

FACTUAL HISTORY

Appellant, a 69-year-old window clerk, filed an occupational disease claim (Form CA-2) for a bilateral foot condition that arose in the performance of duty on or about January 21, 2003.³ OWCP accepted bilateral foot conditions and lumbar strain. Beginning June 2004 appellant has undergone several OWCP-approved bilateral foot/ankle surgeries, the most recent of which occurred on September 28, 2012. He last worked for the employing establishment in June 2007; however, his work stoppage at the time was unrelated to his accepted bilateral foot/ankle condition(s). Appellant has received FECA wage-loss compensation, and OWCP placed him on the periodic compensation rolls, effective December 16, 2012.

Effective November 1, 2013 appellant began receiving age-related benefits from the Social Security Administration (SSA). On December 10, 2013 he informed OWCP of his receipt of these benefits.

On May 4, 2015 SSA confirmed that appellant was in receipt of retirement benefits, effective November 1, 2013. It provided a breakdown of appellant's monthly SSA benefits that included contributions from his federal service (w/Federal Employees Retirement System (FERS)), as well as a monthly benefit that excluded his FERS-based contributions (w/o FERS). Beginning November 2013 appellant's total monthly SSA benefit was \$1,774.80. The corresponding monthly amount excluding appellant's FERS-based contributions was \$881.00. SSA also provided additional calculations for subsequent periods beginning December 2013 (\$1,801.00/\$894.20) and December 2014 (\$1,831.60/\$909.40).

OWCP subsequently advised appellant that effective May 31, 2015 his 28-day wage-loss benefits would be offset based on the corresponding amount of SSA age-related retirement benefits attributable to his federal service (\$851.26).

On June 4, 2015 OWCP issued a preliminary overpayment determination in the amount of \$17,297.87, for the period November 1, 2013 to May 30, 2015. It explained that the overpayment of compensation was because appellant had received retirement benefits concurrently with FECA benefits. This constituted a prohibited dual benefit. OWCP advised that appellant was not at fault in creating the overpayment. It also provided him an Overpayment Recovery Questionnaire (Form OWCP-20) and informed appellant of his appeal rights.

On June 12, 2015 appellant requested a prerecoumpment hearing before an OWCP hearing representative regarding the issues of the overpayment and waiver, which was held on February 18, 2016. During the hearing he argued that he should not be held responsible for the overpayment as it was not his fault. Appellant indicated that he lived in San Francisco, CA, one of the most expensive cities in the U.S., and could not afford to pay anymore. OWCP's hearing representative advised appellant to submit the requisite information requested in the overpayment recovery questionnaire (Form OWCP-20) in consideration of a repayment schedule and/or a waiver of recovery of the overpayment.

³ Appellant's accepted conditions include bilateral metatarsalgia, bilateral ankle/foot joint pain, bilateral bunion, bilateral plantar nerve lesion, bilateral acquired deformities of the foot and ankle, bilateral tarsal tunnel syndrome, bilateral knee arthritis, and lumbar strain.

On April 6, 2016 OWCP received appellant's completed Form OWCP-20. Appellant indicated that he had monthly income of \$3,650.74, which included both FECA and SSA benefits. He noted the following expenses: tenant insurance, \$186.00 per year (or 15.50 per month), car insurance, \$1,147.74 annually (or 95.65 per month), rent, \$616.00 per month, food, \$1,000.00 per month, clothing, \$200.00 per month, cell phone, \$36.00 per month, home care help, \$100.00 per month, and garage, \$168.00 per month. The only supporting documentation which accompanied the questionnaire was a checking account statement, which indicated that appellant had a balance of \$160.83 and \$294.25 in savings as of February 29, 2016 and an American Express statement of payments and credits which verified a semi-annual automobile insurance payment of \$573.87, or \$1,147.74 annually in automobile insurance payments.

