



operating dropped into a hole. On January 8, 2001 OWCP accepted a herniated disc. The record indicates that appellant began receiving wage-loss compensation for total disability on the periodic rolls. By decision dated March 6, 2006, OWCP denied a claim for a consequential emotional condition.

On August 1, 2013 OWCP sent appellant an EN1032 form requesting information as to employment, dependents, and receipt of other federal benefits. In a memorandum of telephone call (Form CA-110) dated August 5, 2013, it indicated that he was unsure as to whether he was under the Federal Employees' Retirement System (FERS) for the purposes of completing the EN1032 form. On August 13, 2013 the employing establishment stated that it had no records with respect to appellant's retirement. Appellant submitted an August 4, 2013 EN1032 form and did not respond to a question as to receipt of Social Security Administration (SSA) benefits as part of an annuity for federal service.

In a letter dated August 22, 2013, OWCP requested that appellant provide any information regarding retirement benefits and SSA benefits. By Form CA-110 dated November 13, 2013, it stated that he was covered under FERS, according to the employing establishment. OWCP requested that the SSA provide information regarding receipt of SSA benefits.

On May 9, 2014 OWCP received a response from SSA indicating that the effective date was April 2013, with the SSA rate with FERS at \$1,433.60, and without FERS \$1,122.40. As of December 2013, the SSA rate with FERS was \$1,455.10 and without FERS \$1,139.40. The record contains an OWCP "FERS Offset Calculation" worksheet dated May 13, 2014. The worksheet finds an overpayment of \$2,503.28 from April 1 to November 30, 2013, and \$1,602.78 from December 1, 2013 to May 4, 2014.

By letter dated June 11, 2014, OWCP made a preliminary determination that an overpayment of \$4,106.06 was created between April 1, 2013 and May 4, 2014. It found that appellant was not at fault in creating the overpayment and requested that he complete the enclosed OWCP-20 overpayment questionnaire and submit supporting financial documents. No response was received.

In a decision dated July 18, 2014, OWCP finalized its determination that an overpayment of \$4,106.06 was created. It denied waiver as appellant had not submitted any relevant financial evidence to establish waiver of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 1**

5 U.S.C. § 8116(d)(2) requires that compensation benefits be reduced by "the amount of any such [SSA] benefits payable that are attributable to Federal service." OWCP's procedures provide that, while SSA benefits are payable concurrently with FECA benefits, in disability cases, FECA benefit will be reduced by SSA benefits paid on the basis of age and attributable to the employee's federal service.<sup>2</sup> OWCP obtains information from SSA on the amount of the claimant's benefits beginning with the date of eligibility to FECA benefits. SSA will provide the

---

<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4(e) (June 2009).

actual amount of SSA benefits received by the claimant/beneficiary. It will also provide a hypothetical SSA benefit computed without 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 benefits to obtain the amount of compensation payable.<sup>3</sup>

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

In the present case, the record indicates that appellant was receiving wage-loss compensation for total disability based on November 8, 2000 employment injury. Appellant retired, and according to the SSA, he was covered under FERS and began receiving retirement benefits as of April 1, 2013. As noted above, FECA benefits must be reduced by the many SSA benefits paid on the basis of age and attributable to the employee's federal service. For the periods of April 1 to November 30, 2013 and December 1, 2013 to May 4, 2014, appellant's FECA benefits had not been reduced. Therefore, an overpayment of compensation was created.

The SSA provided the SSA rate with FERS and the hypothetical SSA rate without FERS. The difference between the amounts must be deducted from FECA benefits, as noted above. Based on the information provided by the SSA, OWCP determined that for the period April 1, 2013 to May 4, 2014, \$4,106.06 should have been deducted from appellant's continuing wage-loss compensation. No contrary evidence was presented. The Board accordingly finds that the record supports a finding that an overpayment of \$4,106.06 was created in this case.

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

Section 8129(b) of FECA<sup>4</sup> provides: "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>5</sup> Since OWCP found appellant to be without fault in the creation of the overpayment, OWCP may only recover the overpayment if recovery would neither defeat the purpose of FECA nor be against equity and good conscience. The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of Title 20 of the Code of Federal Regulations.

According to section 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary "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

---

<sup>3</sup> See *R.C.*, Docket No. 14-1383 (issued December 5, 2014); citing FECA Bulletin No. 97-09 (issued February 3, 1997). See also *P.G.*, Docket No. 13-589 (issued July 9, 2013).

<sup>4</sup> *Supra* note 1.

<sup>5</sup> 5 U.S.C. § 8129(b).

determined by OWCP from data provided by the Bureau of Labor Statistics.<sup>6</sup> For waiver under the “defeat the purpose” of FECA standard, appellant must show that he needs substantially all of his current income to meet current ordinary and necessary living expenses, and that his assets do not exceed the resource base.<sup>7</sup>

Section 10.437 provides that recovery of an overpayment would be against equity and good conscience if: (a) the overpaid individual would experience severe financial hardship in attempting to repay the debt; (b) the 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.

With respect to the submission of financial evidence, OWCP regulations at 20 C.F.R. § 10.438 provide:

“(a) 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. This information will also be used to determine the repayment schedule, if necessary.

“(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.”

### ANALYSIS -- ISSUE 2

In the present case, OWCP sent appellant an OWCP-20 form and indicated that he needed to complete the form and submit supporting financial documentation. As noted above, it is his responsibility to submit the requested financial evidence. The record indicated that appellant did not submit any financial evidence prior to the July 18, 2014 OWCP final decision. Under OWCP regulations at 20 C.F.R. § 10.438, failure to submit the requested information in a timely manner shall result in denial of waiver. The Board finds that OWCP properly denied waiver in this case.

On appeal, appellant states that he contacted OWCP in July 2013 to make sure that there was not an overpayment. He stated that the overpayment should be waived. The Board notes that OWCP found that appellant was not at fault in creating the overpayment. Since he is not at fault, appellant could be eligible for waiver of the overpayment. However, OWCP cannot make a proper determination as to waiver unless he submits relevant financial evidence, which would allow OWCP to make a determination as to whether recovery would defeat the purpose of FECA

---

<sup>6</sup> OWCP procedures provide that the assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (June 2009).

<sup>7</sup> See *Robert E. Wenzholz*, 38 ECAB 311 (1986).

or be against equity and good conscience. It properly denied waiver in this case. Appellant may submit relevant evidence and request waiver, as indicated in 20 C.F.R. § 10.438(b).

**CONCLUSION**

The Board finds that an overpayment of \$4,106.06 was created during the period April 1, 2013 to May 4, 2014. OWCP properly denied waiver as appellant did not submit any relevant financial evidence.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 18, 2014 is affirmed.<sup>8</sup>

Issued: March 11, 2016  
Washington, DC

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>8</sup> James A. Haynes, Alternate Judge, participated in the original decision, but was no longer a member of the Board effective November 16, 2015.