

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

This case has previously been before the Board.³ 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 February 3, 2005 appellant, then a 61-year-old modified window clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 31, 2005 she developed post-traumatic stress disorder (PTSD) when she was robbed at gunpoint while in the performance of duty. OWCP accepted her claim for PTSD. Appellant stopped work on May 11, 2006. OWCP paid her wage-loss compensation on the periodic rolls, effective August 6, 2006.

On December 14, 2006 OWCP received a Request for Withdrawal of Application from SSA form dated November 30, 2006. Appellant explained that her reason for withdrawing her application was because her SSA benefits would be deducted from her workers' compensation benefits. She noted that she chose not to receive any benefits from SSA and would repay the benefits she had received for October through November 2006. Appellant submitted a receipt from SSA of a payment that she had made on November 30, 2006 in the amount of \$1,730.00.

In a letter dated August 9, 2007, C.M., an employing establishment injury compensation specialist, informed OWCP that appellant had been approved for retirement, effective August 31, 2007. She requested that OWCP provide appellant with an election form.

Appellant completed Forms CA-1032 dated December 4, 2006, November 25, 2007, January 7, 2008, December 3, 2009, December 11, 2010, January 9 and December 3, 2012, December 12, 2013, January 25 and November 30, 2015, December 20, 2016, and December 5, 2017. She responded "Yes" indicating that she received retirement benefits from SSA as part of an annuity for federal service.

On October 16, 2018 OWCP forwarded a Federal Employees Retirement System (FERS)/SSA dual benefits form to SSA requesting information from SSA regarding appellant's potential receipt of dual benefits.

On October 22, 2018 OWCP received a completed FERS/SSA dual benefits form from SSA. The form indicated that appellant received SSA age-related retirement benefits as of September 2006 and provided SSA age-related benefit rates with FERS offset from September 1, 2006 through December 2017. Beginning September 2006, the SSA rate with FERS was \$865.50 and without FERS was \$63.00. Beginning December 2006, the SSA rate with FERS was \$894.00 and without FERS was \$65.00. Beginning January 2007, the SSA rate with FERS was \$905.50 and without FERS was \$65.00. Beginning December 2007, the SSA rate with

³ *Order Denying Request for Oral Argument*, Docket No. 19-0713 (issued July 17, 2020); Docket No. 19-0713 (issued October 20, 2020).

FERS was \$926.40 and without FERS was \$66.50. Beginning December 2008, the SSA rate with FERS was \$980.00 and without FERS was \$70.30. Beginning December 2011, the SSA rate with FERS was \$1,015.30 and without FERS was \$72.70. Beginning December 2012, the SSA rate with FERS was \$1,032.50 and without FERS was \$73.90. Beginning December 2013, the SSA rate with FERS was \$1,048.00 and without FERS was \$75.00. Beginning December 2014, the SSA rate with FERS was \$1,065.80 and without FERS was \$76.30. Beginning December 2016, the SSA rate with FERS was \$1,068.90 and without FERS was \$76.40. Beginning December 2017, the SSA rate with FERS was \$1,090.30 and without FERS was \$77.90.

In a preliminary overpayment determination dated November 2, 2018, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$136,711.48, for the period September 1, 2006 through October 13, 2018, because it had failed to reduce her wage-loss compensation benefits by the portion of her SSA age-related retirement benefits that were attributable to her federal service without an appropriate offset.

By decision dated December 14, 2018, OWCP finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$136,711.48, for the period September 1, 2006 through October 13, 2018 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without an appropriate offset. It also found that she was without fault in the creation of the overpayment but denied waiver of recovery of the overpayment.

Appellant appealed to the Board.⁴ By decision dated October 20, 2020, the Board found that OWCP had established the fact of overpayment as she had concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset. However, the Board also found that the case was not in posture for decision regarding the amount of the overpayment because the evidence of record was unclear as to when appellant began to receive SSA age-related retirement benefits. The case was remanded for OWCP to consult with the Office of Personnel Management (OPM) and SSA to determine the exact amount of the overpayment of compensation and the correct dates during which the overpayment occurred.

On November 17, 2020 OWCP provided SSA with a FERS/SSA dual benefits form. The form requested that an SSA representative verify the correct start date of appellant's SSA retirement payments, taking any returned payments into account. It attached a copy of the November 30, 2006 Request for Withdrawal of Application, wherein she indicated that she was withdrawing her application for SSA benefits and a receipt from SSA of a payment that she had submitted.

On December 1, 2020 SSA responded only that appellant's date of entitlement was September 2006.

⁴ Appellant requested oral argument. By order dated July 17, 2020, the Board denied her request for oral argument. *Order Denying Request for Oral Argument*, Docket No. 19-0713 (issued July 17, 2020).

On December 16, 2020 OWCP again provided SSA with a FERS/SSA dual benefits form. The form requested that an SSA representative verify the correct start date of appellant's SSA retirement payments, taking any returned payments into account. It attached a copy of the November 30, 2006 Request for Withdrawal of Application, wherein appellant indicated that she was withdrawing her application for SSA benefits and a receipt from SSA of a payment that she had submitted.