In a May 2, 2016 decision, an OWCP hearing representative finalized the preliminary determination regarding the fact and amount of the overpayment, as well as OWCP's finding that appellant was not at fault in the creation of the overpayment. Regarding his request for waiver of recovery of the overpayment, however, the hearing representative noted that OWCP had yet to receive documentation regarding appellant's financial situation that would allow for consideration of waiver. She indicated that the Form OWCP-20 was undated and unsigned, and that the minimal evidence provided by appellant did not warrant waiver. The hearing representative further noted that appellant continued to receive FECA wage-loss compensation and, based on the limited financial information provided, had a reasonable ability to repay \$300.00 every 28 days from his continuing compensation payments.⁴

LEGAL PRECEDENT

A FECA beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.⁵ To avoid payment of a dual benefit, FECA wage-loss compensation benefits shall be reduced by the amount of Social Security Act benefits attributable to the employee's federal (FERS-based) service.⁶ However, an offset is not required where the employee-beneficiary is covered under the Civil Service Retirement System (CSRS) and/or his SSA age-related benefits are attributable to private sector employment.⁷

An individual who is without fault in creating or accepting an overpayment is nonetheless subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.⁸ Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a current or former beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of

⁴ The hearing representative noted claimed monthly expenses, including food, which totaled \$2,225.50. She also noted a total monthly income of \$3,647.27.

⁵ See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

⁶ 5 U.S.C. § 8116(d)(2); 20 C.F.R. § 10.421(d).

⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Claims*, Chapter 2.812.9c (May 2012); Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4e(2) (January 1997).

⁸ 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

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.⁹ 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, relinquished a valuable right or changed his or her position for the worse.¹⁰

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP.¹¹ This information is necessary for determining whether a waiver of recovery of the overpayment is warranted.¹² The information is also used to determine an appropriate repayment schedule, if necessary.¹³ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁴

When an overpayment has been made to an individual who is entitled to further payments, 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.¹⁵

ANALYSIS

The Board finds that fact of overpayment has been established, but the case is not in posture for decision with respect to the amount of the overpayment. The record establishes that appellant was covered under FERS. The record also establishes that he received age-related social security retirement benefits beginning November 1, 2013, in addition to FECA wage-loss compensation. Appellant is not entitled to simultaneously receive FECA wage-loss compensation and retirement benefits based on his federal service.¹⁶ On May 4, 2015 SSA represented that a portion of appellant's monthly retirement benefit was attributable to his federal

⁹ 20 C.F.R. § 10.436(a), (b). For an individual with no eligible dependents the asset base is \$4,800.00. The base increases to \$8,000.00 for an individual with a spouse or one dependent, plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 - Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(b) (June 2009).

¹⁰ *Id.* at § 10.437(a), (b).

¹¹ *Id.* at § 10.438(a).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at § 10.438(b).

¹⁵ *Id.* at § 10.441(a).

¹⁶ *See supra* note 5.

service. Consequently, OWCP was obliged to offset appellant's FECA wage-loss compensation by the amount of SSA age-related retirement benefits attributable to his federal service.¹⁷

While the fact of the overpayment has been established, the Board is unable to determine whether OWCP's finding regarding the amount of overpayment (\$17,297.87) is accurate. Although SSA provided monthly FERS offset calculations beginning November 2013, December 2013, and December 2014, it is unclear from the record how OWCP calculated the reported \$17,297.87 overpayment for the period November 1, 2013 through May 30, 2015. An OWCP decision "shall contain findings of fact and a statement of reasons."¹⁸ There is no calculation reflecting how much FECA benefits had been paid compared to that which should have been paid. There is simply a page with a total of \$17,297.87. The hearing representative's May 2, 2016 decision does not fully comply with 20 C.F.R. § 10.126. Accordingly, the case shall be remanded to OWCP for clarification and documentation on how it calculated the amount of the overpayment based upon the May 4, 2015 information SSA provided.¹⁹ After OWCP has developed the case record consistent with the Board's above-noted directive, a *de novo* decision shall be issued.

CONCLUSION

Appellant is not entitled to receive both FECA wage-loss compensation and SSA age-related retirement benefits based on his prior federal service. SSA represented that appellant's age-related retirement benefits beginning November 1, 2013 were based, in part, on his federal service. However, the record does not clearly establish how OWCP arrived at its finding that appellant received an overpayment of compensation in the amount of \$17,297.87 for the period November 1, 2013 through May 30, 2015. Accordingly, the Board finds that the case is not in posture for decision regarding the amount of overpayment.

¹⁷ 5 U.S.C. § 8116(d)(2); 20 C.F.R. § 10.421(d).

¹⁸ 20 C.F.R. § 10.126.

¹⁹ Given the Board's disposition of the case with respect to the amount of the overpayment, the hearing representative's findings with respect to waiver of recovery and an appropriate repayment schedule are moot.

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2016 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and the case is remanded for further action consistent with this decision.

Issued: September 5, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board