

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

B.C., Executrix of the Estate of B.W., Appellant)	
)	
and)	Docket No. 22-0864
)	Issued: May 28, 2024
U.S. POSTAL SERVICE, MAIN POST OFFICE,)	
Columbus, OH, Employer)	
)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 25, 2022¹ appellant filed a timely appeal from an October 29, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)(f). One hundred and eighty days from October 29, 2021, the date of the OWCP decision, was April 27, 2022. Since using April 28, 2022, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is April 25, 2022, which renders the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$89,691.54 for which she was without fault, because she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation for the period February 1, 2015 through April 24, 2021, 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 \$300.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

This case has previously been before the Board on other issues.³ The facts of the case as presented in the prior decisions are herein incorporated by reference. The relevant facts are as follows.

On July 11, 1997 appellant, then a 47-year-old general clerk, filed an occupational disease claim (Form CA-2) alleging that on July 24, 1996 she first became aware that her bilateral thumb arthritis had been aggravated by her federal employment duties.⁴ She did not stop work. OWCP accepted the claim for aggravation of bilateral thumb arthritis and aggravation of bilateral wrist arthritis.⁵

Appellant received intermittent wage-loss compensation benefits on the supplemental rolls from October 14, 2008 until April 9, 2011. OWCP paid her wage-loss compensation on the periodic rolls for temporary total disability from April 10, 2011 to August 23, 2014. It paid appellant partial wage-loss compensation on the supplemental rolls from August 24, 2014 through September 7, 2015. Appellant received a schedule award for five percent permanent impairment of each upper extremity which was paid from September 8, 2015 through April 13, 2016. OWCP then again paid appellant wage-loss compensation on the supplemental rolls commencing April 14, 2016 until May 24, 2019, then from June 8 until July 19, 2019, from August 3, 2019 until January 17, 2020, then from February 1 until September 11, 2020. Appellant again received wage-loss compensation on the periodic rolls commencing September 13, 2020.

On May 4, 2021 OWCP received from SSA a completed Federal Employees Retirement System (FERS)/SSA dual benefit calculation form, which reported that appellant had been in receipt of SSA age-related retirement benefits since February 1, 2015. Beginning February 2015, appellant's monthly SSA rate with FERS was \$1,466.10; beginning March 2015, appellant's monthly SSA rate with FERS was \$1,466.10; beginning January 2016, appellant's monthly SSA rate with FERS was \$1,469.60; beginning December 2016, appellant's monthly SSA rate with

³ Docket No. 17-0823 (issued August 14, 2017); Docket No. 16-0588 (issued August 8, 2016).

⁴ The record indicates that appellant began work at the employing establishment on May 21, 1988.

⁵ This was assigned OWCP File No. xxxxxx485. On October 16, 1997 OWCP combined OWCP File Nos. xxxxxx728 and xxxxxx103, with xxxxxx485 as the master file. Under OWCP File No. xxxxxx103, it accepted the claim for temporary aggravation of bilateral wrist arthritis which has resolved. OWCP denied appellant's claim for aggravation of bilateral wrist arthritis under OWCP File No. xxxxxx728.

FERS was \$1,473.90; beginning January 2017, appellant's monthly SSA rate with FERS was \$1,477.90; beginning December 2017, appellant's monthly SSA rate with FERS was \$1,507.40; beginning December 2018, appellant's monthly SSA rate with FERS was \$1,549.60; beginning December 2019, appellant's monthly SSA rate with FERS was \$1,574.40; and beginning December 2020, appellant's monthly SSA rate with FERS was \$1,594.70.

Beginning February 2015, appellant's monthly SSA rate without FERS was \$309.40; beginning December 2015, appellant's monthly SSA rate without FERS was \$309.40; beginning December 2016, appellant's monthly SSA rate without FERS was \$310.30; beginning December 2017, appellant's monthly SSA rate without FERS was \$316.40; beginning December 2018, appellant's monthly SSA rate without FERS was \$325.30; beginning December 2019, appellant's SSA rate without FERS was \$330.40; and beginning December 2020, appellant's SSA rate without FERS was \$334.70.

