

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

K.P., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, ORLANDO)
INTERNATIONAL AIRPORT, Orlando, FL,)
Employer)

Docket No. 25-0040
Issued: December 5, 2024

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

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 15, 2024 appellant filed a timely appeal from a July 17, 2024 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the July 17, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,653.08, during the period July 1, 2020 through May 18, 2024, 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 \$567.81 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 17, 2004 appellant, then a 47-year-old security screener, filed a traumatic injury claim (Form CA-1) alleging that on April 12, 2004 she injured her head, neck, upper back, and right knee when inspecting luggage that had fallen from screening equipment while in the performance of duty. She stopped work on April 17, 2004. OWCP assigned this claim OWCP File No. xxxxxx435 and on July 29, 2004 accepted it for thoracic and cervical strain.⁴ It subsequently expanded the acceptance of appellant's claim to include aggravation of cervical spondylosis. OWCP paid her wage-loss compensation on the supplemental rolls, effective June 6, 2004, and on the periodic rolls, effective October 3, 2004.

The record reveals that appellant is under the Federal Employees Retirement System (FERS).

By decision dated March 28, 2019, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective March 31, 2019. It subsequently denied modification by decisions dated July 18, 2019, and March 12 and October 4, 2021. Appellant appealed to the Board. By decision issued April 5, 2024,⁵ the Board reversed the termination.

³ Docket No. 22-0207 (issued April 5, 2024).

⁴ Previously, under OWCP File No. xxxxxx566, appellant filed a Form CA-1 for a June 17, 2003 injury to her forehead sustained when she struck her head on the rollers of an L3 machine while in the performance of duty. OWCP accepted the claim for headache and lumbar strain. By decision dated March 13, 2008, the Board affirmed OWCP's December 18, 2006 decision which affirmed the prior termination of her compensation benefits effective December 4, 2003 as the accepted employment conditions had ceased without residuals. *K.P.*, Docket No. 07-2182 (issued March 13, 2008). On April 23, 2024 OWCP administratively combined the claims with OWCP File No. xxxxxx435 designated as the master file.

⁵ *Supra* note 3.

In an April 23, 2024 memorandum, OWCP indicated that as it had reinstated appellant's wage-loss compensation benefits retroactive to March 31, 2019, an SSA/FERS offset calculation would be required for the subsequent period.⁶

On April 29, 2024 OWCP provided SSA with a FERS/SSA dual benefits form. It requested appellant's SSA age-related retirement benefits rates with and without FERS.

On May 7, 2024 SSA completed the FERS/SSA dual benefits form, which reports that appellant had received SSA benefits based on age commencing July 2020. The form reported her SSA age-related retirement benefit rates with a FERS offset and without a FERS offset. Beginning July 2020, the SSA rate with FERS was \$450.10 and without FERS \$378.40. Beginning December 2020, the SSA rate with FERS was \$455.90 and without FERS \$383.20. Beginning December 2021, the SSA rate with FERS was \$482.70 and without FERS \$405.80. Beginning December 2022, the SSA rate with FERS was \$524.70 and without FERS \$441.00. Beginning December 2023, the SSA rate with FERS was \$541.50 and without FERS \$455.10.

In a FERS offset overpayment calculation worksheet dated May 21, 2024, OWCP used the information provided by SSA to calculate the 28-day FERS offset for the relevant periods. It found that, for the period July 1 through November 30, 2020, appellant received an overpayment in the amount of \$361.63; for the period December 1, 2020 through November 30, 2021, appellant received an overpayment in the amount of \$874.83; for the period December 1, 2021 through November 30, 2022, appellant received an overpayment in the amount of \$925.28; for the period December 1, 2022 through November 30, 2023, appellant received an overpayment in the amount of \$1,007.14; and for the period December 1, 2023 through May 18, 2024, appellant received an overpayment of \$484.20. OWCP added the five amounts to calculate a total overpayment of \$3,653.08.

Effective May 19, 2024, OWCP offset appellant's FECA wage-loss compensation benefits by her SSA age-related retirement benefits. Appellant's new net wage-loss compensation payment every 28 days would be changed to \$2,079.57.

On May 21, 2024 OWCP notified appellant of its preliminary overpayment determination that she had received an overpayment of compensation in the amount of \$3,653.08, for the period July 1, 2020 through May 18, 2024, because appellant concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It further determined that appellant was without fault in the creation of the overpayment. OWCP 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, cancelled checks, pay slips, and any other records to support her reported 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 precouplement hearing.

⁶ On April 23, 2024 OWCP expanded the acceptance of appellant's employment conditions to include sprain of ligaments of cervical spine, contusion of right lower leg, other cervical disc displacement, cervical spondylosis without myelopathy or radiculopathy, sprain of ligaments of thoracic spine, sprain of ligaments of lumbar spine, other cervical disc displacement at C4-5 and C5-6, and chondromalacia patella, right knee.

In statements dated June 1, and July 12 and 15, 2024, appellant requested that OWCP waive recovery of the overpayment as she was without fault in its creation. She asserted that she could not have anticipated that the Board's reversal of OWCP's termination of her wage-loss compensation would result in a retroactive overpayment. Appellant did not submit a completed Form OWCP-20 or other financial information.

