therefore finds that

¹⁷ *Id.*

¹⁸ *Supra* note 12.

¹⁹ 20 C.F.R. § 10.438.

²⁰ 5 U.S.C. § 8129.

²¹ *See P.G.*, Docket No. 22-1073 (issued December 28, 2022); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

²² 20 C.F.R. § 10.441(a).

²³ *Id.*

²⁴ *J.R.*, Docket No. 21-0485 (issued December 10, 2021); *M.B.*, Docket No. 20-1578 (issued March 25, 2021).

OWCP properly required recovery of the overpayment by deducting \$300.00 per month from appellant's continuing compensation payments every 28 days.²⁵

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$23,677.92, for the period August 1, 2022 through November 4, 2023, for which she was without fault, as she concurrently received FECA wage-loss benefits 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 properly required repayment by deducting \$300.00 from her continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

²⁵ See *J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.G.*, Docket No. 19-1274 (issued July 10, 2020).