

FACTUAL HISTORY

On February 20, 2006 appellant, then a 58-year-old letter carrier, filed an occupational disease claim (Form CA 2) alleging that his repetitive employment duties of walking and lifting heavy items caused bilateral leg and knee pain. He did not initially stop work. By decision dated March 27, 2007, OWCP accepted the claim for bilateral knee osteoarthritis.

Appellant stopped work on April 12, 2008 and returned to full-duty work on June 18, 2008. OWCP paid him intermittent wage-loss compensation and medical benefits on the supplemental rolls as of April 12, 2008. Appellant underwent right knee surgery on May 18, 2010 and left knee surgery on July 12, 2011. Beginning April 11, 2010, OWCP paid him compensation benefits on the periodic rolls for total disability.

In a March 30, 2018 Federal Employees Retirement System Act (FERS)/SSA Dual Benefits Calculations worksheet, SSA reported that appellant was under FERS since 1981. It provided his SSA rate with FERS and SSA rate without FERS from February 2013 through December 2017. SSA further noted that appellant was receiving “disability benefits” prior to February 2013, but the offset was not applicable prior to that date.

In an April 5, 2018 FERS offset calculation worksheet, OWCP noted a \$39,827.09 overpayment because SSA/FERS age-based offset was not applied to payments from February 1, 2013 through March 21, 2018 based on calculations received from SSA on April 2, 2018. It noted that appellant’s entitlement to SSA retirement benefits commenced on February 1, 2013 and was paid through March 21, 2018, a period for which an offset must be applied.

By letter dated April 5, 2018, OWCP informed appellant that he had been receiving social security benefits on account of age since February 1, 2013. It noted that SSA had confirmed that a portion of his SSA benefits were attributed to his years of federal service as an employee under the FERS program. SSA reported that appellant’s current monthly benefit amount was \$1,998.30, but that he would only be entitled to \$1,338.60 as his federal service increased his monthly social security payment by \$659.70. It noted that this difference of \$659.70 as the portion of social security benefits attributed to federal service and was the amount that must be offset against his compensation benefits.

In a notice dated April 16, 2018, OWCP made a preliminary determination that a \$39,827.09 overpayment of compensation had been created for the period February 1, 2013 through March 31, 2018 as appellant was paid dual compensation under SSA and FERS retirement without an appropriate offset. It found that he was without fault in the creation of the overpayment. An OWCP memorandum noted the SSA rate with and without FERS, and the amount of the monthly offset for the period in question. OWCP informed appellant of his options if he wished to contest the preliminary finding. It also advised that in order to consider the question of waiver or to determine a reasonable method of collection, he must complete the overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Failure to submit the required information within 30 days would result in denial of waiver of recovery of the overpayment.

On May 10, 2018 appellant requested waiver of the recovery of the overpayment and argued that the overpayment occurred through no fault of his own. He asserted that he was not responsible in the creation of the overpayment and, therefore, should not be penalized.

In a letter dated September 3, 2018, appellant argued that OWCP was careless in the handling of his case and he had not created the overpayment. He stated that he was without fault and repaying the overpayment would cause him difficulty.² No additional evidence was received.

By decision dated September 25, 2018, OWCP found that appellant received an overpayment of compensation in the amount of \$39,827.09 for the period February 1, 2013 through March 31, 2018, because the offset for SSA/FERS was not applied to his compensation benefits when he began receiving SSA retirement benefits. It further found that it would not waive recovery of the overpayment and that he could repay the overpayment by deducting \$300.00 every 28 days from his continuing compensation benefits.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.³ Section 8116 limits the right of an employee to receive compensation: While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁴

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-based benefits that are attributable to federal service of the employee.⁵ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁶

² The Board notes that OWCP scheduled an informal hearing on October 10, 2018. In his letter dated September 3, 2018, appellant noted that he never requested a hearing, nor did he desire to have one. On September 17, 2018 OWCP accepted his request to withdraw the hearing.

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see T.B.*, Docket No. 18-1449 (issued March 19, 2019).

