

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

P.T., Appellant)	
)	
and)	Docket No. 24-0715
)	Issued: September 18, 2024
U.S. POSTAL SERVICE, BENT TREE POST)	
OFFICE, Dallas, TX, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 25, 2024 appellant, through counsel, filed a timely appeal from a June 10, 2024 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.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the June 10, 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 \$6,366.74, for the period November 1, 2022 through February 25, 2023, for which she was without fault, because she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.⁴ 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 September 2, 2004 appellant, then a 48-year-old customer service supervisor, filed a traumatic injury claim (Form CA-1) alleging that on August 2, 2004 she sustained a left knee injury when she pushed a wire cage loaded with magazines while in the performance of duty. On the reverse side of the form, appellant's supervisor listed appellant's retirement coverage as Federal Employees Retirement System (FERS). OWCP accepted the claim for chondromalacia of the patella and tricompartmental chondromalacia. On June 21, 2005 appellant underwent OWCP-approved left knee arthroscopy. She returned to modified duty on February 8, 2006. Appellant stopped work on December 7, 2006 and did not return. OWCP subsequently expanded the acceptance of appellant's conditions to include derangement of posterior horn of the left medial meniscus.⁵ OWCP paid appellant wage-loss compensation on the periodic rolls, effective June 8, 2008.

Appellant elected OPM retirement benefits, effective July 21, 2014.

On August 5, 2014 OWCP expanded the acceptance of appellant's conditions to include lumbar sprain, sprain of right lateral collateral ligament, and localized unspecified osteoarthritis, lower leg, right.

On July 6, 2018 OWCP informed appellant that section 8116(d)(2) of FECA (5 U.S.C. § 8116(d)(2)) requires that her continuing compensation benefits be reduced if she begins receiving SSA retirement benefits based on her age and federal service. It advised that because she was approaching her 62nd birthday they were notifying her of this requirement. OWCP further advised that failure to report receipt of retirement benefits to OWCP could result in an overpayment of compensation, which could be subject to recovery.

Appellant turned 62 years of age on July 21, 2018.

⁴ Docket No. 06-2143 (issued June 1, 2007).

⁵ Appellant underwent OWCP-authorized right knee patellofemoral replacement on April 25, 2008, and OWCP authorized left knee total arthroscopy on September 12, 2008.

On January 28 and April 29, 2022 OWCP provided SSA with a FERS/SSA dual benefits form. It requested appellant's SSA age-related retirement benefit rates with and without FERS. No response was received.

On January 9, 2023 OWCP provided SSA with a FERS/SSA dual benefits form for the period commencing January 1, 2015.

Effective February 26, 2023, 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 \$2,379.45.

On February 28, 2023 SSA completed the FERS/SSA dual benefits form, which reported that appellant had received SSA disability benefits from March 2005 through October 2022. Commencing November 2022, appellant received SSA benefits based on age. The form reported her SSA age-related retirement benefit rates with a FERS offset and without a FERS offset. Beginning November 2022, the SSA rate with FERS was \$2,304.50 and without FERS \$754.10; beginning December 2022, the SSA rate with FERS was \$2,504.90 and without FERS \$819.70.

In a FERS offset overpayment calculation worksheet dated May 30, 2023, OWCP used the information provided by SSA to calculate the 28-day FERS offset for the relevant periods. It found that, for the period November 1 through 30, 2022 appellant received an overpayment in the amount of \$1,533.36; and for the period December 1, 2022 through February 25, 2023 appellant received an overpayment in the amount of \$4,833.38. OWCP calculated a total overpayment in the amount of \$6,366.74.

In a preliminary overpayment determination dated June 20, 2023, OWCP informed appellant of its preliminary finding that she had received an overpayment of compensation in the amount of \$6,366.74 for the period November 1, 2022 through February 25, 2023 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable recovery method and advised her that she could request a waiver of the overpayment. It further requested that she provide financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income and expenses. Additionally, OWCP further 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.

On June 30, 2023 appellant requested a precoupment hearing before a representative of OWCP's Branch of Hearings and Review and waiver of recovery of the overpayment. Appellant also submitted a completed Form OWCP-20, wherein she reported monthly income of \$5,167.45 and monthly household expenses for herself and her husband, with whom she resided, of \$5,425.00, including \$1,200.00 for mortgage on a home she owned, \$500.00 for food, \$75.00 for clothing, \$650.00 in utilities, \$400.00 in automotive expenses, and \$2,600.00 in installment debt repayment. Appellant further identified assets totaling \$1,500.00 in a checking account.

A precoupment hearing was held on November 6, 2023.

Following the hearing, appellant submitted supporting financial documentation.

By decision dated June 10, 2024, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$6,366.74 for the period November 1, 2022 through February 25, 2023 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 as it was neither against equity and good conscience, nor would it defeat the purpose of FECA. OWCP found a monthly income of \$5,389.40, and allowed \$3,460.70 in monthly expenses, including \$1,200.39 for mortgage, \$300.00 for food, \$75.00 for clothing, \$451.05 in utilities, \$438.63 in automotive expenses, and \$995.63 in installment debt repayment. It required recovery of the \$6,366.74 overpayment by payment in full.

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.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 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.⁸ 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation, 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 June 10, 2024 decision, OWCP found that an overpayment of compensation was created for the period November 1, 2022 through February 25, 2023. 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 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).

⁹ FECA Bulletin No. 97-09 (issued February 3, 1997).

retirement benefits attributable to federal service for the same period.¹⁰ The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service during the period November 1, 2022 through February 25, 2023. Consequently, the fact of overpayment has been established.¹¹

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 November 1, 2022 through February 25, 2023. In its June 20, 2023 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 \$6,366.74.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period November 1, 2022 through February 25, 2023, and finds that an overpayment of compensation in the amount of \$6,366.74 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.¹² 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.¹³

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.¹⁴ 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

¹⁰ *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).

¹¹ *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

¹² 5 U.S.C. § 8129(a)-(b).

¹³ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁴ *Supra* note 8 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).

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.¹⁵

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.¹⁶

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.¹⁷ 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.¹⁸ 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.¹⁹

OWCP properly found that appellant's financial documentation supported total current monthly income of \$5,389.40, and total monthly expenses of only \$3,460.70. As appellant's monthly income exceeded her ordinary and necessary living expenses by more than \$50.00, OWCP found that she did not need substantially all of her income for ordinary and necessary living expenses.²⁰

Appellant also did not establish that she was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience. She did not provide any financial information to show that she would experience severe financial hardship in attempting to repay the debt or that she gave up a valuable right in reliance on her wage-loss compensation benefits. Appellant, therefore, did not establish that recovery of the overpayment was against equity and good conscience.²¹

¹⁵ *Id.* at § 10.437(a)(b).

¹⁶ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁷ *M.D.*, Docket No. 22-1391 (issued June 30, 2023); *see L.D.*, Docket No. 19-0606 (issued November 21, 2019); *R.B.*, Docket No. 15-0808 (issued October 26, 2015).

¹⁸ 5 U.S.C. § 8129.

¹⁹ *Supra* note 8 at § 10.436.

²⁰ *See W.W.*, Docket No. 22-0745 (issued November 7, 2022); *M.C.*, Docket No. 19-0699 (issued February 12, 2020).

²¹ *W.W., id.*; *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

As appellant failed to establish that recovery of the overpayment of compensation would either defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP did not abuse its discretion in denying waiver of recovery of the overpayment.²²

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$6,366.74, for the period November 1, 2022 through February 25, 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 Board further finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 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

²² *Supra* note 8 at § 10.437(a)(b).