

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

R.L., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Meridian, MS, Employer

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**Docket No. 16-1564
Issued: January 4, 2017**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 26, 2016 appellant filed a timely appeal from a June 30, 2016 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 the case.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$5,076.00 for the period November 1, 2015 to April 30, 2016; (2) whether OWCP abused its discretion by refusing to waive recovery of the overpayment; and (3) whether it properly determined that it would recover the overpayment by deducting \$100.00 from continuing compensation benefits.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 20, 1995 appellant, then a 45-year-old city carrier, injured his right knee in the performance of duty. OWCP accepted the claim for right knee sprain and tear of the right medial meniscus and authorized four arthroscopic surgeries. Appellant returned to light-duty employment on January 29, 1996 and worked intermittently thereafter. Beginning April 21, 2002 appellant received wage-loss compensation for total disability from OWCP. He was placed on the periodic compensation rolls beginning November 2, 2003.²

Appellant had routinely been required, as a condition of being on the periodic rolls, to submit EN1032 forms. In the November 2, 2015 letter, OWCP as it had done every year, sent appellant the EN1032 form to report income from other sources and dependents. The form informed appellant of his yearly requirement to report all income from employment or receipt of benefits from federally-funded or federally-assisted programs including Social Security Administration (SSA) retirement benefits. The claimant had consistently signed and returned the annual Form EN1032, including acknowledgement of the following statement:

“I understand that I must immediately report to OWCP any employment or employment activity, any change in the status of claimed dependents, any third[-] party settlement, and any monies or income or change in monies or income from Federally assisted disability or benefit programs.”

On November 13, 2015 OWCP requested that SSA provide a dual benefit calculation.

In a memorandum dated April 6, 2016, SSA advised OWCP that appellant had been in receipt of age-based SSA retirement benefits since November 1, 2015 that were partially based upon appellant’s employment in civilian federal service. A form completed by SSA showed the SSA rate with Federal Employees Retirement System (FERS) and without FERS for the period November 1, 2015 to April 30, 2016. The form noted the SSA rate with FERS was \$1,798.00 and the SSA rate without FERS was \$952.00. These figures were used to calculate the amount that appellant’s FECA wage-loss compensation should have been offset during the above-noted period.

A FERS offset calculation dated May 6, 2016 explained how OWCP used the figures provided by the SSA to calculate FECA compensation offset for the period of the overpayment, November 1, 2015 to April 30, 2016. OWCP noted that the period of overpayment November 1, 2015 to April 30, 2016 was 182 days and a 28-day offset was \$780.92. The memorandum shows that the total amount of the overpayment was \$5,076.00.

In a May 11, 2016 letter, OWCP advised appellant of his entitlement only to FECA compensation with a FERS offset. The document revealed that appellant’s FECA compensation

² The record indicates that appellant received schedule award compensation from August 5, 2007 through April 30, 2010 on the periodic rolls. Beginning May 1, 2010, he resumed receiving wage-loss compensation for total disability.

was adjusted from \$2,889.64 every 28 days to reflect the FERS offset of \$780.92 effective May 1, 2016. As of May 1, 2016 appellant's net 28-day compensation was \$2,108.72.

In a May 12, 2016 notice, OWCP advised appellant of its preliminary determination that he received a \$5,076.00 overpayment of compensation for the period November 1, 2015 to April 30, 2016 because he had received a prohibited dual benefit in that he received SSA benefits partially based on his federal service during this period while simultaneously receiving FECA wage-loss compensation. It explained that it was required to institute an offset of FECA compensation, reducing FECA compensation benefits by the amount of the SSA retirement benefits attributed to his federal services. OWCP also made a preliminary determination that appellant was at fault in creating the overpayment because, based on the language of the EN1032, he should have reasonably been aware that he was receiving incorrect payments. It informed appellant that he had the right to submit evidence or argument if he disagreed with OWCP's finding. Appellant was provided an overpayment action request and an overpayment recovery questionnaire (OWCP-20 form). He was informed of the actions he could take and was afforded 30 days to respond. No additional information was submitted.

On May 18, 2016 appellant contested the overpayment and the finding of fault. He indicated that he believed the overpayment occurred through no fault of his own and requested waiver. Appellant further indicated that there was no way he could have known that he was being overpaid as he received the same money in his checking account every pay period and saw no overpayment in his account.

In an OWCP telephone log dated May 26, 2016, appellant contacted OWCP and inquired about social security changing from disability to regular benefits at age 65. OWCP's representative reported a question and answer dialogue with appellant.

By decision dated June 30, 2016, OWCP finalized the preliminary overpayment determination, finding an overpayment of compensation in the amount of \$5,076.00 for the period November 1, 2015 to April 30, 2016. It determined that appellant was not at fault as he did not know or could not have known that he was not entitled to receive retirement benefits from SSA and FECA benefits. OWCP noted that appellant contested the overpayment because he was not aware that he was being overpaid as the amount of his OWCP periodic rolls payments remained the same. Additionally it noted that appellant contacted OWCP and spoke to a representative on May 26, 2016 who clarified appellant's questions regarding his social security benefits changing from disability benefits to regular benefits at age 65. Nonetheless, OWCP indicated that appellant had failed to submit financial information to justify waiving the recovery of the overpayment. It determined that to minimize the hardship \$100.00 would be deducted from future compensation payments.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 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 duty.³ Section 8116(d) of FECA requires that compensation benefits be reduced

³ 5 U.S.C. § 8102(a).

