

² *Order Dismissing Appeal*, Docket No. 20-1530 (issued April 8, 2021), *Order Granting Petition for Reconsideration and Reinstating Appeal*, Docket No. 20-1530 (issued January 27, 2025).

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$25,365.65, for the period September 1, 2017 through May 25, 2019, 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 OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$1,550.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On March 7, 2013 appellant, then a 57-year-old information resource manager, filed a traumatic injury claim (Form CA-1) alleging that on January 25, 2013 she sustained neck and back injuries when she lifted computers, moved boxes, and assisted a team while in the performance of duty. She stopped work on January 29, 2013. OWCP accepted the claim for lumbar sprain. It subsequently expanded acceptance of appellant's claim to include displacement of cervical intervertebral disc without myelopathy, and brachial neuritis or radiculitis not otherwise specified.⁵ Appellant did not return to work. OWCP paid her wage-loss compensation on the supplemental rolls, effective April 22, 2013, and on the periodic rolls, effective September 22, 2013.

In an April 21, 2017 letter, 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.

On May 4, 2019 OWCP provided SSA with a FERS/SSA dual benefits form. It requested appellant's SSA age-related retirement benefits rates with and without FERS.

On May 4, 2019 SSA completed the FERS/SSA dual benefits form, which reported appellant's SSA age-related retirement benefits with and without FERS, commencing September 2017. Beginning September 2017, the SSA rate with FERS was \$1,693.80 and without

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that following the January 21, 2020 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.*

⁵ The case record establishes that appellant's retirement coverage is under the Federal Employees Retirement System (FERS).

FERS \$504.40. Beginning December 2017, the SSA rate with FERS was \$1,727.60 and without FERS \$516.50. Beginning December 2018, the SSA rate with FERS was \$1,776.00 and without FERS \$530.90.

In a FERS offset overpayment calculation worksheet dated May 22, 2019, OWCP used the information provided by SSA to calculate the 28-day FERS offset for the relevant periods. It found that, for the period September 1 through November 30, 2017, appellant received an overpayment in the amount of \$3,658.20; for the period December 1, 2017 through November 30, 2018, she received an overpayment of \$14,573.13; and for the period December 1, 2018 through May 25, 2019, appellant received an overpayment of \$7,224.32. OWCP added these amounts to calculate a total overpayment of \$25,365.65.

Effective May 26, 2019, 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 \$6,184.68.

On June 11, 2019 OWCP notified appellant of its preliminary overpayment determination that she received an overpayment in the amount of \$25,365.65, for the period September 1, 2017 through May 25, 2019, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It further determined that she was without fault in the creation of the overpayment. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20), and submit supporting financial documentation, including income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records to support her reported income and expenses. Additionally, it provided an overpayment action request form and 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 prerecoumpment hearing.

On July 12, 2019 appellant requested a prerecoumpment hearing before a representative of OWCP's Branch of Hearings and Review. She disagreed with the overpayment, contended that it occurred through no fault of her own, and requested waiver of the overpayment. Appellant did not submit a completed Form OWCP-20 or provide supporting financial documentation as requested.

A prerecoumpment hearing was held on November 7, 2019.

By decision dated January 21, 2020, OWCP's hearing representative finalized OWCP's preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$25,365.65, for the period September 1, 2017 through May 25, 2019, 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 appellant did not submit financial information as requested. The hearing representative required recovery of the overpayment by deducting \$1,550.00 every 28 days from appellant's continuing compensation payments.⁶

⁶ Effective January 5, 2020, appellant's net compensation every 28 days was \$6,352.91.

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.⁷ 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.⁸

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.⁹ 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount \$25,365.65 for the period September 1, 2017 through May 25, 2019, 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 January 21, 2020 decision, OWCP found that an overpayment of compensation was created for the period September 1, 2017 through May 25, 2019. 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 retirement benefits attributable to federal service for the same period.¹¹ The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service during the period September 1, 2017 through May 25, 2019. Consequently, the fact of overpayment has been established.¹²

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 September 2017. In its June 11, 2019 preliminary overpayment determination, OWCP calculated the amount of overpayment by determining the difference between the SSA rate with and without

⁷ 5 U.S.C. § 8102(a).

⁸ *Id.* at § 8116.

⁹ 20 C.F.R. § 10.421(d).

¹⁰ FECA Bulletin No. 97-09 (issued February 3, 1997).

¹¹ *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).

¹² *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

FERS for each period and multiplying the daily offset amount by the number of days in each period, to find a total overpayment of \$25,365.65.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period September 1, 2017 through May 25, 2019, and finds that an overpayment of compensation in the amount of \$25,365.65 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.¹³ 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.¹⁴

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.¹⁵ 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.¹⁶

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.¹⁷

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 recovery of the overpayment would defeat

¹³ 5 U.S.C. § 8129(a)-(b).

¹⁴ A.C., Docket No. 18-1550 (issued February 21, 2019); see *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁵ *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).

¹⁶ *Id.* at § 10.437(a)(b).

¹⁷ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

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

In its preliminary overpayment determination dated June 11, 2019, OWCP explained the importance of providing the completed Form OWCP-20 and supporting financial documentation, 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 of recovery of the overpayment if she failed to furnish the requested information within 30 days. Appellant, however, failed to submit a completed Form OWCP-20 and supporting financial documentation. 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.²⁰

Consequently, as appellant did not submit 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.²¹

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.²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$1,550.00 from appellant's continuing compensation payments, every 28 days.

As noted above, appellant did not provide the necessary financial information regarding her income, expenses, and assets prior to the final overpayment decision. When an individual fails

¹⁸ 5 U.S.C. § 8129.

¹⁹ *Supra* note 8 at § 10.436.

²⁰ *Supra* note 8 at § 10.438.

²¹ *See K.P.*, Docket No. 25-0040 (issued December 5, 2024); *E.T.*, Docket No. 22-0234 (issued August 17, 2022); *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

²² *Supra* note 8 at § 10.441(a); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²³

The Board, therefore, finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$1,550.00 every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$25,365.65, for the period September 1, 2017 through May 25, 2019, 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 further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$1,550.00 from appellant's continuing compensation payments, every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 30, 2025
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

²³ *E.A.*, Docket No. 24-0810 (issued September 26, 2024); *B.J.*, Docket No. 24-0599 (issued July 16, 2024); *C.B.*, Docket No. 24-0285 (issued April 24, 2024); *J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002).