

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

R.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Portland, ME, Employer**

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**Docket No. 12-1383
Issued: December 28, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 11, 2012 appellant filed a timely appeal of a May 30, 2012 Office of Workers' Compensation Programs' (OWCP) merit decision. 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 the case.

ISSUES

The issues are: (1) whether appellant received an overpayment of \$13,419.62 from May 1, 2006 to September 24, 2011 because he concurrently received FECA and Social Security Administration (SSA) benefits without an appropriate retirement benefit offset; (2) whether appellant was without fault in the creation of the overpayment; and (3) whether the overpayment should be recovered by withholding \$250.00 from appellant's continuing compensation payment every 28 days.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

Appellant, a 55-year-old mail handler, filed a traumatic injury claim alleging that on October 8, 1996 he injured his right hand in the performance of duty, OWCP assigned File No. xxxxxx185. He filed a second claim for a right hand and wrist injury on April 9, 1997, OWCP assigned File No. xxxxxx143. OWCP accepted the April 9, 1997 claim for right wrist sprain, right carpal tunnel syndrome and surgical release on February 2, 1998. Appellant filed a third right upper extremity injury claim on April 1, 1999, OWCP assigned File No. xxxxxx149.² OWCP accepted the April 1, 1999 claim for wrist sprain, lesion of the ulnar nerve, contusion of the shoulder and depressive disorder. On May 12, 2010 OWCP accepted the additional condition of severe osteoarthritis of the right shoulder.

On May 19, 1999 appellant filed an occupational disease claim alleging that he developed stress due to factors of his federal employment, OWCP assigned File No. xxxxxx197. OWCP accepted the May 1999 claim for reflex sympathetic dystrophy, depressive disorder, reflux esophagitis and lesion of the right ulnar nerve. File No. xxxxxx197 serves as the master file of the combined claims.

The employing establishment offered appellant a modified mail handler position on December 14, 1999. He returned to work on December 16, 1999.

Appellant filed a claim for left index finger injury on December 16, 1999. He requested compensation for leave without pay beginning May 8, 2000. OWCP accepted the December 1999 claim for radial collateral ligament tear on June 1, 2000.

On November 7, 2005 OWCP granted appellant a schedule award for 61 percent impairment of the right upper extremity, less 50 percent paid under File No. xxxxxx149. The period of the schedule award was from October 30, 2005 through June 27, 2006.

Appellant completed EN1032 forms on November 14, 2006, November 24, 2007, November 15, 2008 and November 9, 2009 and stated that he had not received any benefits from SSA as part of an annuity under the Federal Employees' Retirement System.

Appellant received compensation on the periodic rolls from February 14 through March 13, 2010.

By decision dated March 22, 2010, OWCP granted appellant a schedule award for seven percent impairment of his left upper extremity. The period of this award ran from March 14 through August 13, 2010.

OWCP entered appellant on the periodic rolls on August 19 through September 25, 2010. It noted that appellant's compensation was terminated under File No. xxxxxx149 and reinstated in File No. xxxxxx197 as his schedule award had expired on August 13, 2010.

² Appellant filed a claim for left shoulder pain on July 3, 1999. OWCP denied this claim on November 4, 1999 and November 20, 2000.

Appellant completed a Form EN1032 on November 7, 2010 and indicated that he was not receiving benefits from SSA as part of an annuity for federal service.

In a dual benefit calculations, the SSA stated that appellant was entitled to disability from February 2001 through April 2006 and that he became entitled to retirement benefits effective May 2006.

In a letter dated October 4, 2011, OWCP informed appellant that he had been receiving SSA benefits due to his age since May 1, 2006. It advised him that the portion of his SSA benefits which were attributed to his federal service required an offset of his FECA benefits in accordance with 20 C.F.R. § 10.421(d). The SSA stated that appellant's current monthly benefit amount was \$1,826.00 and that if his federal service was not included in his social security computation he would be entitled to \$1,612.00. OWCP found that appellant's federal service had increased his monthly SSA payment by \$214.00 and that this amount must be offset against his compensation benefits.

Appellant completed a Form CA-1032 on November 7, 2011 and stated that he did not receive benefits from SSA as part of an annuity for federal sservice.

On November 25, 2011 OWCP made a preliminary determination that appellant had received an overpayment of compensation in the amount of \$13,419.62 for the period May 1, 2006 through September 24, 2011 because he received retirement benefits from SSA while also receiving wage-loss compensation under FECA. OWCP found that appellant was at fault in the creation of the overpayment. It noted that SSA reported on May 1, 2006 that appellant began receiving SSA retirement benefits based upon his federal service. OWCP further found that he failed to report these benefits on the EN1032 forms he completed from 2007 through 2011.

Appellant requested a prerecoupment hearing before an OWCP hearing representative on November 28, 2011. He testified at the oral hearing on March 12, 2012. Appellant stated that he received SSA benefits and OWCP benefits for the same period of time. However, he stated that his SSA benefits were related to his lower extremities while OWCP benefits were paid for his upper extremities. Appellant stated that he did not realize that he was being overpaid.

Appellant completed an overpayment recovery questionnaire on February 4, 2012. He listed his monthly household income as \$4,557.28. Appellant listed his total monthly expenses as \$4,255.48. He stated that he had a checking account balance of \$295.00, a savings account balance of \$50.00 and other personal property and funds of \$8,000.00. Appellant concluded that his income exceeded his expenses by \$301.80 a month.