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 or her compensation benefits shall be reduced by the amount of SSA benefits attributable to his or her federal service.⁴

OWCP procedures provide that, while SSA age-based retirement 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.⁵

ANALYSIS -- ISSUE 1

The record supports that appellant received FECA wage-loss compensation from November 1, 2015 and that he received SSA retirement benefits beginning November 1, 2015. The portion of the SSA benefits he earned as a federal employee was part of his FERS retirement package, and the receipt of benefits under FECA and federal retirement benefits concurrently is a prohibited dual benefit.⁶ Appellant's FECA compensation was not offset until May 1, 2016. SSA notified OWCP of the applicable SSA rates for that period and their effective dates. Based on these rates, OWCP was able to calculate the dual benefit appellant had received from November 1, 2015 to April 30, 2016, which yielded an overpayment of compensation in the amount of \$5,076.00. The record includes an overpayment worksheet explaining the overpayment calculation.

The Board has reviewed OWCP's calculations of the dual benefits appellant received and finds that OWCP properly determined that appellant had received a \$5,076.00 overpayment of compensation from November 1, 2015 to April 30, 2016.

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."⁷ Section 10.438 of OWCP regulations provides that [t]he 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 on an overpayment would defeat the purpose of FECA or be against equity and good conscience.

⁴ 5 U.S.C. § 8116(d); *see also Janet K. George (Angelos George)*, 54 ECAB 201 (2002).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4(e) (January 1997); Chapter 2.1000.11(b) (February 1995).

⁶ 5 U.S.C. § 8116(d)(2); *see also R.C.*, Docket No. 14-1383 (issued December 5, 2014); *see also FECA Bulletin No. 97-9* (issued February 3, 1997).

⁷ 5 U.S.C. § 8129.

Failure to submit the requested information within 30 days of the request shall result in denial of waiver.⁸

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 OWCP regulations.⁹

Section 10.436 provides that 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 determined by OWCP from data provided by the Bureau of Labor Statistics.¹⁰ 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 assets do not exceed the resource base.¹¹ 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.¹²

An individual's liquid assets include but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits. Nonliquid assets include but are not limited to the fair market value of an owner's equity in property such as a camper, boat, second home, and furnishings/supplies.¹³

ANALYSIS -- ISSUE 2

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.¹⁴ In a May 12, 2016 preliminary notice of overpayment, it advised appellant of its preliminary determination and instructed appellant to complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, OWCP 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 prerecoupment hearing. Appellant did not submit the overpayment recovery questionnaire or supporting financial documents. Thus, OWCP did not have the

⁸ 20 C.F.R. § 10.438.

⁹ 5 U.S.C. § 10.434-10.437

¹⁰ *Id.* at § 10.436.

¹¹ *Id.*

¹² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6.a (June 2009).

¹³ *Id.*

¹⁴ *Supra* note 7.

necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience such that it would cause a financial burden.

Consequently, as appellant did not submit the financial information it had properly requested from him as required under section 10.438 of OWCP's regulations,¹⁵ which was necessary to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment in the amount of \$5,076.00.

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.¹⁶ Section 10.441(a) of the regulations¹⁷ provides:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later 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.”¹⁸

ANALYSIS -- ISSUE 3

The record reflects that appellant continues to receive wage-loss compensation under FECA. When, as in this case, an individual fails to provide requested information on income, expenses and assets, OWCP should follow minimum collection guidelines, which provide 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.¹⁹ The Board finds that OWCP did not abuse its discretion in following those guidelines in this case, where appellant has not submitted complete financial information, by deducting \$100.00 every four weeks.

On appeal appellant asserts that the overpayment of compensation was not his fault and that it would be a financial burden for his family to pay back the \$5,076.00 owed. The Board has held that, although OWCP finds a claimant without fault in the matter of an overpayment, repayment is still required unless adjustment or recovery of the overpayment would defeat the

¹⁵ *Supra* note 8.

¹⁶ *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

¹⁷ 20 C.F.R. § 10.441(a).

¹⁸ *Id.*

¹⁹ *Gail M. Roe*, 47 ECAB 268 (1995); *Robin D. Calhoun*, Docket No. 00-1756 (issued May 21, 2001).

purpose of FECA or be against equity and good conscience.²⁰ As explained, appellant has not provided the financial information that would support waiver of the overpayment.

CONCLUSION

The Board finds that OWCP properly found an overpayment of FECA compensation in the amount of \$5,076.00 for the period November 1, 2015 to April 30, 2016. The Board also finds that OWCP did not abuse its discretion in denying waiver of recovery of the overpayment. The Board further finds that OWCP properly determined that it would recover the overpayment by deducting \$100.00 from continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

²⁰ *Keith H. Mapes*, 56 ECAB 130 (2004).