

FACTUAL HISTORY

OWCP accepted that on May 31, 2000 appellant, then a 49-year-old mail carrier, sustained acute back strain, an aggravation of lumbar degenerative disc disease, and major depressive disorder in the performance of duty. He stopped work on June 1, 2000 and returned to part-time employment on August 14, 2000. Appellant stopped work again on December 15, 2000 and did not return.² OWCP paid him compensation for total disability.³

On June 5, 2012 OWCP noted that appellant was almost 62 years old and advised him that FECA required a reduction in benefits if he received retirement benefits from the Social Security Administration (SSA) attributable to federal service. It advised him to contact OWCP promptly if he received SSA retirement benefits to avoid an overpayment of compensation.

SSA, in a form dated July 15, 2015, provided the amount that appellant received in retirement benefits with FERS and also the hypothetical amount that he would have received without FERS. Including federal employment, he was entitled to a monthly payment rate of \$1,207.10 effective July 2012, \$1,227.60 effective December 2012, \$1,246.00 effective December 2013, and \$1,267.10 effective December 2014. Without counting appellant's federal earnings, he was entitled to a monthly payment rate of \$803.30 effective July 2012, \$816.90 effective December 2012, \$829.10 effective December 2013, and \$843.10 effective December 2014.

By letter dated July 29, 2015, OWCP advised appellant that it was adjusting his compensation to offset the portion of his SSA retirement benefits attributable to his federal service. It informed him that the portion of the SSA benefits earned as a federal employee was part of the FERS retirement package and that FECA did not allow the simultaneous receipt of workers' compensation and federal retirement benefits.

On July 31, 2015 OWCP calculated the overpayment by determining the difference between appellant's SSA amount with and without FERS for each period. It then multiplied the daily offset amount by the number of days in each period to find a total overpayment of \$15,308.02.

In a telephone call dated August 3, 2005, appellant advised that SSA was not paying him the correct amount. He indicated that he was receiving around \$800.00 per month from SSA.

On August 14, 2015 OWCP notified appellant of its preliminary determination that he received an overpayment of \$15,308.02 as he had received compensation benefits for the period July 1, 2012 through July 25, 2015 that had not been reduced by the portion of his SSA benefits earned based on his federal service. It determined that he began receiving regular retirement

² In a decision dated April 15, 2003, OWCP terminated appellant's compensation benefits after finding that the weight of the evidence established that he had no further disability due to his May 31, 2000 employment injury. On February 9, 2004, an OWCP hearing representative reversed the April 15, 2003 decision.

³ By decision dated March 23, 2005, OWCP found that appellant received an overpayment of \$3,070.75 because it had not withheld appropriate premiums for health and optional life insurance from April 11, 2003 through March 1, 2004.

benefits under SSA on July 1, 2012. OWCP found that the portion of the SSA benefits he received due to his federal service was part of FERS retirement package and thus a prohibited dual payment. It further made a preliminary determination that appellant was without fault in creating the overpayment. OWCP requested that he complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, it notified appellant that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing.

Appellant telephoned OWCP on August 27, 2015 and contended that he was receiving compensation from SSA without the FERS rate. On August 28, 2015 OWCP provided him with its overpayment calculations.

On August 28, 2015 appellant challenged the existence of an overpayment. He submitted an April 21, 2012 notification from SSA advising him that it had reduced his disability payments as he was receiving compensation from OWCP, but that effective July 2012 he could receive retirement benefits of \$910.00. The form further indicated that he could elect disability benefits again at age 65, when it no longer considered workers' compensation benefits. Appellant elected to receive retirement benefits beginning July 2012.

In a notice of award dated July 16, 2012, SSA advised appellant that beginning July 2012 he would receive \$910.00 a month in SSA retirement benefits. In 2013 it informed him that he would receive \$925.00 per month. In 2014 SSA notified him that he would receive a monthly benefit payment of \$939.00 and in 2015 a monthly benefit payment of \$955.00.

Appellant also submitted Form SSA-1099 benefits statements from 2012 to 2014 indicating that SSA had offset his workers' compensation benefits from his SSA benefits. In 2012 SSA paid appellant a total of \$20,078.00 in benefits, which included payment by check or direct deposit of \$6,440.00 and an offset of workers' compensation of \$13,638.00, in 2013 SSA paid him a total of \$24,738.00 in benefits, or \$11,100.00 by check or direct deposit and \$13,638.00 in workers' compensation offset, and in 2014 it paid him \$24,906.00, or \$11,268.00 by check or direct deposit and \$13,628.00 in workers' compensation offset.

By letter dated August 28, 2015, appellant reiterated his contention that he was not receiving SSA benefits based on his federal service as part of FERS. He maintained that the benefits he received were a result of private employment. Appellant submitted evidence showing deposits into his checking account by SSA.