On January 26, 2021 OWCP received a completed FERS/SSA dual benefits form from SSA. The form indicated that appellant received SSA age-related retirement benefits as of September 2006 and provided SSA age-related benefit rates with FERS offset from September 2006 through December 2020. Beginning September 2006, the SSA rate with FERS was \$865.00 and without FERS was \$1.40. Beginning December 2006, the SSA rate with FERS was \$894.00 and without FERS was \$1.40. Beginning January 2007, the SSA rate with FERS was \$905.00 and without FERS was \$1.40. Beginning December 2007, the SSA rate with FERS was \$926.00 and without FERS was \$1.40. Beginning October 2008, the SSA rate with FERS was \$926.40 and without FERS was \$1.40. Beginning December 2008, the SSA rate with FERS was \$979.50 and without FERS was \$1.50. Beginning December 2009, the SSA rate with FERS was \$979.50 and without FERS was \$1.50. Beginning December 2010, the SSA rate with FERS was \$979.50 and without FERS was \$1.50. Beginning December 2011, the SSA rate with FERS was \$1,014.90 and without FERS was \$1.50. Beginning January 2012, the SSA rate with FERS was \$1,267.90 and without FERS was \$1.50. Beginning December 2012, the SSA rate with FERS was \$1,288.90 and without FERS was \$1.50. Beginning December 2013, the SSA rate with FERS was \$1,308.90 and without FERS was \$1.50. Beginning December 2014, the SSA rate with FERS was \$1,330.90 and without FERS was \$1.50. Beginning December 2015, the SSA rate with FERS was \$1,330.90 and without FERS was \$1.50. Beginning December 2016, the SSA rate with FERS was \$1,335.00 and without FERS was \$1.50. Beginning December 2017, the SSA rate with FERS was \$1,361.00 and without FERS was \$1.50. Beginning December 2018, the SSA rate with FERS was \$1,399.50 and without FERS was \$1.50. Beginning December 2019, the SSA rate with FERS was \$1,421.60 and without FERS was \$1.50. Beginning December 2020, the SSA rate with FERS was \$1,440.50 and without FERS was \$1.50.

In a preliminary overpayment determination dated January 28, 2021, OWCP notified appellant of its preliminary finding that she had received an overpayment of compensation in the amount of \$170,058.72 for the period September 1, 2006 through February 28, 2019, because it had failed to reduce her wage-loss compensation benefits by the portion of her SSA benefits that were attributable to federal service without an appropriate offset. It determined that she was without fault in the creation of the overpayment. The decision indicated that the overpayment

amount was based on the revised calculations received from SSA on January 26, 2021 and included a computation of overpayment form.⁵

OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20), to determine a reasonable repayment 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 and canceled checks, pay slips, and any other records that support income and expenses. Additionally, OWCP notified appellant that within 30 days of the date of the letter she could request a teleconference, a final decision based on the written evidence, or a prerecoupment hearing. No response was received.

By decision dated March 3, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$170,058.72, for the period September 1, 2006 through February 28, 2019, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without appropriate offset. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because she had not completed and returned the Form OWCP-20. The final overpayment decision indicated that the

⁵ From December 1, 2007 through February 28, 2019, OWCP determined that for the period December 1, 2007 through September 30, 2008, appellant received an overpayment of \$9,296.80; for the period October 1 through November 30, 2008, appellant received an overpayment of \$1,859.96; for the period December 1, 2008 through November 30, 2011, appellant received an overpayment of \$35,304.73; for the period December 1, through 31, 2011, appellant received an overpayment of \$1,035.67; for the period January 1 through November 30, 2012, appellant received an overpayment amount of \$13,986.07; for the period December 1, 2012 through November 30, 2013, appellant received an overpayment of \$15,491.24; for the period December 1, 2013 through November 30, 2014, appellant received an overpayment of \$15,731.90; for the period December 1, 2014 through November 30, 2016, appellant received an overpayment of \$32,037.08; for the period December 1, 2016 through November 30, 2017, appellant received an overpayment of \$16,045.96; for the period December 1, 2017 through October 13, 2018, appellant received an overpayment of \$14,207.52; for the period October 14 through November 30, 2018, appellant received an overpayment of \$2,151.30; and for the period December 1, 2018 through February 28, 2019, appellant received an overpayment of \$4,147.91. OWCP determined that the overpayment amount was \$174,748.69. OWCP thereafter applied credits for two periods (\$1,602.04 for the period October 14 through November 30, 2018, and \$3,087.93 for the period December 1, 2018 through February 28, 2019), during which OWCP previously had applied offsets. OWCP determined that the total overpayment amount was \$170,058.72.

overpayment amount was based on the revised calculations received from SSA on January 26, 2021 and included a computation of overpayment form.⁶

