

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

A.V., Appellant)	
)	
and)	Docket No. 22-1234
)	Issued: May 4, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Tamarac, FL, Employer)	
)	

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 August 8, 2022 appellant filed a timely appeal from a July 12, 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 over the merits of this case.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$32,678.20, for the period May 1, 2017 through March 27, 2021, for which she was without fault, because she concurrently received FECA wage-

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the July 12, 2022 decision and on appeal, 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.*

loss compensation 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 \$678.34 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On November 16, 1995 appellant, then a 47-seven-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 14, 1995 she slipped on a patron's driveway and fell while in the performance of duty. OWCP accepted the claim for bursitis, right hip; swelling of the limb, right; enthesopathy of hip region, right; osteoarthritis unspecified pelvis/thigh right; chronic osteomyelitis, pelvic region and thigh, right; and other post-procedural status, right. The record reflects that OWCP paid appellant wage-loss compensation on the periodic rolls commencing June 16, 2002.

A notification of personnel action (PS Form 50) dated October 14, 1997 noted appellant's retirement plan as Federal Employees Retirement System (FERS).

On December 31, 2020 OWCP requested FERS offset information from the SSA. In February 2021, the SSA responded that the claimant had been receiving dual benefits since May 2017.³

On February 26, 2021 SSA completed the FERS/SSA dual benefits form and provided appellant's monthly benefits with and without FERS beginning May 2017. It indicated that: beginning May 2017 appellant's SSA rate with FERS was \$1,595.80 and without FERS was \$940.80; beginning December 2017 her SSA rate with FERS was \$1,627.70 and without FERS was \$959.60; beginning January 2018 her SSA rate with FERS was \$1,664.70 and without FERS was \$981.40; beginning December 2018 her SSA rate with FERS was \$1,711.30 and without FERS was \$1,008.90; beginning December 2019 her SSA rate with FERS was \$1,738.60 and without FERS was \$1,025.00; and beginning December 2020 her SSA rate with FERS was \$1,761.20 and without FERS was \$1,038.30.

By letter dated March 25, 2021, OWCP advised appellant that her compensation would be offset based upon the portion of her SSA benefits attributable to her FERS retirement.

By preliminary overpayment determination dated March 26, 2021, OWCP advised appellant that she had been overpaid \$32,678.20 because she received SSA age-related retirement benefits for the period May 1, 2017 through March 27, 2021, while also receiving FECA wage-loss compensation benefits. It also advised her that she was without fault in the matter. OWCP provided appellant with a computation of overpayment calculation which showed that for the period May 1, 2017 through November 30, 2017, appellant received an overpayment of \$4,621.02; for the period December 1 through 31, 2017, appellant received an overpayment of \$682.79; for

³ OWCP previously had requested FERS offset information from the SSA on January 11 and November 20, 2017, but did not receive a response from SSA. It also requested FERS offset information from the SSA on March 28 and April 18, 2019, and on May 28, 2019, SSA responded that appellant had been receiving dual benefits since May 2017, but no further action was taken.

the period January 1 through November 30, 2018, appellant received an overpayment of \$7,523.83; for the period December 1, 2018 through November 30, 2019, appellant received an overpayment of \$8,451.97; for the period December 1, 2019 through November 30, 2020, appellant received an overpayment of \$8,610.28; and for the period December 1, 2020 through March 27, 2021, appellant received an overpayment of \$2,788.32. 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 and 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 March 31, 2021 appellant requested a prerecoupment hearing before an OWCP representative.

Appellant completed a Form OWCP-20 on March 31, 2021. She listed her income and expenses and submitted some supporting financial documentation. Appellant indicated that her monthly Social Security income was \$1,760.50 and her FECA income was \$3,171.43 for total income of \$4,931.13. She noted a checking account balance of \$4,900.00 and savings of \$21,000.00, for total assets of \$25,900.00.

Following a preliminary review on July 27, 2021, an OWCP hearing representative determined that the case was not in posture for decision as the evidence of record was insufficient to establish appellant's retirement system plan as no Forms SF-50 were of record. On July 29, 2021 OWCP reissued its preliminary overpayment determination finding that appellant had received an overpayment during the period May 1, 2017 through March 27, 2021 in the amount of \$32,678.20 because appellant had been receiving SSA age-related retirement benefits during that time period without appropriate offset.

On August 7, 2021 appellant again requested a prerecoupment hearing. She also submitted an overpayment recovery questionnaire on August 7, 2021. Appellant listed her Social Security income as \$1,740.50. She also listed expenses of \$1,155.27 for rent or mortgage, \$750.00 for food, \$17.00 for clothing, \$78.07.00 for utilities, 70.69 for other expenses. Appellant noted that she had a \$9,328.53 bank loan with a \$269.63 payment, and supplemental insurance with a monthly payment of \$118.92; car insurance in the amount of \$103.67 per month; credit card monthly payment of \$35.00; doctor's bill of \$344.50 and \$40.09; veterinary bill of \$117.00; supplemental medicine bill of \$70.00; a monthly gasoline bill of \$35.00; car expenses of \$42.99; and a Medicare deductible of \$17.00 and a co-payment for medicine of \$2.50.

