

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

V.H., widow of S.H. claiming on behalf of her five minor children, Appellant)	
)	
and)	Docket No. 21-0589
)	Issued: September 10, 2024
DEPARTMENT OF THE AIR FORCE, JOINT BASE SAN ANTONIO-RANDOLPH AIR FORCE BASE, San Antonio, TX, 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 March 7, 2021 appellant filed a timely appeal from a February 2, 2021 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.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$20,652.53, for the period September 10, 2015 through May 27, 2017, for which she was without fault, because she concurrently received FECA survivor benefits and Social Security Administration (SSA) survivor benefits on behalf of her five minor children, without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment;

¹ 5 U.S.C. § 8101 *et seq.*

and (3) whether OWCP properly deducted \$163.38 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On October 7, 2014 the employee, then a 33-year-old firefighter, filed an occupational disease claim (Form CA-2) alleging that he developed a respiratory infection, breathing problems, and headaches due to mold exposure. He noted that he first became aware of his condition on February 4, 2014, and realized its relation to his federal employment on September 12, 2014. OWCP accepted the claim for extrinsic asthma, other primary cardiomyopathies, congestive heart failure, and pulmonary eosinophilia. The employee died on September 9, 2015.

On October 2, 2015 appellant, the employee's widow, filed a claim for FECA survivor benefits (Form CA-5) on behalf of herself and her five minor children. She noted on the claim form that she and the employee married in 2002 and that she was married and living with the employee at the time of his death. Appellant noted that she had also applied for SSA survivor benefits. The amount of the SSA survivor benefit was estimated to be \$3,610.00. Appellant provided a copy of the employee's death certificate and the birth certificates for their minor children, C.H., A.H., K.H., E.H., and S.H.

OWCP awarded appellant FECA survivor benefits for herself as the employee's widow, and on behalf of their five minor children. The benefits were paid at the 75% augmented rate on the periodic rolls, effective September 20, 2015, with \$3,511.99 in net benefits paid every 28 days.²

On October 14, 2015 OWCP sent a dual benefits form to SSA to identify a potential overpayment. It requested that SSA report the benefit rates paid to appellant for herself and on behalf of her five minor children, with and without the Federal Employees Retirement System (FERS) offset. No response was received. OWCP sent a second dual benefits form to SSA on August 15, 2016.

In a September 1, 2016 response, SSA noted that the deceased employee was entitled only to disability benefits for the period June 2015 through August 2015. It further noted that appellant was a young surviving spouse and was "not entitled to benefits or [the employee's] income." SSA reported as of September 9, 2015, the SSA survivor benefit for each of the employee's five minor children was \$758.20 with FERS and \$77.40 without FERS; and as of December 2015, \$758.20 with FERS and \$77.40 without FERS.

Beginning August 21, 2016, OWCP deducted from appellant's periodic rolls payments in order to reflect a FERS offset for each minor child's survivor benefit under FECA, adjusting the net compensation payments every 28 days to \$2,183.30.

² The survivor benefits were allocated as follows: appellant received 45% or \$2,330.39, and each minor child received 6 percent, or \$236.32, for a total of 30 percent.

On September 14, 2016 OWCP informed appellant that she would no longer receive compensation benefits for her children as they received more monthly benefits from SSA than they were entitled to receive in FECA benefits.

On September 29, 2016 OWCP received a dual benefits form dated September 9, 2016, wherein SSA reported that the SSA benefit rates for each of the five minor children were as follows: beginning June 2015, \$2,093.70 with FERS and \$89.00 without FERS; and as of December 2015, \$2,165.70 with FERS and \$89.00 without FERS.

On December 7, 2016 OWCP contacted SSA to request clarification regarding the FERS/SSA offset, as the second offset form was based on the employees' disability benefits. SSA advised that the children were currently in receipt of \$758.20 SSA benefits as of September 15, 2014. SSA further advised that the form was based on the amount of primary insurance for disability not death, reflecting the \$2,093.70 amount was not valid, and the form dated September 1, 2016 provided the correct amounts.

On June 7, 2017 appellant informed OWCP that she remarried on May 16, 2017. OWCP terminated appellant's entitlement to receive survivor benefits as of May 30, 2017.

In a letter dated July 14, 2017, OWCP informed appellant that her children were entitled to 75 percent of the deceased employee's compensation minus the offset by receipt of SSA benefits. It also noted that SSA informed OWCP that the SSA offset for each child was \$680.80 monthly or \$628.43 every 28 days. Appellant was advised that the net payment every 28 days beginning June 25, 2017 for her children would be \$558.07 following the SSA offset.