By decision dated July 17, 2024, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$3,653.08 for the period July 1, 2020 through May 18, 2024, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It further found that she was without fault in the creation of the overpayment but denied waiver of recovery of the overpayment, noting that she submitted no statement of income, assets, and expenses, and no financial information. OWCP required repayment of the debt by deducting \$567.81 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 of an employee resulting from personal injury sustained while in the performance of his or her federal employment.⁷ 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.⁸

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to federal service of the employee.⁹ 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 wage-loss compensation and federal retirement concurrently is a prohibited dual benefit.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,653.08, for the period July 1, 2020 through May 18, 2024, for which she was without fault, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset.

In its July 17, 2024 decision, OWCP found that an overpayment of compensation was created for the period July 1, 2020 through May 18, 2024. The overpayment was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant. As previously noted, a claimant cannot receive both compensation for wage loss and SSA age-related

⁷ 5 U.S.C. § 8102(a).

⁸ *Id.* at § 8116.

⁹ 20 C.F.R. § 10.421(d).

¹⁰ FECA Bulletin No. 97-09 (issued February 3, 1997).

retirement benefits attributable to federal service for the same period.¹¹ The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service during the period July 1, 2020 through May 18, 2024. Consequently, the fact of overpayment has been established.¹²

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. The SSA provided appellant's SSA age-related retirement benefit rates with FERS, and without FERS, for specific periods commencing July 1, 2020 through May 18, 2024. In its May 21, 2024 preliminary overpayment determination, OWCP calculated the amount of overpayment by determining the difference between the SSA rate with and without FERS for each period and multiplying the daily offset amount by the number of days in each period, to find a total overpayment of \$3,653.08.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period July 1, 2020 through May 18, 2024, and finds that an overpayment of compensation in the amount of \$3,653.08 was created.

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.¹³ 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.¹⁴

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.¹⁵ 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.¹⁶

¹¹ *P.B.*, Docket No. 23-0955 (issued March 13, 2024); *see E.M.*, Docket No. 21-1231 (issued April 19, 2023); *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

¹² *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

¹³ 5 U.S.C. § 8129(a)-(b).

¹⁴ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁵ *Supra* note 9 at § 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).

¹⁶ *Id.* at § 10.437(a)-(b).

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.¹⁷

ANALYSIS -- ISSUE 2

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

The overpayment in this case resulted from OWCP's retroactive payment of wage-loss compensation commencing March 31, 2019, as appellant received age-related SSA retirement benefits commencing July 2020.¹⁸ As OWCP found her 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.¹⁹ 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 procedures.²⁰

In its preliminary overpayment determination dated May 21, 2024, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver of recovery of the overpayment if she failed to furnish the requested financial information within 30 days. Appellant did not submit a completed Form OWCP-20 or any other financial documentation. 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.²¹

Consequently, 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.²²

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides in pertinent part that, 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 the same. If no refund is made, OWCP shall decrease later payments of

¹⁷ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁸ *See K.V.*, Docket No. 21-0429 (issued September 13, 2023).

¹⁹ 5 U.S.C. § 8129.

²⁰ *Supra* note 9 at § 10.436.

²¹ *Supra* note 9 at § 10.438.

²² *See E.T.*, Docket No. 22-0234 (issued August 17, 2022); *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

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

When an individual fails to provide requested information regarding income, expenses, and assets, OWCP should follow minimum collection guidelines. The Federal (FECA) Procedure Manual provides that, in these instances, it should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.²⁴

ANALYSIS -- ISSUE 3

The Board finds that OWCP improperly required recovery of the overpayment by deducting \$567.81 from appellant's continuing compensation payments, every 28 days.

As noted above, appellant did not provide the necessary financial information to support her income, expenses, and assets prior to the final overpayment decision. When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁵ The Board finds, however, that OWCP required recovery at a rate higher than the accepted guideline rate of 25 percent of appellant's net compensation. The record establishes that OWCP paid appellant \$2,079.57 in net compensation. The Board notes that 25 percent of \$2,079.57 is \$519.89. The Board, therefore, finds that OWCP abused its discretion by deducting \$567.81 from appellant's continuing compensation payments, every 28 days.²⁶

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,653.08, during the period July 1, 2020 through May 18, 2024, for which she was without fault, as 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 waiver of recovery of the overpayment. The Board also finds that OWCP improperly required recovery of the overpayment by deducting \$567.81 from appellant's continuing compensation payments every 28 days.

²³ *Supra* note 9 at § 10.441(a); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

²⁴ *Supra* note 15 at Chapter 6.500.8c(1) (September 2018).

²⁵ *E.A.*, Docket No. 24-0810 (issued September 26, 2024); *B.J.*, Docket No. 24-0599 (issued July 16, 2024); *supra* note 12; *C.B.*, Docket No. 24-0285 (issued April 24, 2024); *J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002).

²⁶ *See J.R.*, Docket No. 24-0852 (issued November 14, 2024); *R.M.*, Docket No. 19-1508 (issued July 6, 2022); *L.M.*, Docket No. 21-0455 (issued February 28, 2022); *M.W.*, 20-1107 (issued March 17, 2021).

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2024 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: December 5, 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