

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

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<b>D.G., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0497</b>
	)	<b>Issued: June 13, 2024</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Bedford Park, IL, Employer</b>	)	
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*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 April 4, 2024 appellant filed a timely appeal from March 5 and 18, 2024 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 \$29,880.23, for the period October 1, 2018 through July 15, 2023, 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 it properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$738.43 from appellant's continuing compensation payments every 28 days.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On March 23, 1994 appellant, then a 41-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that she developed pain in her lower back and right leg due to factors of her federal employment, including pushing/pulling mail equipment, lifting trays, twisting, and stooping. She noted that she first became aware of her condition and related it to factors of her federal employment on January 18, 1994. OWCP accepted the claim for L4-5 disc herniation, aggravation of spondylolisthesis without myelopathy or radiculopathy, aggravation of degeneration of thoracic or lumbar intervertebral disc, postlaminectomy syndrome, and lumbar radiculopathy. The record reflects that OWCP initially paid appellant FECA wage-loss compensation on the supplemental rolls, and that she has been paid FECA wage-loss compensation continuously on the periodic rolls since January 21, 2007.

A December 15, 2000 claim for compensation (Form CA-7) reflected that appellant was enrolled in the Federal Employees Retirement System (FERS).

On December 1, 2021 OWCP requested that SSA provide a report of appellant's FERS/SSA dual benefits status beginning 2014. No response was received, and follow-up requests were made on April 6, 2022, and June 27, August 11, and June 14, 2023.

On July 6, 2023, the SSA responded, noting that appellant began receiving age-related SSA benefits on October 1, 2018. It provided appellant's SSA age-related retirement benefit rates with and without FERS. Beginning October 2018, the SSA rate with FERS was \$1,495.20 and without FERS was \$1,015.60; beginning December 2018, the SSA rate with FERS was \$1,537.00 and without FERS was \$1,044.00; beginning December 20, 2019, the SSA rate with FERS was \$1,561.50 and without FERS was \$1,060.70; beginning December 2020, the SSA rate with FERS was \$1,581.70 and without FERS was \$1,074.40; beginning December 2021, the SSA rate with FERS was \$1,675.00 and without FERS was \$1,137.70; and beginning December 2022, the SSA rate with FERS was \$1,820.70 and without FERS was \$1,236.60.

In a letter dated August 4, 2023, OWCP informed appellant that, effective August 12, 2023, it would begin deducting the portion of SSA age-related retirement benefits attributable to her federal service from her 28-day periodic compensation benefits. It noted that her current monthly SSA age-related retirement benefit with FERS was \$1,820.70 and without FERS was \$1,236.60. OWCP explained that the amount of FERS/SSA dual benefit to be deducted from appellant's FECA benefits was \$584.10 every 28 days. It noted that the offset of FECA wage-loss payments every 28 days would be \$539.17, and appellant's new net compensation payment would be \$2,970.99, every 28 days.

On August 10, 2023 OWCP issued a preliminary overpayment determination that an overpayment occurred in the amount of \$29,880.23, for the period October 1, 2018 through July 15, 2023, because appellant concurrently received both FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset, which resulted in a prohibited dual benefit. It calculated the overpayment amount by determining the difference between her SSA amount with and without FERS for the stated period and totaling this amount to find an overpayment of \$29,880.23. Based on the SSA overpayment calculation worksheet, OWCP calculated the following overpayments: for the period October 1 through November 30, 2018 in the amount of \$964.47; for the period December 1, 2018 through November 30, 2019 in the

amount of \$5,932.29; for the period December 1, 2019 through November 30, 2020 in the amount of \$6,042.66; for the period December 1, 2020 through November 30, 2021 in the amount of \$6,104.36; for the period December 1, 2021 through November 30, 2022 in the amount of \$6,465.32; and for the period December 1, 2022 through July 15, 2023 in the amount of \$4,371.13, which resulted in a total overpayment of \$29,880.23. It further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20), along with supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income, assets, 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. OWCP provided an appeal request form and further notified her that within 30 days of the date of the letter, she could contest the overpayment and request a final decision based on the written evidence or a prerecoupment hearing.

On September 7, 2023 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 10, 2024.

On September 3, 2023 appellant completed the Form OWCP-20. She listed her monthly income of \$4,625.99. With regard to her monthly expenses, appellant referred to attached bank statements and listed additional miscellaneous expenses including dining out, personal care, and lawn service.<sup>2</sup> She listed a checking account balance of \$400.00 to \$550.00.

During the prerecoupment hearing, appellant confirmed that she started receiving age-related retirement benefits from SSA in October 2018. She noted that she was unable to provide her husband's income and that she paid the mortgage, food bill, her car payment, and gas and electric bills, while her husband paid for big major items such as repairs. Appellant also noted that she paid for her grandson's school lunch and cell phone. She provided testimony estimating her monthly expenses. Appellant explained that she did not get paper bills and was unable to print out the billing statements because she could not use a computer.

On February 9, 2024, appellant advised that she was able to pull up some billing statements with the assistance of a friend. She explained that due to a prior marital conflict she had agreed to separate finances from her husband and that he refused to provide any financial information for the overpayment proceeding. Appellant provided supporting financial documentation.