By decision dated May 30, 2012, OWCP's hearing representative found that appellant received an overpayment of compensation in the amount of \$13,419.62 during the period May 1, 2006 through September 24, 2011 as he received both OWCP benefits and SSA benefits. He noted that appellant failed to report SSA benefits to OWCP on the CA-1032 forms that he completed and found that appellant was not without fault in the creation of the overpayment. The hearing representative reviewed the financial information and determined that the overpayment should be recovered by repayment of \$250.00 every 28 days from appellant's continuing compensation benefits.

LEGAL PRECEDENT -- ISSUE 1

Section 8116(d) of FECA requires that compensation benefits be reduced by the portion of SSA benefits based on age or death that are attributable to federal service and that, if an employee receives SSA benefits based on federal service, his or her compensation benefits shall be reduced by the amount of SSA benefits attributable to his or her federal service.³

OWCP procedures provide that, while SSA benefits are payable concurrently with FECA benefits, the following restrictions apply: in disability cases, FECA benefits will be reduced by SSA benefits paid on the basis of age and attributable to the employee's federal service.⁴ The offset of FECA benefits by SSA benefits attributable to employment under FERS is calculated as follows: where a claimant has received SSA benefits, OWCP will obtain information from SSA on the amount of the claimant's benefits beginning with the date of eligibility to FECA benefits. SSA will provide the actual amount of SSA benefits received by the claimant/beneficiary. It will also provide a hypothetical SSA benefit computed without the FERS covered earnings. OWCP will then deduct the hypothetical benefit from the actual benefit to determine the amount of benefits which are attributable to federal service and that amount will be deducted from FECA benefit to obtain the amount of compensation payable.⁵

Schedule awards, payable under 5 U.S.C. § 8107 for the permanent loss or loss of use of specified members, organs or functions of the body, are the only FECA monetary compensation benefits payable concurrently with an Office of Personnel Management annuity.⁶ "There are general exceptions to the dual benefits deduction. The two major ones are: (1) schedule awards, as with CSRS retirement benefits, FERS retirement benefits paid by OPM or SSA can be paid concurrently with a schedule award, without any deduction from FECA benefits..."⁷

ANALYSIS -- ISSUE 1

The record establishes that appellant received SSA benefits attributable to his federal employment under FERS from May 2006 through September 24, 2011. Appellant also received FECA disability compensation for overlapping periods. SSA records provided the offset calculations for the entire period from May 1, 2006 through September 24, 2011 in the amount of \$13,419.62. As appellant is not entitled to receive both FECA disability benefits and that portion of his SSA benefits attributable to his federal employment, OWCP properly determined that an

³ 5 U.S.C. § 8116(d). *See D.S.*, Docket No. 12-689 (issued October 10, 2012); *G.B.*, Docket No. 11-1568 (issued February 15, 2012); *see also Janet K. George (Angelos George)*, 54 ECAB 201 (2002).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits* Chapter 2.1000.4(a) (February 1995); Chapter 2.1000.4(e)(2) (February 1995); Chapter 2.1000.11 (February 1995); OWCP does not require an election between FECA benefits and SSA benefits except when they are attributable to the employee's federal service. *See also R.C.*, Docket No. 09-2131 (issued April 2, 2010).

⁵ FECA Bulletin No. 97-09 (issued February 3, 1997). Retirement benefits paid by OPM or SSA can be paid concurrently with a schedule award without any deduction from FECA benefits.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits* Chapter 2.1000.6b (February 1995).

⁷ FECA Bulletin No. 97-09 (issued February 3, 1997).

overpayment in compensation was created.⁸ However, the Board finds that OWCP improperly calculated the period and amount of the overpayment.

OWCP determined that appellant received dual benefits from SSA and OWCP from May 1, 2006 through September 24, 2011. It did not exempt the period May 1, 2006 through August 13, 2010 during which appellant was not receiving FECA disability benefits, but was instead receiving schedule awards for right upper extremity impairment. Appellant received two schedule awards during the period covered by OWCP's finding of overpayment, the November 7, 2007 schedule award from October 30, 2005 through June 27, 2006 overlapping the overpayment period May 1 through June 27, 2006 and the March 22, 2010 schedule award from March 14 through August 13, 2010, overlapping the period of overpayment through the entirety of those days.

As noted above, under FECA and OWCP's procedures, retirement benefits paid by OPM or SSA can be paid concurrently with a schedule award, without any deduction from FECA benefits.⁹ In this case, OWCP considered the periods during which appellant was receiving schedule awards as periods of dual benefits in calculating the period and amount of the overpayment. On remand, OWCP should recalculate the period and amount of the overpayment and issue a *de novo* decision regarding the overpayment received by appellant due to dual SSA and FECA disability benefits without including the periods during which he received schedule awards.

CONCLUSION

The Board finds that an overpayment of compensation was created. However, OWCP improperly calculated the period and amount of the overpayment and that the case must be remanded for a *de novo* decision.¹⁰

⁸ *D.S., supra* note 3.

⁹ FECA Bulletin No. 97-09 (issued February 3, 1997).

¹⁰ In view of the disposition of the case and to avoid piecemeal adjudication, the Board will not adjudicate Issues 2 and 3, regarding fault and repayment of the overpayment, on this appeal.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 30, 2012 is affirmed in part regarding fact of overpayment. The decision is set aside in part and remanded for further development consistent with this decision of the Board.

Issued: December 28, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board