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.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 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.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 benefits and federal retirement concurrently is a prohibited dual benefit.¹⁰

⁶ For September 1, 2006 through February 28, 2019, OWCP determined that for the period September 1, 2006 through November 30, 2006, appellant received an overpayment of \$2,590.80; for the period December 1 through 31, 2006, appellant received an overpayment of \$912.22; for the period January 1 through November 30, 2007, appellant received an overpayment of \$9,949.53; for the period December 1, 2007 through September 30, 2008, appellant received an overpayment of \$9,296.80; for the period October 1 through November 30, 2008, appellant received an overpayment of \$1,859.96; for the period December 1, 2008 through November 30, 2011, appellant received an overpayment of \$35,304.73; for the period December 1, through 31, 2011, appellant received an overpayment of \$1,035.67; for the period January 1 through November 30, 2012, appellant received an overpayment amount of \$13,986.07; for the period December 1, 2012 through November 30, 2013, appellant received an overpayment of \$15,491.24; for the period December 1, 2013 through November 30, 2014, appellant received an overpayment of \$15,731.90; for the period December 1, 2014 through November 30, 2016, appellant received an overpayment of \$32,037.08; for the period December 1, 2016 through November 30, 2017, appellant received an overpayment of \$16,045.96; for the period December 1, 2017 through October 13, 2018, appellant received an overpayment of \$14,207.52; for the period October 14 through November 30, 2018, appellant received an overpayment of \$2,151.30; and for the period December 1, 2018 through February 28, 2019, appellant received an overpayment of \$4,147.91. OWCP determined that the overpayment amount was \$174,748.69. OWCP thereafter applied credits for two periods (\$1,602.04 for the period October 14 through November 30, 2018, and \$3,087.93 for the period December 1, 2018 through February 28, 2019), during which OWCP previously had applied offsets. OWCP determined that the total overpayment amount was \$170,058.72.

⁷ 5 U.S.C. § 8102(a).

⁸ *Id.* at § 8116.

⁹ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

¹⁰ 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 previously found in its October 20, 2020 decision that appellant received an overpayment of compensation, for which she was without fault. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.¹¹

The Board finds that this case is not in posture for decision regarding the period and amount of the overpayment.

On remand, from the Board's prior decision, OWCP provided SSA with another FERS/SSA dual benefits form and requested that SSA verify the correct start date of appellant's SSA age-related retirement benefit payments, taking any returned payments into account. It attached a copy of the November 30, 2006 Request for Withdrawal of Application, wherein she indicated that she was withdrawing her application for SSA benefits and a receipt from SSA documenting a payment that she had submitted. In response, SSA indicated that appellant's entitlement to SSA age-related retirement benefits began in September 2006. It provided a completed FERS/SSA dual benefits form dated January 26, 2021, which listed her SSA age-related retirement benefit rates with and without a FERS offset for the period September 2006 through December 2020. However, SSA did not explain the impact of appellant's November 30, 2006 Request for Withdrawal of Application, nor did it indicate whether any returned payments had been accounted for. Furthermore, the evidence of record shows conflicting amounts regarding appellant's monthly SSA age-related retirement benefit rates with and without the FERS offset. On October 22, 2018 SSA provided a completed FERS/SSA dual benefits form that contained monthly SSA age-related retirement benefit rates beginning September 2006 that both included and excluded her FERS contributions. However, on January 26, 2021 OWCP received another completed FERS/SSA dual benefits calculation form, which contained different amounts for the SSA rate with and without FERS. The form also contained corresponding monthly SSA benefits through December 2020, instead of October 2018.

As the case record remains unclear as to how OWCP determined the period and amount of the overpayment, the Board is unable to adequately review this aspect of the case.¹²

The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated.¹³

The case must therefore be remanded for OWCP to obtain clarification from OPM and SSA regarding whether appellant's November 30, 2006 Request for Withdrawal of Application affected her receipt of SSA age-related retirement benefits and whether any returned payments were accounted for. It shall then have SSA verify her SSA-age-related retirement benefit rates with and without FERS in light of this clarification and explain any discrepancies in the reported

¹¹ *T.C.*, Docket No. 21-0612 (issued December 2, 2021); *T.W.*, Docket No. 20-0836 (issued July 21, 2021); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

¹² *See L.D.*, Docket 20-1344 (issued March 9, 2023). *See also S.H.*, Docket No. 20-1189 (issued January 27, 2021); *see also E.T.*, Docket No. 19-1046 (issued December 31, 2019).

¹³ *See J.M.*, Docket No. 18-1505 (issued June 21, 2019); *Teresa A. Ripley*, 56 ECAB 528 (2005).

amounts. OWCP shall then determine the correct period of the overpayment, recalculate the amount of the overpayment, and issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, and instructions for appellant to provide supporting financial information. After this and other such further development as deemed necessary, it shall issue a *de novo* decision.¹⁴

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. The Board further finds that the case is not in posture for decision with respect to the amount and period of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: May 8, 2023
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

¹⁴ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.