⁶ FECA Bulletin No. 97-09 (February 3, 1997); *see also T.B., id.*

Section 404.310 of SSA regulations provides that entitlement to SSA compensation begins at 62 years.⁷ Section 404.409 of SSA regulations provides that for individuals born from 1943 to 1954, full retirement age is 66 years.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$39,827.09 because he concurrently received SSA retirement benefits while receiving FECA benefits for the period February 1, 2013 through March 31, 2018 without an appropriate offset.⁹

In its September 25, 2018 decision, OWCP found that an overpayment of compensation was created for the period February 1, 2013 through March 31, 2018. The overpayment was based on the evidence received from SSA with respect to retirement benefits paid to appellant. Appellant has not challenged the fact or amount of overpayment. The record indicates that, while he was receiving compensation for total disability under FECA, he was also receiving SSA age-based retirement benefits. A claimant cannot receive both compensation for wage-loss and SSA age-based benefits attributable to federal service for the same period.¹⁰ The information provided by SSA established that appellant received age-based SSA benefits that were attributable to federal service during the period February 1, 2013 through March 31, 2018. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of age-based SSA retirement benefits that were attributable to federal service. The SSA provided the SSA rate with FERS, and without FERS for specific periods from February 1, 2013 through March 31, 2018. OWCP provided its calculations for each relevant period based on the SSA worksheet. No contrary evidence was provided.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period February 1, 2013 through March 31, 2018 and finds that an overpayment of compensation in the amount of \$39,827.09 was created.¹¹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or

⁷ 20 C.F.R. § 404.310.

⁸ *Id.* at § 404.409.

⁹ *T.B.*, *supra* note 5.

¹⁰ *See E.K.*, Docket No. 18-0587 (issued October 1, 2018).

¹¹ *See D.C.*, Docket No. 17-0559 (issued June 21, 2018).

recovery would defeat the purpose of FECA or would be against equity and good conscience.¹² The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.¹³

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of 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.¹⁴ 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, gives up a valuable right or changes his or her position for the worse.¹⁵

OWCP regulations provide that 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. The information is also used to determine the repayment schedule, if necessary.¹⁶ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$39,827.09 overpayment of compensation.¹⁸

As OWCP found appellant without fault in the creation of the overpayment, waiver of recovery of the overpayment must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against

¹² 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see A.S.*, Docket No. 17-0606 (issued December 21, 2017).

¹³ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁴ 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(2) (September 2018).

¹⁵ *Id.* at § 10.437(a)(b).

¹⁶ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁷ *Id.* at § 10.438(b).

¹⁸ *See A.C.*, *supra* note 13.

equity and good conscience.¹⁹ Appellant, however, had the responsibility to provide the appropriate financial information to OWCP.²⁰

In its preliminary determination dated April 16, 2018, OWCP clearly explained to appellant the importance of providing the completed overpayment questionnaire and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised him that it would deny waiver if he failed to furnish the requested financial information within 30 days. Appellant, responded by correspondence that he was not responsible in the creation of the overpayment and, therefore, should not be penalized; however, he did not complete a Form OWCP-20 or submit any financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

Appellant has submitted no evidence that he had relied upon the incorrect payments to his detriment or that he would experience severe financial hardship attempting to repay the debt.²¹ Consequently, as he did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.²²

On appeal appellant contends that the overpayment occurred due to OWCP's error. As discussed, OWCP found him not at fault in the creation of the overpayment, however, he failed to submit financial information to support waiver of recovery of the overpayment.²³

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 the error is discovered or his 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 any hardship.²⁴

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$300.00 every 28 days from appellant's continuing compensation.

¹⁹ 20 C.F.R. § 10.436.

²⁰ *Id.* at § 10.438.

²¹ *See V.T.*, Docket No. 18-0628 (issued October 25, 2018).

²² *See S.B.*, Docket No. 16-1795 (issued March 2, 2017).

²³ *See D.M.*, Docket No. 17-0810 (issued October 2, 2017).

²⁴ 20 C.F.R. § 10.441(a); *see Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

As noted, appellant did not complete the Form OWCP-20 nor did he submit financial information as requested prior to the final September 25, 2018 decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²⁵ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁶ As appellant did not submit information to OWCP as requested, the Board finds that there is no evidence in the record to show that OWCP erred in directing recovery of the \$39,827.09 overpayment of compensation at the rate of \$300.00 every 28 days from his continuing compensation.²⁷

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$39,827.09 for the period February 1, 2013 through March 31, 2018 because he concurrently received SSA retirement benefits while receiving FECA benefits. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$300.00 every 28 days from his continuing compensation payments.

²⁵ *Id.* at 10.438.

²⁶ *L.L.*, Docket No. 18-1103 (issued March 5, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

²⁷ *See S.M.*, Docket No. 17-1802 (issued August 20, 2018).

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2019
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