

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

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C.L., Appellant )  
and ) Docket No. 21-0481  
U.S. POSTAL SERVICE, POST OFFICE ) Issued: May 12, 2023  
Merrifield, VA, Employer )  
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)

*Appearances:*

*Alan J. Shapiro, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 9, 2021 appellant, through counsel, filed a timely appeal from an October 22, 2020 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 over 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 an 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 October 22, 2020 decision, OWCP received additional evidence. 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 \$10,660.75 for the period July 7, 2018 through July 5, 2019, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits, without an appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

## **FACTUAL HISTORY**

On August 16, 2018 appellant, then a 70-year-old lobby clerk, filed a notice of recurrence (Form CA-2a) alleging that on June 20, 2018 she developed a left knee condition due to her previously accepted condition under OWCP File No. xxxxxx590. She explained that she had returned to work following her previous injury and had been working in a limited-duty assignment five days per week, eight hours per day since August 28, 2017.<sup>4</sup> Appellant noted that her work schedule subsequently increased to six days per week and that this required prolonged standing and walking, causing pain in her legs. OWCP assigned the present claim OWCP File No. xxxxxx285. She stopped work on June 20, 2018. An October 5, 2018 claim for compensation (Form CA-7) also noted appellant's retirement system coverage as FERS.

On June 27, 2019 OWCP accepted the present claim for a temporary aggravation of degenerative disease of the left knee.

On July 15, 2019 OWCP forwarded a FERS/SSA dual benefits form to SSA to obtain information regarding appellant's age-related retirement benefit rates with and without a FERS offset.

On July 16, 2019 OWCP paid appellant net wage-loss compensation on the supplemental rolls totaling \$42,563.60 for the period July 7, 2018 through July 5, 2019.

On December 30, 2019 OWCP received from SSA a completed FERS/SSA dual benefits form, which indicated that appellant had been in receipt of SSA age-related retirement benefits since December 2013. The form reported appellant's SSA age-related retirement benefit rates with and without a FERS offset. Beginning December 2017, the SSA rate with FERS was \$2,155.00 and without FERS was \$1,285.00; beginning December 2018, the SSA rate with FERS was \$2,215.50 and without FERS was \$1,321.50; and beginning January 2019, the SSA rate with FERS was \$2,223.50 and without FERS was \$1,321.50.

OWCP completed a FERS offset overpayment calculation worksheet on January 30, 2020. It calculated the overpayment amount by determining the daily FERS offset amount and multiplying that amount by the number of days in each period July 7, 2018 through July 5, 2019, resulting in a total overpayment amount of \$10,660.75. This form indicated that, from July 7 through November 30, 2018, appellant received an overpayment in the amount of \$4,216.15; from

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<sup>4</sup> Appellant has a previously accepted May 30, 1998 right knee injury due to walking on uneven terrain in the performance of duty under OWCP File No. xxxxxx590. Her retirement system coverage was noted on the notification of personnel action (PS Form 50) as Federal Employees Retirement System (FERS). OWCP administratively combined File Nos. xxxxxx590 and xxxxxx285, with the latter serving as the master file number.

December 1 through 31, 2018, she received an overpayment in the amount of \$913.65; and from January 1 through July 5, 2019, she received an overpayment in the amount of \$5,530.95.

On January 31, 2020 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$10,660.75 had been created because it had failed to reduce appellant's wage-loss compensation payments for the period July 7, 2018 through July 5, 2019, to offset her SSA age-related retirement benefits that were attributable to federal service. 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 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, pay slips, and other records to 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 prerecougment hearing.

On February 7, 2020 appellant requested a prerecougment hearing before a representative of OWCP's Branch of Hearings and Review, and indicated that she disagreed with OWCP's January 31, 2020 preliminary determination that an overpayment had occurred. She requested waiver of recovery of the overpayment.

Following a preliminary review, by decision dated April 13, 2020, OWCP's hearing representative vacated the January 31, 2020 decision, finding that the preliminary overpayment determination did not provide an adequate description of how appellant was overpaid.

On April 27, 2020 OWCP issued a second preliminary overpayment determination finding that an overpayment of compensation in the amount of \$10,660.75 had been created because it had failed to reduce appellant's wage-loss compensation payments for the period July 7, 2018 through July 5, 2019, to offset her SSA age-related retirement benefits that were attributable to federal service. It advised her that the receipt of age-related retirement benefits from SSA attributable to employment covered by FERS is a prohibited dual benefit and, therefore, compensation benefits must be offset by the amount of those benefits. It outlined its overpayment calculation and again determined that she was without fault in the creation of the overpayment. OWCP also requested that appellant submit a completed Form OWCP-20 with supporting documentation to determine a reasonable payment method and advised her that she could request a waiver of recovery of the overpayment.

On May 20, 2020 appellant requested a prerecougment hearing before a representative of OWCP 's Branch of Hearings and Review and requested waiver of recovery of the overpayment.

During a hearing conducted on August 11, 2020 appellant testified that her current income was \$2,059.00 in SSA age-related retirement benefits, and that she was not receiving any wage-loss compensation benefits. OWCP's hearing representative explained the need for her to complete and return Form OWCP-20 with supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and other records to support income and expenses.