On October 19, 2017 OWCP requested that SSA specify the amount of monthly benefits paid to appellant, for C.H., A.H., K.H., E.H., and S.H, with and without the FERS offset attributable to the employee's federal service.

In an April 24, 2018 SSA offset overpayment calculation worksheet, OWCP calculated that appellant had been overpaid \$20,652.53 from September 10, 2015 through May 27, 2017 as OWCP had failed to offset SSA survivor benefits from ongoing FECA survivor benefits with regard to appellant's minor children. It explained that net benefits had been paid in the amount of \$63,660.41, but should have been paid in the amount of \$43,007.88.

By notice dated April 24, 2018, OWCP advised appellant of its preliminary determination of an overpayment of compensation in the amount of \$20,652.53 for the period September 10, 2015 through May 27, 2017 as appellant concurrently received SSA survivor benefits and FECA survivor benefits on behalf of her minor children without an appropriate offset. It noted that it appeared that she was at fault in the creation of the overpayment as she accepted a payment she knew or reasonably knew was incorrect. OWCP provided an overpayment recovery questionnaire (Form OWCP-20) for information regarding her income, assets, and expenses. It also requested supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP further notified appellant that, within 30 days of the date of the letter, she could contest the overpayment and request final decision based on the record, or a preresoupment hearing.

On May 14, 2018 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. On a completed Form OWCP-20 dated May 11, 2018, she reported approximately \$11,524.00 in monthly income and \$14,485.00 in monthly expenses. Appellant also listed \$631,000.00 in bank accounts, stocks, and bonds. She provided financial documentation to support her reported assets, income, and expenses.

Following a preliminary review, by decision dated August 13, 2018, an OWCP hearing representative vacated the April 24, 2018 preliminary overpayment determination, finding that the case was not in posture for a hearing. The hearing representative noted that OWCP had not obtained SSA offset amounts for any period after November 30, 2016, and that OWCP had requested updated offset amounts from SSA on October 19, 2017, but no response was received. Thus, the hearing representative found that updated information was necessary in order to calculate an overpayment for the period which extends through May 27, 2017. The case was, therefore, remanded for OWCP to obtain from SSA the offset amounts for the period after November 2016.

On September 25, October 30, and November 5 and 15, 2018, and January 9, 2019 OWCP requested that SSA specify the rates of benefits payable to appellant for her surviving minor children, with and without the FERS offset attributable to the employee's federal service.

On January 14, 2019 OWCP received an updated dual benefits form from SSA dated January 8, 2019, advising that each of the five minor children were entitled to SSA benefits at varying amounts.

On February 13, 2019 OWCP requested that SSA specify the amount of monthly benefits paid to appellant and her five minor children with and without the FERS offset attributable to the employee's federal service.

On February 19, 2019 OWCP received a dual benefits form from SSA dated February 13, 2019 reporting the SSA benefit rates for each of the employee's five minor children with and without FERS as follows: beginning September 2015, \$758.20 with FERS and \$132.30 without FERS, as of December 2015, \$758.20 with FERS and \$132.30 without FERS, as of December 2016, \$760.40 with FERS and \$132.60 without FERS, as of December 2017, \$775.60 with FERS and \$135.30 without FERS, and as of December 2018, \$797.30 with FERS and \$139.10 without FERS.

By notice dated April 2, 2019, OWCP advised appellant of its preliminary determination of an overpayment of compensation in the amount of \$20,652.53 for the period September 10, 2015 through May 27, 2017 as appellant concurrently received SSA survivor benefits and FECA survivor benefits on behalf of her five minor children without an appropriate offset. It noted that for the period September 10, 2015 through August 2016 no offset was taken and for the period August 21, 2016 through May 27, 2017 a partial offset was taken. OWCP explained that for the period September 10 through 19, 2015 the net FECA benefit for the 5 dependents totaled \$773.65, however the offset amount was \$1,117.68, therefore the amount overpaid was \$773.65. For the period September 20, 2015 through February 6, 2016, the net FECA benefit was \$5,908.00, the actual offset was \$15,647.50, therefore the overpayment was \$5,908.00. For the period February 7 through March 5, 2016, the net FECA benefit was \$1,182.45, the actual offset was \$3,129.50, therefore the overpayment was \$1,182.45. For the period March 6 through April 2, 2016, the net