On May 6, 2021 OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$89,691.54 because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period February 1, 2015 through April 24, 2021. It noted that SSA had confirmed that a portion of her SSA age-related retirement benefits were attributed to her federal service as an employee, which required an offset of her FECA compensation benefits through April 24, 2021 when her monthly compensation for wage loss was adjusted. OWCP explained that it had calculated the overpayment of compensation by determining the difference between appellant's SSA benefit rates with and without FERS for each period, and then multiplying that amount by the number of days in each period. The FERS offset overpayment calculation worksheet indicated that during the 28-day period from February 1 to 28, 2015 appellant received an overpayment of \$1,067.72; for the 306-day period from March 1 through December 31, 2015 an overpayment of \$11,668.69; for the 335-day period from January 1 through November 30, 2016 an overpayment of \$12,813.20; for the 31-day period from December 1 through 31, 2016 an overpayment of \$1,189.17; for the 334-day period from January 1 through November 30, 2017 an overpayment of \$12,856.43; for the 365-day period from December 1, 2017 through November 30, 2018 an overpayment of \$14,331.26; for the 365-day period December 1, 2018 through November 30, 2019 an overpayment of \$14,731.96; for the 366-day period from December 1, 2019 through November 30, 2020 an overpayment of \$15,010.02; and for the 145-day period from December 1, 2020 through April 24, 2021 an overpayment of \$6,023.08. Using these figures, OWCP calculated that the total overpayment amount was \$89,691.54. It found appellant 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. Additionally, it 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 record or request a precouplement hearing.

On May 15, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, and further requested waiver of recovery of the overpayment. Attached to her request was an unsigned Form OWCP-20, which listed her monthly income as \$6,158.70. She listed monthly expenses totaling \$4,700.68. Appellant reported assets of \$675.00 cash on hand and \$500.00 in a checking account balance, resulting in total assets of \$1,175.00. She did not provide documentation supporting her expenses.

Appellant testified that she was unaware that she was not entitled to receive Social Security and FECA benefits, and that she was not in a position to repay the overpayment.

Subsequent to the hearing appellant's then counsel submitted updated financial information including documentation. She listed monthly income as \$1,759.84 in FECA benefits and \$1,446.00 in SSA benefits, resulting in total income of \$3,205.84. Appellant listed monthly expenses and other financial obligations totaling \$3,507.53.

By decision dated October 29, 2021, OWCP issued a final overpayment decision, which determined that appellant received an overpayment of compensation in the amount of \$89,691.54 for the period February 1, 2015 through April 24, 2021 for which she was without fault. It found that the various monthly expenses she listed were not current and ordinary living expenses. OWCP concluded that appellant's monthly income of \$3,205.84 exceeded her allowed monthly expenses by \$624.45. Thus, it denied waiver of the overpayment and required recovery of the overpayment by deducting \$300.00 from her 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.⁶ 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.⁷

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.⁸ 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 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that fact of overpayment has been established.

In its October 29, 2021 decision, OWCP found that an overpayment of compensation was created during the period February 1, 2015 through April 24, 2021. The overpayment was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant. A claimant cannot receive both FECA compensation for wage loss and SSA age-related

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8116.

⁸ 20 C.F.R. § 10.421(d); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁹ FECA Bulletin No. 97-09 (issued February 3, 1997); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

retirement benefits attributable to federal service for the same period.¹⁰ The information provided by SSA indicated that appellant received age-related SSA retirement benefits that were attributable to federal service during the period February 1, 2015 through April 24, 2021. As noted, a claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service.¹¹ Thus, fact of overpayment is established.

The Board further finds, however, that period and amount of overpayment are not in posture for decision.

The Board notes that OWCP improperly calculated appellant's overpayment for the period September 8, 2015 through April 13, 2016. The evidence of record indicates that OWCP included this period during which appellant received a schedule award in its FERS offset calculation. OWCP's regulations provide that retirement benefits paid by the Office of Personnel Management or SSA can be paid concurrently with schedule award compensation under FECA without a deduction from FECA benefits.¹² Consequently, the SSA age-related retirement benefits appellant received during the period September 8, 2015 through April 13, 2016 were not dual benefits, and should not have been included in the overpayment calculation.

The Board further notes that OWCP's payment records indicate that appellant did not receive wage-loss compensation for the entire period in question.

On remand, OWCP shall determine the proper period and amount of the overpayment of compensation. It shall then issue a new preliminary overpayment determination with a Form OWCP-20, an overpayment recovery questionnaire, and instructions for appellant to provide supporting financial information. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹³

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation because she concurrently received SSA age-related retirement benefits while also receiving FECA benefits without appropriate offset. The Board further finds that the case is not in posture for decision with regard to the period and amount of the overpayment.

¹⁰ 5 U.S.C. § 8116(d)(2); *S.R.*, Docket No. 20-0818 (issued June 28, 2022); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

¹¹ 5 U.S.C. § 8116(d)(2); *D.B.*, Docket No. 20-0964 (issued May 10, 2021); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

¹² *D.B.*, *id.*; *see J.H.*, Docket No. 19-1887 (issued June 16, 2020); *K.C.*, Docket No. 19-1838 (issued May 1, 2020).

¹³ In light of the Board's disposition of Issue 1, Issues 2, and 3 are rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part, set aside in part, and this case is remanded for further proceedings consistent with this opinion of the Board.

Issued: May 28, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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