

recovery of the overpayment by deducting \$100.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

This case has previously been before the Board.³ On March 13, 2000 appellant, then a 51-year-old attorney-adviser, filed an occupational disease claim (Form CA-2) for an emotional condition that he attributed to factors of his federal employment. He stopped work in January 2000, and the Office of Personnel Management (OPM) awarded him a disability annuity beginning April 4, 2000.⁴ After several denials, OWCP ultimately accepted appellant's claim for severe recurrent major depressive disorder with psychotic features, which arose on or about November 4, 1999.⁵ It paid wage-loss compensation for temporary total disability retroactive to February 13, 2000, and placed appellant on the periodic compensation rolls, effective September 4, 2005. As of the date of the appeal, appellant continued to receive FECA wage-loss compensation.

On August 1, 2014 at age 66, appellant was eligible to receive full retirement (age-related) benefits from the Social Security Administration (SSA).

In a July 13, 2015 employment/financial disclosure report (EN1032), appellant informed OWCP that he was not currently receiving retirement benefits from SSA as part of an annuity for federal (FERS-based) service.⁶

On July 21, 2015 OWCP requested information from SSA regarding whether a FERS offset was required. It provided a FERS/SSA dual benefits calculation form for SSA to complete and return to OWCP. On August 24, 2015 SSA returned the completed form noting that, effective July 2014, appellant's monthly SSA rate with his FERS contribution was \$2,163.90. The corresponding monthly rate without FERS was \$2,117.30. Beginning December 2014, the SSA rate with and without FERS contributions were \$2,200.60 and \$2,153.20, respectively.

Based on the information SSA provided, OWCP calculated a 28-day FERS offset of \$43.02 for the period July 1 through November 30, 2014 (153 days), with a corresponding overpayment of \$235.05. For the period December 1, 2014 through September 19, 2015 (293 days), OWCP calculated a 28-day FERS offset of \$43.75, and a resulting overpayment of \$457.85. The total overpayment for the period July 1, 2014 through September 19, 2015 was \$692.90.

³ Docket No. 01-1901 (issued February 13, 2003); Docket No. 03-2275 (issued January 22, 2004).

⁴ OPM advised that appellant was covered under the Federal Employees Retirement System (FERS).

⁵ Appellant has preexisting, service-connected post-traumatic stress disorder (PTSD), for which he receives disability benefits from the Department of Veterans Affairs.

⁶ The EN1032 advised appellant that he need not report any benefits received from SSA on account of employment in the private sector.

Effective September 20, 2015, OWCP reduced appellant's 28-day periodic rolls payment based upon the calculated FERS offset.

On October 19, 2015 OWCP issued a preliminary overpayment determination that an overpayment was created in the amount of \$692.90, for the period July 1, 2014 through September 19, 2015. It explained in detail the method by which it calculated the amount of overpayment. OWCP explained that appellant's compensation was not adjusted to reflect the SSA/FERS deduction from July 1, 2014 through September 19, 2015 which occurred because he had received retirement benefits concurrently with FECA benefits. This constituted a prohibited dual benefit. OWCP advised that appellant was without fault in the creation of the overpayment. It also provided him an Overpayment Recovery Questionnaire (Form OWCP-20) and informed appellant of his appeal rights.

On October 26, 2015 appellant replied, noting that he was confused by OWCP's recent letter, but assumed that, because he was not at fault, he was not obligated to repay the debt. He asked OWCP to let him know if his interpretation/assumption was incorrect, otherwise he would protest having to repay a debt he was not at fault in creating.

By decision dated November 20, 2015, OWCP finalized the preliminary determination regarding the fact and amount of overpayment, as well as its finding that appellant was without fault in the creation of the overpayment. Additionally, it indicated that the October 19, 2015 preliminary determination outlined appellant's rights and responsibilities with respect to the identified overpayment. While he responded by letter dated October 26, 2015, appellant did not pursue any of the rights and/or remedies available to him. OWCP, therefore, found that he had not provided justification for waiver of recovery of the overpayment. It further advised that the overpayment would be recovered by withholding \$100.00 from appellant's 28-day periodic compensation payments.

LEGAL PRECEDENT -- ISSUE 1

A FECA beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.⁷ 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.⁸ However, an offset is not required where the employee-beneficiary is covered under the Civil Service Retirement System (CSRS) and/or his or her SSA age-related benefits are attributable to private sector employment.⁹

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

⁷ See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

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

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Claims*, Chapter 2.812.9c (May 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4e(2) (January 1997).