FECA benefit was \$1,186.35, the actual offset was \$3,129.50, therefore the overpayment was \$1,186.35. For the period April 3 through 30, 2016, the net FECA benefit was \$1,188.25, the actual offset was \$3,129.50, therefore the overpayment was \$1,188.25. For the period May 1, through August 20, 2016, no deduction for the offset was made therefore the amount of the overpayment was \$6,327.20. From August 21, 2016 through March 4, 2017, OWCP did deduct \$1,181.60 every 28 days, but the correct deduction was \$1,581.80 every 28 days, which resulted in an overpayment of \$2,801.40. During the period March 5, 2017 through May 27, 2017 the actual net deduction FECA made was \$3,555.42, but the offset should have been \$4,840.65, therefore the overpayment for this period was \$1,285.23. OWCP advised that the overpayment for the entire period totaled \$20,652.53. It found appellant at fault in the creation of the overpayment as she accepted a payment she knew or reasonably knew was incorrect. OWCP requested that appellant submit a completed 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 precouplement hearing.

On April 22, 2019 appellant requested a precouplement hearing before a representative of OWCP's Branch of Hearings and Review. She completed a Form OWCP-20 dated April 11, 2019. Appellant reported total monthly income of \$4,677.97³ and total monthly expenses of \$5,185.00. She also reported \$86.61 in assets. Appellant provided supporting financial documentation in support of her reported assets, income, and expenses. She disputed the fault finding, asserting that she had been misled by her claims examiner.

A precouplement hearing was held on August 16, 2019. Appellant again asserted that she was without fault in the creation of the overpayment. She provided testimony regarding her financial hardship and requested waiver of recovery of the overpayment. Appellant testified regarding the change in her financial circumstances since her divorce from her second husband. She related that she had used proceeds she had received following the employee's death to pay off the mortgage on her house. Appellant submitted additional financial documentation in support of her reported assets, income, and expenses.

By decision dated November 5, 2019, OWCP's hearing representative found that the case was not in posture for a decision as clarification was required regarding the calculation of the overpayment. She remanded the case to OWCP to provide appellant with a clear explanation as to the period of the overpayment and how it was calculated.

In an undated worksheet, OWCP calculated that appellant had been overpaid \$20,652.53 from September 10, 2015 through May 27, 2017 as OWCP had failed to offset SSA survivor benefits from ongoing FECA survivor benefits to appellant's minor children. It noted that for the period September 10, 2015 through August 20, 2016 appellant received \$16,565.90 in compensation when she was not entitled to receive any compensation, and for the period

³ This included approximately \$3,985.00 in SSA survivor benefits for her five children (\$797.00 per child) and \$692.00 in FECA survivor benefits for her children.

August 21, 2016 through May 27, 2017 she received \$15,913.25 in compensation when she was only entitled to receive \$11,826.62, resulting in an overpayment of \$20,652.53 ($16,565.90 + \$15,913.25 - \$11,826.62 = \$20,652.53$).

By notice dated November 5, 2020, OWCP advised appellant of its preliminary determination of an overpayment of compensation in the amount of \$20,652.53 for the period September 10, 2015 through May 27, 2017 as she concurrently received FECA survivor benefits and SSA survivor benefits on behalf of her five minor children, without an appropriate offset. It noted that for the period September 10, 2015 through August 2016 no offset had been taken and for the period August 21, 2016 through May 27, 2017 a partial offset had been taken. OWCP found appellant was without fault in the creation of the overpayment. It requested that appellant submit a completed Form OWCP-20 to determine a reasonable payment method and advised her that she could request waiver of recovery of the overpayment. OWCP 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, 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 evidence or a precoupment hearing. No response was received.

By decision dated February 2, 2021, OWCP finalized the November 5, 2020 preliminary determination, finding an overpayment of compensation in the amount of \$20,652.53 for the period September 10, 2015 through May 27, 2017. Appellant was found to be without fault in the creation of the overpayment, that waiver of recovery of the overpayment was not warranted, and that the overpayment would be recovered by deduction of \$163.38 from the continuing compensation payments for minor children until payment was made in full.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 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 duty.⁴

A FECA beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.⁵ Section 8116(d) of FECA requires that compensation benefits be reduced by the portion of SSA benefits based on age or death that are attributable to federal service.⁶

⁴ *Id.* at § 8102.

