

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

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A.S., Appellant )  
and ) Docket No. 17-1664  
U.S. POSTAL SERVICE, POST OFFICE, ) Issued: December 17, 2018  
Ponte Vedra, FL, Employer )  
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)

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 26, 2017 appellant timely appealed from a July 6, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's case.

**ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$3,888.45 for the period September 1 through December 13, 2015; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

Appellant, then a 63-year-old city carrier, injured his right shoulder in the performance of duty on February 24, 2015. OWCP accepted appellant's claim for disorder of bursae and tendons in shoulder region, unspecified, right; other affections of shoulder region, not elsewhere classified, right; sprain of shoulder and upper arm, other specified sites, right; and villonodular synovitis, shoulder region, right.

OWCP paid wage-loss compensation for temporary total disability and beginning August 4, 2015 placed appellant on the periodic compensation rolls.

Appellant was born in January 1952. When he reached age 62 in 2014, he was eligible to receive age-related social security retirement benefits. Appellant began receiving benefits effective September 1, 2015. The record indicates that he was subject to Federal Insurance Contributions Act (FICA) and Federal Employees' Group Life Insurance (FEGLI) coverage withholding while a federal employee.

Between March 5, 2016 and January 24, 2017, appellant regularly submitted annual statements (Form CA-1032) regarding his employment status, volunteer work, dependents, and other federal benefits received. He consistently denied receiving benefits from the Office of Personnel Management (OPM). In his March 5, 2016 statement, appellant indicated that he received \$1,761.00 per month beginning September 2015 through February 2016 from the Social Security Administration (SSA) based on his federal service. In his March 15, 2016 statement, he confirmed that he had received \$1,761.00 per month. In his January 24, 2017 statement, appellant did not disclose receipt of SSA benefits.

On March 10, 2017 OWCP contacted SSA regarding the benefits of appellant.

On March 28, 2017 SSA advised OWCP that appellant was entitled to retirement benefits, payment of which began paying in September 2015.<sup>2</sup> It provided a breakdown of appellant's monthly SSA benefits that included contributions from his federal service (w/FERS), as well as a monthly benefit that excluded his federal service contributions (w/o FERS). Beginning September 2015, appellant's total monthly SSA benefit was \$1,761.00. The corresponding monthly amount excluding appellant's federal service contributions was \$794.20. SSA provided additional calculations for subsequent periods beginning December 2015 (\$1,761.00/\$794.20), January 2016 (\$2,043.00/\$919.60), and December 2016 (\$2,049.00/\$922.30). SSA also noted that appellant was entitled to disability benefits effective January 2016.

Appellant returned to modified full-time work with the employing establishment on April 12, 2017.

On April 27, 2017 OWCP issued a preliminary overpayment determination in the amount of \$3,888.45 for the period September 1 through December 31, 2015 because he received full compensation, when that compensation should have been offset due to receipt of social security

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<sup>2</sup> SSA noted that the FERS period began in 1981, and the computation date commenced from August 27, 2015 to the present.

retirement benefits that were partially based upon his civilian federal service. Additionally, it found that appellant was without fault in creating the overpayment. OWCP advised appellant that, if he disagreed with fact or the amount of the overpayment, he had a right to submit new evidence in support of his belief. It also provided him an overpayment recovery questionnaire (OWCP-20) and informed appellant of his appeal rights.

Appellant timely requested a prerecouplement hearing, which OWCP's Branch of Hearings and Review scheduled for June 29, 2017. At the hearing he indicated that the overpayment occurred through no fault of his own. Appellant explained that he received regular social security benefits for four of the five months of the mandatory minimum wait before his social security disability could be approved. He explained that it was reduced by approximately \$75.00 per month, because he received regular social security benefits during the mandatory wait and that his regular old-age social security lifetime benefits would also be reduced by the \$75.00 per month, which was approximately \$560.00 based of his life expectancy of 79 years. On May 31, 2017 OWCP received appellant's completed overpayment recovery questionnaire (OWCP-20). On June 22, 2017 appellant provided supporting documentation.

Appellant indicated on his submissions that he had monthly income of \$9,262.00, which included SSA, Army retirement benefits, and rental income. He indicated monthly expenses of \$6,023.00. Appellant noted the following: rent or mortgage, \$3,013.00 per month; food, \$500.00 per month; clothing, \$100.00 per month; utilities \$300.00 per month; and miscellaneous expenses \$250.00 per month. Additionally, he listed several loans for his car and residential loans tallying \$1,383.00. Appellant listed assets of \$23,290.00. As to the question of fault he explained that, when he applied for SSA benefits, he informed them that he was on "workmens' comp." Appellant indicated that they provided his payment. Furthermore, he underwent three shoulder surgeries and was approved for SSA disability effective January 1, 2016. However, the effective date of appellant's disability was August 2015, but he had to wait five months. He explained that because he received regular benefits for four months, his social security benefits were reduced which was approximately, \$7,560.00. Appellant explained that it seemed like a "double jeopardy." He provided supporting documentation which accompanied the questionnaire.

At the June 29, 2017 prerecouplement hearing, the hearing representative found that monthly income after expenses was determined to be \$2,981.54. Appellant was also found to have net assets of \$27,114.00.

By decision dated July 6, 2017, the hearing representative finalized OWCP's preliminary determination regarding the fact and amount of the overpayment, as well as its finding that appellant was not at fault. Regarding appellant's request for waiver of recovery, she noted that appellant had not provided justification for consideration of waiver. The hearing representative explained that the financial information received did not establish a basis for granting waiver of recovery of the overpayment.