By decision dated March 5, 2024, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$29,880.23, for the period October 1, 2018 through July 15, 2023, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. He found that she was without fault in the creation of the overpayment but denied waiver of recovery of the overpayment. He requested that appellant forward a check in the amount of \$29,860.23.

By decision dated March 18, 2024, OWCP advised appellant that since she was receiving continuing compensation on the periodic rolls, per its procedures, it would require recovery of the

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<sup>2</sup> The Board is unable to determine which items constitute monthly expenses.

overpayment by deducting \$738.43 from appellant's continuing compensation payments every 28 days beginning April 20, 2024.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of FECA<sup>3</sup> 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.<sup>4</sup> Section 8116 of FECA defines the limitations on the right to receive compensation benefits.<sup>5</sup> 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.

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.<sup>6</sup> 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.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$29,880.23 for the period October 1, 2018 through July 15, 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.

In its March 5, 2024 decision, OWCP found that an overpayment of compensation was created for the period October 1, 2018 through July 15, 2023. The overpayment was based on the evidence received from SSA with respect to its age-related retirement benefits paid to appellant. A claimant cannot receive both FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.<sup>8</sup> The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service during the period October 1, 2018 through July 15, 2023, at the same time appellant received FECA wage-loss compensation. The Board therefore finds that fact of overpayment has been 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. The SSA provided appellant's

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8116.

<sup>6</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

<sup>8</sup> 5 U.S.C. § 8116(d)(2); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

SSA age-related retirement benefit rates with FERS, and without FERS, for specific periods commencing October 1, 2018 through July 15, 2023. In its August 10, 2023 preliminary overpayment determination, OWCP calculated the amount of overpayment by determining the difference between the SSA amount 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 \$29,880.23.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period October 1, 2018 through July 15, 2023, and finds that an overpayment of compensation in the amount of \$29,880.23 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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup>

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<sup>9</sup> 5 U.S.C. § 8129(a)-(b).

<sup>10</sup> A.C., Docket No. 18-1550 (issued February 21, 2019); see *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>11</sup> 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).

<sup>12</sup> *Id.* at § 10.437(a)(b).

<sup>13</sup> *Id.* at § 10.438(b).

## 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.<sup>14</sup> 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.<sup>15</sup> To establish that repayment of the overpayment would defeat the purpose of FECA, appellant must show that she requires substantially all of her income, as well as her spouse's income,<sup>16</sup> to meet current ordinary and necessary living expenses and that their assets do not exceed the established limit as determined by OWCP procedures.<sup>17</sup>

In its preliminary overpayment determination dated August 10, 2023, it explained the importance of providing the completed Form OWCP-20 and financial information. OWCP advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant completed the Form OWCP-20, and following the hearing submitted financial documentation supporting some of her expenses. During the hearing, OWCP's hearing representative explained that appellant was required to document her spouse's income and expenses. Appellant however failed to submit her husband's financial information and did not document all of her assets.<sup>18</sup> The Board finds that 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.<sup>19</sup>

Consequently, as appellant did not submit all of 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.<sup>20</sup>

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

<sup>15</sup> 5 U.S.C. § 8129.

<sup>16</sup> An individual's total income includes any funds which may reasonably be considered available for his or her use, regardless of the source. A spouse's income is considered available to the individual if the spouse was living in the household both at the time the overpayment was incurred and at the time waiver is considered. *Supra* note 11 at Chapter 6.400.4b(1) (September 2020).

<sup>17</sup> 20 C.F.R. § 10.436.

<sup>18</sup> An individual's liquid assets include, but are not limited to, cash on hand, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits. Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork. *Id.* at Chapter 6.400.4b(3)(a) and (b) (September 2020).

<sup>19</sup> 20 C.F.R. § 10.438.

<sup>20</sup> See *E.T.*, Docket No. 22-0234 (issued August 17, 2022); *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441(a) of OWCP's regulations 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.”<sup>21</sup>

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, OWCP 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.<sup>22</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$738.43 from appellant's continuing compensation payments every 28 days.

Appellant provided only a partially-completed Form OWCP-20 and did not provide the supporting financial documentation regarding her spouse's income and expenses. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>23</sup>

When an individual fails to provide the requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>24</sup> The Board therefore finds that OWCP properly required recovery of the overpayment by deducting \$738.43 from appellant's continuing compensation payments every 28 days.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$29,880.23, for the period October 1, 2018 through July 15, 2023, 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 also finds

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<sup>21</sup> 20 C.F.R. at § 10.441(a); A.S., Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>22</sup> *Supra* note 11 at Chapter 6.500.8c(1) (September 2018).

<sup>23</sup> *Supra* note 16.

<sup>24</sup> *See J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002); *supra* note 11 at Chapter 6.300.2 (September 2018). *See also* 20 C.F.R. § 10.436; *supra* note 11 at Chapter 6.400.4a(2) (September 2020).

that OWCP properly denied waiver of recovery of the overpayment, and properly required recovery by deducting \$738.43 from appellant's continuing compensation payments every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 5 and 18, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 13, 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