

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

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<b>J.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0876</b>
	)	<b>Issued: September 26, 2024</b>
<b>U.S. POSTAL SERVICE, COLUMBUS- OAKLAND PARK BRANCH POST OFFICE, Columbus, OH, Employer</b>	)	
_____	)	

*Appearances:* *Case Submitted on the Record*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
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 August 28, 2024 appellant, through counsel, filed a timely appeal from a June 17, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the June 17, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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 \$31,277.07 for the period April 1, 2021 through November 4, 2023, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and Social Security Administration (SSA) age-related retirement benefits, 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 \$674.86 from appellant's continuing compensation payments every 28 days.

## **FACTUAL HISTORY**

On February 5, 2013 appellant, then a 57-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on January 9, 2013 she sustained a right shoulder strain when delivering her mounted mail route while in the performance of duty. She stopped work on January 30, 2013. Appellant's retirement coverage was listed as under the Federal Employees Retirement System (FERS). OWCP accepted sprain of the right shoulder, and subsequently expanded the acceptance of her claim to include sprain of the right shoulder and upper arm acromioclavicular (AC), adhesive capsulitis of the right shoulder, and disorder of the tendons of the right shoulder. It paid appellant wage-loss compensation on the supplemental rolls, effective February 24, 2013, on the periodic rolls, effective June 2, 2013, and pursuant to a loss of wage-earning capacity determination from June 27, 2015 through April 2, 2016.

On June 14, 2023 OWCP forwarded a FERS/SSA dual benefits form to SSA.

On July 12, 2023 OWCP received a completed FERS/SSA dual benefits form wherein SSA advised that appellant received SSA disability benefits, effective April 1, 2021. SSA explained that she became eligible for retirement benefits in April 2021, and prior to this period she received FECA wage-loss compensation. It reported appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset beginning April 2021. Beginning April 2021, the SSA rate with FERS was \$1,247.50 and without FERS was \$318.10. Beginning December 2021, the SSA rate with FERS was \$1,321.10 and without FERS was \$336.80. Beginning December 2022, the SSA rate with FERS was \$1,436.00 and without FERS was \$366.10.

On January 11, 2024 OWCP notified appellant of its preliminary overpayment determination that she received an overpayment of compensation in the amount of \$31,277.07, for the period April 1, 2021 through November 4, 2023, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset. It determined that she was without fault in the creation of the overpayment. OWCP advised that the effective date of appellant's entitlement to SSA benefits was April 1, 2021. It requested that she submit a completed overpayment recovery questionnaire (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 appellant provide supporting financial documentation including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records that support income and expenses. Additionally, it provided an overpayment action request form and further 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 precoupment hearing.

On March 3, 2024 appellant submitted an overpayment action request form dated February 28, 2024, requesting a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She noted that she contested the overpayment, requesting waiver of recovery of the overpayment.

Appellant submitted a completed Form OWCP-20 dated February 28, 2024, in which she reported total monthly income of \$5,782.78 and total monthly expenses of \$3,106.48. She further noted \$50.00 cash on hand and checking and savings account balances of zero.

On April 9, 2024 OWCP held a telephonic prerecoupment hearing. Appellant subsequently submitted supporting financial documentation.

By decision dated June 17, 2024, OWCP's hearing representative finalized the January 11, 2024 preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$31,277.07 for the period April 1, 2021 through November 4, 2023, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. She further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The hearing representative indicated that appellant provided documentation for her list of expenses. She required recovery of the overpayment by deducting \$674.86 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 or death of an employee resulting from personal injury sustained while in the performance of his or her duty.<sup>4</sup> 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.<sup>5</sup>

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 age-related retirement benefits 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>

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<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).

## **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$31,277.07, for the period April 1, 2021 through November 4, 2023, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset.

OWCP paid appellant FECA wage-loss compensation on the periodic rolls, effective June 6, 2013. It paid appellant SSA age-related retirement benefits beginning April 1, 2021. As noted, a claimant cannot concurrently receive 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 established that a portion of appellant's benefits were attributable to her federal service. Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.<sup>9</sup>

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. OWCP received documentation from SSA with respect to appellant's specific SSA age-related retirement benefits that were attributable to federal service. SSA provided appellant's SSA age-related retirement benefit rates with FERS and without FERS for the period beginning April 1, 2021. OWCP provided its calculations based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$31,277.07.

The Board has reviewed OWCP's calculation of dual benefits received by appellant and finds that an overpayment of compensation in the amount of \$31,277.07 was created.

## **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<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> An individual is deemed to meet current

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<sup>8</sup> 20 C.F.R. § 10.421(d); *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *S.M.*, *supra* note 6.

<sup>9</sup> *Id.*

<sup>10</sup> 5 U.S.C. § 8129.

<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).

ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>12</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>13</sup>

Section 10.438 of OWCP's regulations provides 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>14</sup>

### ANALYSIS -- ISSUE 2

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

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.<sup>15</sup>

Appellant submitted a completed Form OWCP-20, wherein she reported total monthly income of \$5,782.78 and total monthly expenses of \$3,179.41. She further noted \$50.00 on hand and checking and savings account balances of zero.

The Board finds that as appellant's total monthly income exceeds her total monthly expenses by more than \$50.00, she does not need substantially all of her monthly income to meet current and ordinary living expenses.

The Board further finds that appellant has not established that recovery of the overpayment would be against equity and good conscience, because it has not been shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt, or that a valuable right had been relinquished, or that a position had been changed for the worse in reliance on the payment, which created the overpayment.<sup>16</sup> Therefore, OWCP properly denied waiver of recovery of the overpayment.

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<sup>12</sup> *Id.* at Chapter 6.400.4.a(3); *see also N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

<sup>13</sup> 20 C.F.R. § 10.437(a)(b).

<sup>14</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>15</sup> 5 U.S.C. § 8129.

<sup>16</sup> *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

Because it has not been established that, recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP has not abused its discretion by denying waiver of recovery of the overpayment.

### **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 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>17</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$674.86 from appellant's continuing compensation payments every 28 days.

In determining whether appellant could repay the overpayment through \$674.86 deductions from continuing compensation payments, OWCP took into account her financial information as well as factors set forth in 20 C.F.R. § 10.441, and found that this method of recovery would minimize any resulting hardship, not necessarily eliminate it, while at the same time liquidating the debt in a reasonably prompt fashion.<sup>18</sup> OWCP gave due regard to the financial information provided on the overpayment recovery questionnaire, and found that her monthly income exceeded monthly expenses by more than \$50.00. Thus, the Board finds that it properly required recovery of the \$31,277.07 overpayment by deducting \$674.86 from appellant's continuing compensation payments every 28 days.<sup>19</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$31,277.07, for the period April 1, 2021 through November 4, 2023, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and

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<sup>17</sup> 20 C.F.R. § 10.441(a); A.S., Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>18</sup> See *L.F.*, Docket No. 15-0489 (issued May 11, 2015).

<sup>19</sup> See *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

properly required recovery of the overpayment by deducting \$674.86 from her continuing compensation payments every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 17, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 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