

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

H.S., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
U.S. CITIZENSHIP & IMMIGRATION)
SERVICES, CALIFORNIA SERVICE CENTER,)
Laguna Niguel, CA, Employer)
_____)

**Docket No. 22-1040
Issued: May 12, 2023**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On July 2, 2022 appellant filed a timely appeal from a June 13, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$91,093.21, for the period June 1, 2013 through July 17, 2021, 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.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 13, 2005 appellant then a 58-year-old assistant, filed an occupational disease claim (Form CA-2) alleging that she developed basilar joint arthritis in both hands due to factors of her federal employment. She noted that she first became aware of her condition on January 28, 1999 and first realized its relation to her federal employment on April 7, 2005. The record reveals that appellant's retirement system was FERS and Federal Insurance Contributions Act (FICA). OWCP accepted her claim for aggravation of bilateral thumb basilar joint arthritis. It paid appellant wage-loss compensation on the periodic rolls effective May 14, 2006.

On June 17, 2021 OWCP forwarded a Federal Employees Retirement System (FERS)/SSA dual benefits form to SSA.

On July 22, 2021 OWCP received a completed FERS/SSA dual benefits form from SSA wherein SSA advised that appellant received SSA benefits for the period June 2013 through December 2020. SSA reported her SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from June 2013 through December 2020. Beginning June 2013, the SSA rate with FERS was \$924.80 and without FERS was \$41.10. Beginning December 2013, the SSA rate with FERS was \$938.60 and without FERS was \$41.70. Beginning December 2014 and December 2015, the SSA rate with FERS was \$954.50 and without FERS was \$42.40. Beginning December 2016, the SSA rate with FERS was \$957.30 and without FERS was \$42.50. Beginning December 2017, the SSA rate with FERS was \$976.40 and without FERS was \$43.30. Beginning December 2018, the SSA rate with FERS was \$1,003.70 and without FERS was \$44.50. Beginning December 2019, the SSA rate with FERS was \$1,019.70 and without FERS was \$45.20. Beginning December 2020, the SSA rate with FERS was \$1,032.90 and without FERS was \$45.70.

On July 23, 2021 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's SSA offset overpayment from June 1, 2013 through July 17, 2021 and computed a total overpayment amount of \$91,093.21.

On July 23, 2021 OWCP notified appellant of its preliminary overpayment determination that she received an overpayment of compensation in the amount of \$91,093.21, for the period June 1, 2013 through July 17, 2021, because she received FECA wage-loss compensation benefits and SSA age-related retirement benefits that were partially based on credits earned while working in the Federal Government, and this constituted a prohibited dual benefit. 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 payment 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, canceled checks, pay slips, and any other records that support income and expenses. Additionally, OWCP provided an overpayment action request form and further 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 prerecoupment hearing.

On August 15, 2021 appellant requested a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review. She noted that she contested the overpayment, and requested waiver of recovery of the overpayment because she was found to be without fault. Appellant asserted that the overpayment was due to incorrect information provided by OWCP and that she had already spent the funds.

Appellant completed a Form OWCP-20 dated August 15, 2021 and attached financial information including credit card statements, bank statements, and a federal tax return for 2020.

By decision dated October 14, 2021, OWCP's hearing representative performed a preliminary review, and determined that the case was not in posture for a hearing. The hearing representative noted that OWCP advised appellant of the amounts determined to be SSA offset amounts; however, it did not explain the overpayment calculations or provide worksheets used as the basis of the overpayment. The hearing representative set aside the July 23, 2021 decision, remanded the case to OWCP, and instructed it to reissue an overpayment decision that demonstrates its calculations and clearly explains how those calculations were determined.

On November 2, 2021 OWCP notified appellant of its preliminary overpayment determination that she received an overpayment of compensation in the amount of \$91,093.21, for the periods June 1, 2013 through July 17, 2021, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset, and this constituted a prohibited dual benefit. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed Form OWCP-20 to determine a reasonable payment 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, canceled checks, pay slips, and any other records that support income and expenses. Additionally, OWCP provided an overpayment action request form and further 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 prerecoumment hearing.