On September 30, 2020 appellant submitted Form OWCP-20, listing total monthly income of \$2,059.00 and total monthly expenses of \$3,438.00. She attached documentation including a

\$130.68 per month automobile insurance payment, life insurance payments ranging from \$123.61 to \$128.72 per month, a health insurance premium of \$117.90 per month, a dental bill premium of \$107.12, a medical bill showing a balance of \$96.75, and miscellaneous medical expenses totaling \$673.39. Appellant reported no assets.

By decision dated October 22, 2020, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$10,660.75 for the period July 7, 2018 through July 5, 2019 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without an appropriate offset. The hearing representative found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, noting that she had not submitted sufficient financial documentation.

### **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>5</sup> Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.<sup>6</sup>

Section 10.421(d) of OWCP's implementing regulations requires that OWCP 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>7</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 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>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$10,660.75 for the period July 7, 2018 through July 5, 2019, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.<sup>9</sup> The evidence of record indicates that, during this period appellant was paid wage-loss compensation benefits under FECA, and she also received SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both compensation for wage-loss compensation benefits under FECA and

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<sup>5</sup> *Supra* note 1 at § 8102(a).

<sup>6</sup> *Id.* at § 8116(a).

<sup>7</sup> 20 C.F.R. § 10.421(d); *P.L.*, Docket No. 20-0709 (issued March 18, 2021); *S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>8</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>9</sup> *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).

SSA age-related retirement benefits attributable to federal service for the same period.<sup>10</sup> The information provided by SSA establishes that appellant received SSA age-related retirement benefits that were attributable to federal service during the period July 7, 2018 through July 5, 2019. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided its rate with FERS and without FERS for specific periods from July 7, 2018 through July 5, 2019. OWCP provided its calculations for each relevant period based on the SSA worksheet and determined that appellant received an overpayment in the amount of \$10,660.75. No contrary evidence was received. The Board thus finds that appellant received prohibited dual benefits for the period July 7, 2018 through July 5, 2019, totaling \$10,660.75.

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

Section 8129 of FECA provides that adjustment or recovery by the United States may not be made when 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>11</sup> Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>12</sup>

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.<sup>13</sup>

Section 10.437 of OWCP's implementing regulations provides that 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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>14</sup>

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<sup>10</sup> 20 C.F.R. § 10.421(d); *see S.M., supra note 7; L.J., supra note 7.*

<sup>11</sup> 5 U.S.C. § 8129(b).

<sup>12</sup> 20 C.F.R. § 10.436.

<sup>13</sup> *Id.*; OWCP's procedures provide that the assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

<sup>14</sup> 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

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.<sup>15</sup> 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>16</sup> Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery of the overpayment, and no further request for waiver shall be considered until the requested information is furnished.<sup>17</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>18</sup> Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.<sup>19</sup>

In its preliminary overpayment determinations dated January 31 and April 27, 2020, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and other records to support income and expenses. It advised her that it would deny waiver if she failed to furnish the requested financial information in a timely manner. During the course of the hearing conducted on August 11, 2020, appellant was again instructed to complete and return Form OWCP-20 and include supporting documentation, as the form alone would be insufficient to substantiate her request for waiver of the overpayment.

On September 30, 2020 appellant submitted Form OWCP-20, reporting her total monthly income of \$2,059.00 and total monthly expenses of \$3,438.00. However, she attached documentation of automobile insurance payments of \$130.68 per month, life insurance premiums ranging from \$123.61 to \$128.72 per month, and health insurance premiums of \$117.90 per month, a dental bill premium of \$107.12, a medical bill showing a balance of \$96.75, and miscellaneous medical expenses totaling \$673.39. OWCP, therefore, did not submit sufficient financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.<sup>20</sup>

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<sup>15</sup> *Id.* at 10.438(a).

<sup>16</sup> *Id.*; M.S., Docket No. 18-0740 (issued February 4, 2019).

<sup>17</sup> *Id.* at § 10.438(b); see G.S., Docket No. 20-1580 (issued March 19, 2021).

<sup>18</sup> See J.R., Docket No. 17-0181 (issued August 12, 2020); L.S., 59 ECAB 350 (2008).

<sup>19</sup> 20 C.F.R. § 10.438; V.B., Docket No. 20-0976 (issued January 26, 2021).

<sup>20</sup> E.M., Docket No. 19-0857 (issued December 31, 2019).

Consequently, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>21</sup>

**CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$10,660.75, for which she was without fault, for the period July 7, 2018 through July 5, 2019, 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 October 22, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 12, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>21</sup> The Board's jurisdiction over recovery of an overpayment is limited to those cases where OWCP seeks recovery from continuing compensation under FECA. 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018). As appellant is no longer in receipt of wage-loss compensation, the Board lacks jurisdiction over OWCP's recovery of the overpayment. *L.C.*, Docket No. 19-1094 (issued February 25, 2020); *D.R.*, 59 ECAB 148 (2007).