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

Section 8102(a) 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 her federal employment.<sup>3</sup> Section 8129(a) of FECA provides, 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.”<sup>4</sup>

A FECA beneficiary may not receive wage-loss compensation concurrently with a Federal retirement or survivor annuity.<sup>5</sup> To avoid payment of a dual benefit, FECA wage-loss compensation benefits shall be reduced by the amount of SSA benefits attributable to the employee’s federal service.<sup>6</sup>

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.<sup>7</sup> 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. SSA 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 the overpayment.<sup>8</sup>

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

The Board finds that this case is not in posture for decision as to this issue.

The record establishes that appellant received age-related social security retirement benefits at least partially attributable to his federal service beginning September 2015, 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.<sup>9</sup> On March 21, 2017 SSA represented that a portion of appellant’s monthly retirement benefit was attributable to his federal service. Consequently, OWCP was obliged to offset appellant’s FECA wage-loss

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8129(a).

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

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

<sup>7</sup> 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); see R.C., Docket No. 09-2131 (issued April 2, 2010) (OWCP does not require an election between FECA benefits and SSA benefits except when they are attributable to the employee’s federal service).

<sup>8</sup> See V.T., Docket No. 18-0628 (issued October 25, 2018); L.B., Docket No. 11-2076 (issued August 29, 2012).

<sup>9</sup> See *supra* note 3.

compensation by the amount of SSA age-related retirement benefits attributable to his federal service.<sup>10</sup>

Although the Board finds that the fact of overpayment has been established, the case is not in posture for decision with respect to the amount of the overpayment. An OWCP decision “shall contain findings of fact and a statement of reasons.”<sup>11</sup> As noted, the record establishes that appellant received age-related SSA retirement benefits, some of which were attributable to his federal service. However, it is not clear how the amount of the overpayment was derived.

For example, beginning September 2015, appellant’s total monthly SSA benefit with FERS was \$1,761.00, and the corresponding monthly amount excluding appellant’s federal service contributions was \$794.20. SSA provided additional calculations for subsequent periods beginning December 2015 (\$1,761.00/\$794.20), January 2016 (\$2,043.00/\$919.60), and December 2016 (\$2,049.00/\$922.30). The SSA rate with FERS included payments of \$1,761.00, \$1,761.00, \$2,043.00, and \$2,049.00. This would equate to \$7,614.00. The payments without FERS were noted as \$794.20, \$794.20, \$919.60, and \$922.30. By subtracting the SSA rate with FERS from the full SSA rate would equate to an overpayment in the amount of \$2,336.10. (\$7,614.00 minus \$2,336.10 = \$5,277.90). The Board notes that it is unclear how the overpayment amount of \$3,888.45 was determined with respect to the apportionment of federal service SSA benefits for the period September 2015 to December 2016.

Therefore, the Board is unable to make an informed determination as to whether OWCP’s finding regarding the amount of overpayment is accurate. Accordingly, the case shall be remanded to OWCP for further development regarding the appropriate SSA/FECA offset.

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

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.<sup>12</sup> 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 his 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.<sup>13</sup> 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

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<sup>10</sup> 5 U.S.C. § 8116(d)(2); 20 C.F.R. § 10.421(d).

<sup>11</sup> 20 C.F.R. § 10.126.

<sup>12</sup> 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

<sup>13</sup> 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).

such payments would be made, relinquished a valuable right or changed his position for the worse.<sup>14</sup>

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP.<sup>15</sup> This information is necessary for determining whether a waiver of recovery of the overpayment is warranted.<sup>16</sup> The information is also used to determine an appropriate repayment schedule, if necessary.<sup>17</sup> Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

The hearing representative affirmed OWCP's preliminary determination that appellant was not at fault in creating the overpayment. On May 31, 2017 OWCP received appellant's completed overpayment recovery questionnaire (Form OWCP-20). On June 22, 2017 appellant provided supporting documentation. He indicated that he had monthly income of \$9,262.00, which included SSA, Army retirement benefits, and rental income. Appellant indicated expenses, of \$6,023.00. He listed his assets as totaling \$23,290.00. At the June 29, 2017 prercoupmment hearing, the hearing representative found that monthly income after expenses was determined to be \$2,981.54. Appellant was also found to have net assets of \$27,114.00. The Board finds that based on appellant's representations at the prercoupmment hearing, the hearing representative properly determined that the circumstances of his case did not warrant a waiver of the recovery of the overpayment.

On appeal appellant asserts that he disagreed with the overpayment. He argues that the administrative actions have caused him to have a loss of almost \$9,120.00 in social security benefits because he collected it for four months. Appellant also indicates that he generally understood the offset, which seemed "fair," but the five-month waiting period should be excluded from the offset rule. He also noted that he was on OWCP compensation for almost 21 months and his payments prevented him from "financial ruins." The Board notes that these arguments do not impact the fact that he received both FECA wage-loss compensation and SSA age-related retirement benefits based on his prior federal service. However, the amount of the overpayment is unclear and the case will be remanded to determine the amount.

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<sup>14</sup> *Id.* at § 10.437(a), (b).

<sup>15</sup> *Id.* at § 10.438(a).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 20 C.F.R. § 10.438(b).

## **CONCLUSION**

The Board finds that, although OWCP properly determined fact of overpayment, this case is not in posture as to the amount of overpayment. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

## **ORDER**

**IT IS HEREBY ORDERED THAT** the July 6, 2017 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: December 17, 2018  
Washington, DC

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

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

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