In a decision dated December 31, 2015, OWCP determined that appellant received an overpayment of \$15,308.02 from July 1 through 25, 2012 because it had not offset his compensation to reflect SSA benefits attributable to his federal service. It found that he was without fault in creating the overpayment, but denied waiver as he had not submitted any financial information. OWCP noted that documents provided by appellant supported that SSA continued to offset his retirement benefits for workers' compensation. It found, however, that an overpayment existed as it continued to pay him workers' compensation benefits without the appropriate offset. OWCP determined that it would recover the overpayment by deducting \$425.22 from appellant's continuing compensation payments.

On appeal appellant contends that SSA was paying him an amount that was not based on his federal service as evidenced by the deposits that he provided.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA⁴ provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁵ Section 8129(a) of FECA provides that, in pertinent part, when an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.⁶

Section 816(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 received SSA benefits based on federal service, his compensation benefits shall be reduced by the amount of SSA benefits attributable to his or her federal service.⁷

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 the SSA benefits paid on the basis of age and attributable to the employee's federal service.⁸ The offset of FECA benefits by SSA benefits attributable to employment under FERS is calculated as follows: Where a claimant had received SSA benefit, OWCP will obtain information from the SSA on the amount of the claimant's SSA 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 benefits to obtain the amount of compensation payable.⁹

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained acute back strain, an aggravation of degenerative disc disease of the lumbar spine, and major depressive disorder due to a May 31, 2000 employment injury. Appellant stopped work on June 1, 2000, returned to work part time on August 14, 2000, and stopped work again on December 15, 2000. OWCP paid him compensation for total disability.

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *Id.* at § 8102.

⁶ *Id.* at § 8129(a).

⁷ *Id.* at § 8116(d); *see also Janet K. George (Angelos George)*, 54 ECAB 201 (2002).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4(e) (January 1997); Chapter 2.1000.11(a)(b) (February 1995).

⁹ *See L.B.*, Docket No. 11-2076 (issued August 29, 2012).

In a notification dated April 21, 2012, SSA advised appellant that it was currently reducing his disability compensation payments as he was receiving workers' compensation but that as of July 2012 he could elect to receive retirement benefits of \$910.00 per month. Appellant indicated on the form that he wanted to obtain retirement benefits beginning July 2012.

SSA informed appellant on July 16, 2012 that he would receive \$910.00 per month in retirement benefits. It notified him that he would receive \$925.00 per month beginning January 3, 2013, \$939.00 per month beginning January 3, 2014, and \$955.00 per month beginning January 2, 2015.

In a form dated July 15, 2015, SSA specified the amount that appellant received in monthly retirement benefits with federal service under FERS and without federal services. It indicated that with FERS he received \$1,207.10 as of July 2012, \$1,227.60 as of December 2012, \$1,246.00 as of December 2013, and \$1,267.10 as of December 2014. Without counting appellant's federal earnings, he was entitled to a rate of \$803.30 beginning July 2012, \$816.90 beginning December 2012, \$829.10 beginning December 2013, and \$843.10 beginning December 2014.

OWCP determined that appellant received an overpayment because OWCP had failed to deduct the amount that he received in retirement benefits attributable to his federal service from his compensation payments. It noted that SSA continues to offset workers' compensation benefits even after it begins paying disability retirement, but found that SSA's offset of his compensation did not relieve OWCP of its obligation to offset his retirement due to federal service from his workers' compensation benefits.

The Board finds that the case is not in posture for decision regarding whether appellant received an overpayment of compensation. SSA informed OWCP that with his federal service under FERS he received \$1,207.10 in July 2012, \$1,227.60 in December 2012, \$1,246.00 in December 2013, and \$1,267.10 in December 2014. SSA advised appellant, however, that his benefit payment would be \$910.00 in 2012, \$925.00 in 2013, \$939.00 in 2014, and \$955.00 in 2014. Appellant argued that he did not receive retirement benefits from SSA based on his federal service. He submitted evidence showing a discrepancy between the amount SSA indicated that he would receive in retirement with FERS benefits and the amount that SSA informed him that he would receive in benefits.

Given the discrepancy between the amount SSA informed OWCP that appellant was receiving with FERS and the amount SSA told him that he would receive, OWCP should have further developed the evidence by obtaining information from SSA and the Office of Personnel Management (OPM) regarding appellant's retirement benefits and confirming his SSA rate with and without any offset required based on his federal civilian service. Accordingly, the Board will remand the case for OWCP to reconsider whether appellant received an overpayment of compensation.¹⁰

¹⁰ Given the Board's disposition of fact of overpayment, it is premature to address the issues of waiver and recovery of the overpayment.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT December 31, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: May 6, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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