A prerecoupment hearing was held on December 17, 2021. By decision dated July 12, 2022, the hearing representative determined that OWCP properly determined the fact and amount of the overpayment and that appellant was without fault. With regard to waiver, he noted that appellant indicated that she had combined monthly income of \$4,700.84, consisting of \$1,760.50 monthly from SSA and \$2,939.34 monthly from OWCP. The hearing representative determined that her monthly expenses were approximately \$3,157.52. He calculated that appellant had

available monthly funds of \$1,543.32. The hearing representative also noted that she indicated that she had \$25,900.00 in checking and savings accounts. He determined that appellant was not entitled to a waiver as her monthly discretionary income exceeded \$50.00 and her assets exceeded the resource base. The hearing representative followed minimum collection guidelines and ordered repayment by deducting \$678.34 from her 28-day net compensation benefits.

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.⁴ 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.⁵

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.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$32,678.20, for the period May 1, 2017 through March 27, 2021, 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 wage-loss compensation due to her accepted November 14, 1995 employment injury. The evidence of record indicates that beginning May 1, 2017, while she was receiving wage-loss compensation benefits under FECA, appellant also was receiving SSA age-related retirement benefits that were attributable to her federal service without an appropriate offset. A claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁸ Consequently, the Board finds that fact of overpayment has been established.⁹

⁴ 5 U.S.C. § 8102.

⁵ *Id.* at § 8116.

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

⁷ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁸ *M.R.*, Docket No. 20-0427 (issued October 30, 2020). *See also N.B., id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁹ *See K.H.*, Docket No. 18-0171 (issued August 2, 2018).

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 a dual benefits form from SSA with respect to appellant's SSA age-related retirement benefits attributable to federal service. SSA provided its rates with FERS and without FERS for specific periods from May 1, 2017 through March 27, 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 \$32,678.20. The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period May 1, 2017 through March 27, 2021, and finds that an overpayment of compensation in the amount of \$32,678.20 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.¹⁰ 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.¹¹

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.¹² 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.¹³

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.¹⁴

¹⁰ 5 U.S.C. § 8129.

¹¹ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); see *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹² 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).

¹³ *Id.* at § 10.437(a)(b).

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

ANALYSIS -- ISSUE 2

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

The fact that OWCP may have been negligent in the creation of the overpayment does not entitle appellant to waiver of recovery of the overpayment.¹⁵ 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.¹⁶ 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.¹⁷

The Board finds that OWCP properly determined that appellant did not require substantially all of her income to meet ordinary living expenses. Based upon appellant's prerecoumpment hearing before an OWCP hearing representative, overpayment recovery form and the record, the hearing representative found that appellant had combined monthly income of \$4,700.84, consisting of \$1,760.50 monthly from SSA and \$2,939.34 monthly from OWCP, and monthly expenses of \$3,157.52, which resulted in available monthly funds of \$1,543.32. The hearing representative also found that appellant had \$25,900.00 in checking and savings accounts. As appellant's monthly income exceeded her ordinary and necessary living expenses by more than \$50.00, she did not need substantially all of her income for ordinary and necessary living expenses.¹⁸ Appellant's assets also exceeded the allowable asset base.

Additionally, the evidence of record does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant did not submit any evidence that she had relied upon the incorrect payments to her detriment or that she would experience severe financial hardship attempting to repay the debt.¹⁹ Consequently, OWCP properly denied waiver of recovery of the overpayment.

¹⁵ See *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *R.B.*, Docket No. 15-0808 (issued October 26, 2015).

¹⁶ *Supra* note 12 at § 10.436.

¹⁷ *Id.*

¹⁸ *J.C.*, Docket No. 19-0122 (issued June 11, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); see also *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

¹⁹ 20 C.F.R. § 10.437.

LEGAL PRECEDENT - ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.²⁰

Section 10.441 of Title 20 of the Code of Federal Regulations provides that if an overpayment of compensation has been made to one entitled to future payments, proper adjustment shall be made by decreasing subsequent 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."²¹ When an individual fails to provide the requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$678.34 from appellant's continuing compensation payments every 28 days.

The OWCP hearing representative indicated that minimum repayment guidelines required recovery of the overpayment by deducting \$678.34 from appellant's compensation payments every 28 days. The Board finds that OWCP took into consideration the factors set forth in section 10.441 and found that this method of recovery would minimize any resulting hardship on appellant. Therefore, the Board finds that OWCP properly required recovery of the overpayment by deducting \$678.34 from appellant's compensation payments every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$32,678.20, for the period May 1, 2017 through March 27, 2021, for which she was without fault, 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 and properly required recovery of the overpayment by deducting \$678.34 from appellant's continuing compensation payments every 28 days.

²⁰ *R.W.*, Docket No. 19-0451 (issued August 7, 2019); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Albert Pinero*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

²¹ 20 C.F.R. § 10.441; *see A.F.*, Docket No. 19-0054 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

²² *R.O.*, Docket No. 18-0076 (issued August 3, 2018); *Gail M. Roe*, 47 ECAB 268 (1995). At the time of the September 7, 2021 final overpayment determination, OWCP paid appellant \$2,545.88 in FECA wage-loss compensation every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 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