FECA or would be against equity and good conscience.¹⁰ 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.¹¹ 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 position for the worse.¹²

The individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP.¹³ This information is necessary for determining whether waiver of recovery of the overpayment is warranted.¹⁴ The information is also used to determine an appropriate repayment schedule, if necessary.¹⁵ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁶

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.¹⁷

ANALYSIS -- ISSUE 1

The record supports that appellant received FECA wage-loss compensation benefits beginning February 13, 2000 and that he also received SSA retirement benefits beginning July 1, 2014, when he reached the age of 66. The portion of the SSA benefits appellant earned as a federal employee was part of his FERS retirement package and the receipt of benefits concurrently under FECA and federal retirement benefits is a prohibited dual benefit.

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

¹¹ 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).

¹² 20 C.F.R. § 10.437(a), (b).

¹³ *Id.* at § 10.438(a).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at § 10.438(b).

¹⁷ *Id.* at § 10.441(a).

SSA notified OWCP of the applicable SSA compensation rates for appellant and dates of monthly SSA compensation beginning on July 1, 2014 and on December 1, 2014. This included rates with and without FERS offset.¹⁸

Appellant's FECA compensation was not offset by his SSA retirement benefits until September 20, 2015. Based on the rates provided by SSA, OWCP issued a preliminary notice of overpayment on October 19, 2015 and a final overpayment decision on November 20, 2015. It determined that appellant had received a prohibited dual benefit from July 1, 2014 to September 19, 2015. This yielded an overpayment of compensation in the amount of \$692.90.¹⁹ With the preliminary notice of overpayment, OWCP submitted supporting documentation which includes an overpayment worksheet explaining the overpayment calculation.

The Board has reviewed OWCP's calculations of the prohibited dual benefit appellant received for the period July 1, 2014 to September 19, 2015 and finds that he had received a prohibited dual benefit totaling \$692.90 for this period, thus creating an overpayment of compensation in that amount.²⁰

LEGAL PRECEDENT -- ISSUE 2

According to section 10.436,²¹ 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.²² For waiver under this standard, a claimant must meet the two-pronged test and show that he or she both needs substantially all of his or her current income to meet current, ordinary, and necessary living expenses,²³ and that his or her assets do not exceed the resource base.²⁴

¹⁸ FECA Bulletin No. 97-09 (issued February 3, 1997).

¹⁹ 20 C.F.R. § 10.421(d); *see L.J.*, 59 ECAB 264 (2007).

²⁰ *See A.S.*, Docket No. 17-0606 (issued December 21, 2017); *I.H.*, Docket No. 15-1578 (issued November 19, 2015).

²¹ 20 C.F.R. § 10.436.

²² OWCP procedures provide that 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. *Supra* note 9 at Chapter 6.200.6(a) (October 2004).

²³ An individual is deemed to need substantially all of his or her income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. *Desiderio Martinez*, 55 ECAB 245, 250 (2004).

²⁴ *See supra* note 21. *W.F.*, 57 ECAB 705, 708 (2006).

The burden is on the claimant to show that the expenses are reasonable and needed for a legitimate purpose.²⁵ OWCP's regulations 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. ...

“(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.”²⁶

ANALYSIS -- ISSUE 2

As OWCP found appellant without fault in the creation of the overpayment, waiver of recovery 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.²⁷

In the October 19, 2015 preliminary notice of overpayment, OWCP advised appellant of its preliminary determination and instructed him that he was found without fault. Appellant was instructed to either repay the amount in full or request waiver of recovery by completing a Form OWCP-20 overpayment recovery questionnaire and submitting supporting financial documentation. He did not avail himself of his appeal rights or provide any information responsive to the Form OWCP-20 questionnaire. Therefore, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides that 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 the 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 hardship.²⁸

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,

²⁵ *Id.*

²⁶ 20 C.F.R. § 10.438

²⁷ *Id.*

²⁸ *Id.* at § 10.441(a).

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 installment shall be large enough to collect the debt promptly.²⁹

The Board finds that OWCP properly considered the relevant factors in setting a minimal recovery amount of \$100.00 from appellant's continuing compensation payments, noting that the absorption would occurred by approximately May 29, 2016.

CONCLUSION

The Board finds that OWCP properly found an overpayment of compensation in the amount of \$692.90 for the period July 1, 2014 through September 19, 2015. The Board also finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$100.00 every 28 days from appellant's continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 29, 2018
Washington, DC

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

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

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

²⁹ *Robin D. Calhoun*, Docket No. 00-1756 (issued May 21, 2001); *Gail M. Roe*, 47 ECAB 268 (1995).