On November 22, 2021 appellant requested a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review. She noted that she disagreed with the preliminary overpayment determination, and requested waiver of recovery of the overpayment because she was found to be without fault. Appellant asserted that the overpayment occurred because OWCP provided incorrect information, and she relied on their income determination to make monetary decisions. She indicated that she required all of her current income to meet her ordinary and necessary living expenses.

In a Form OWCP-20 dated November 22, 2021, appellant reported that her total monthly income of included \$1,032.00 from SSA, \$472.00 from OWCP and Thrift Savings Plan (TSP), and \$249.00 from dividends and interest, resulting in total monthly income of \$1,753.00. She reported expenses totaling \$3,587.00. Appellant indicated monthly expenses of \$627.00 for rent or mortgage, \$500.00 for food, \$200.00 for clothing, \$250.00 for utilities, and other miscellaneous expenses of \$1,350.00. She noted monthly installment debt of \$660.00. Appellant further noted cash on hand of zero dollars, a checking account balance of \$21,632.00, a savings account balance of \$100,707.00, and stocks and bonds of \$104,532.00. She attached

financial information including bank statements from 2021, real property tax bill from 2021 through 2022, retirement account statements from 2021, and a federal tax return for 2020.

On March 17, 2022 OWCP held a telephonic prerecoumpment hearing. The hearing representative advised appellant that evidence in support of the expenses was necessary and informed her that she could submit the necessary information after the hearing. The record was held open for 30 days for submission of additional financial evidence. OWCP did not receive any further evidence.

By decision dated June 13, 2022, a second OWCP hearing representative finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$91,093.21 for the period June 1, 2013 through July 17, 2021, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. OWCP further found that she 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. It required recovery of the overpayment by payment in monthly installments of \$800.00.

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.² 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.³

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.⁴ 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.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$91,093.21, for the period June 1, 2013 through July 17, 2021,

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116.

⁴ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁵ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 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.

OWCP paid appellant FECA wage-loss compensation on the periodic rolls beginning May 14, 2006. Appellant received SSA age-related retirement benefits beginning June 1, 2013. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.⁶ Accordingly, the Board finds that fact of overpayment has been established.⁷

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 its rate with FERS and without FERS for the specific period June 1, 2013 through July 17, 2021. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$91,093.21. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling of \$91,093.21 for the period June 1, 2013 through July 17, 2021.

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.⁸

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.⁹ An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁰

⁶ *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁷ *Id.*

⁸ 5 U.S.C. § 8129.

⁹ 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).

¹⁰ *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *id.* at Chapter 6.400.4.a(3).

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.¹¹

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.¹²

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.¹³

Evidence in the case record shows that appellant received benefits of \$1,032.00 from SSA, \$472.00 from OWCP and TSP, and \$249.00 from dividends and interest, resulting in total monthly income of \$1,753.00. She reported expenses of \$627.00 for rent or mortgage, \$500.00 for food, \$200.00 for clothing, \$250.00 for utilities, other expenses of \$1,350.00, and monthly installment debt of \$660.00.

Appellant further noted cash on hand of zero dollars, a checking account balance of \$21,632.00, a savings account balance of \$100,707.00, and stocks and bonds of \$104,532.00. The Board finds that appellant's assets exceed the allotted amounts and therefore she is not entitled to waiver of the recovery of the overpayment.¹⁴

Accordingly, OWCP properly denied waiver of recovery of the overpayment.

With respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits.¹⁵ As OWCP requested that appellant submit the overpayment in monthly installments, the Board does not have jurisdiction over the method of recovery of the overpayment in this case.¹⁶

¹¹ 20 C.F.R. § 10.437(a)(b).

¹² *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹³ 5 U.S.C. § 8129.

¹⁴ *Supra* note 13.

¹⁵ *L.L.*, Docket No. 19-0097 (issued March 20, 2020); *A.B.*, Docket No. 18-0915 (issued October 24, 2018).

¹⁶ *See id.*; *Miguel A. Muniz*, 54 ECAB 217 (2002); *Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$91,093.21, for the period June 1, 2013 through July 17, 2021, 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.

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2022 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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board