⁵ *See* 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

⁶ *Id.* at § 8116(d); *M.Y.*, Docket No. 18-0364 (issued August 16, 2018); *see N.R.*, Docket No. 12-1853 (issued June 10, 2013).

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$20,652.53 for the period September 10, 2015 through May 27, 2017, for which she was without fault.

The evidence of record indicates that, while appellant was receiving survivor benefits for herself and her five minor children under FECA, her minor children were concurrently receiving SSA survivor benefits based on the employee's federal service. A claimant cannot receive both compensation for survivor benefits concurrently under both FECA and SSA for the same period without an appropriate offset.⁷ The information provided by SSA supports their receipt of dual benefits. Consequently, the fact of overpayment has been established.⁸

With regard to the amount of the overpayment, the Board has reviewed OWCP's calculations and concludes that it properly determined that appellant's minor children received dual benefits totaling \$20,652.53 for this period. Thus, the Board finds that OWCP properly calculated that appellant was overpaid in the amount of \$20,652.53.

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.⁹ 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.¹⁰

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.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

⁷ *Id.*

⁸ See *M.S.*, Docket No. 20-0068 (issued May 14, 2021); *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

⁹ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; see *B.G.*, Docket No. 20-0541 (issued April 28, 2021); *A.F.*, *id.*

¹⁰ *B.G.*, *id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019); see *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹¹ 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).

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'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.¹³ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$20,652.53 overpayment of compensation.¹⁵

As OWCP found appellant without fault in the creation of the overpayment, waiver 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.¹⁶ Appellant, however, had the responsibility to provide the appropriate financial information to OWCP.¹⁷

In its November 5, 2020 preliminary determination, OWCP explained the importance of providing the completed overpayment questionnaire 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 if she failed to furnish the requested financial information within 30 days. Appellant, however, did not submit an updated Form OWCP-20 or provide any financial documentation supporting her assets, income, and expenses.¹⁸ As a result, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against

¹² *Id.* at § 10.437(a)(b).

¹³ *Id.* at § 10.438(a); *P.N.*, Docket No. 20-1159 (issued April 20, 2021); *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

¹⁴ *Id.* at 10.438(b).

¹⁵ *B.G.*, *supra* note 9; *A.C.*, *supra* note 10.

¹⁶ 20 C.F.R. § 10.436.

¹⁷ *Id.* at § 10.438; *see J.H.*, Docket No. 20-0218 (issued May 28, 2021); *N.J.*, Docket No. 19-1170 (issued January 10, 2020).

¹⁸ *B.G.*, *supra* note 9; *R.M.*, Docket No. 19-1570 (issued June 1, 2020).

equity and good conscience.¹⁹ The Board thus finds that OWCP, properly denied waiver of recovery of the overpayment.²⁰

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides 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 the error is discovered or her attention is called to the 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.²¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$163.38 from appellant's continuing compensation payments every 28 days.

OWCP provided a Form OWCP-20 to appellant with the November 5, 2020 preliminary overpayment determination. Appellant did not complete the Form OWCP-20 or provide any financial information to support that she was financially unable to repay the debt prior to the final February 2, 2021 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²² When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²³ The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.²⁴ The record reflects that during the pay period January 3 to 30, 2021 the net FECA compensation benefit received was in the amount of \$653.52, OWCP calculated that 25 percent of \$653.52 was \$163.38.

¹⁹ *B.G., id.; G.G.*, Docket No. 19-0684 (issued December 23, 2019).

²⁰ 20 C.F.R. § 10.438; *see R.G.*, Docket No. 21-0148 (issued June 7, 2021); *L.D.*, Docket No. 19-0606 (issued November 21, 2019).

²¹ *Id.* at § 10.441, *see B.G., supra* note 9; *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²² *Id.* at § 10.438. *See also A.F., supra* note 8.

²³ *J.A.*, Docket No. 19-1946 (issued July 13, 2020); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.3 (September 2020).

²⁴ *Id.* at Chapter 6.500.8c(1) (September 2018).

Accordingly, as appellant did not submit financial information as requested, the Board finds that OWCP properly required recovery by deducting \$163.38 from her continuing compensation payments every 28 days.²⁵

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$20,652.33 for the period September 10, 2015 through May 27, 2017, for which she was without fault, because she concurrently received FECA survivor benefits and SSA survivor benefits on behalf of her five minor children, without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery by deducting \$163.38 from appellant's continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 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

²⁵ See *C.B.*, Docket No. 24-0285 (issued April 24, 2024); *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).