

October 14, 2017; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$500.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On April 18, 2006 appellant, then a 59-year-old range support technician, filed an occupational disease claim (Form CA-2) alleging that he sustained an emotional condition and work-related stress due to factors of his federal employment. He stopped work on December 14, 2005 and underwent coronary bypass surgery on January 10, 2006. Appellant returned to work on April 10, 2006 and stopped again in April 2007.

OWCP accepted appellant's claim for coronary atherosclerosis of unnamed vessel, hypertensive heart disease without congestive failure, dysthymia, and recurrent depression disorder. It paid wage-loss compensation on the supplemental rolls beginning June 15, 2007, and on the periodic rolls effective March 16, 2008.

In March 2013, appellant reached normal retirement age of eligibility for Social Security Administration (SSA) retirement benefits.

On EN1032 forms dated March 29, 2013, March 19, 2014, March 26, 2015, April 6, 2016, and April 10, 2017, appellant indicated that he had received SSA benefits as part of an annuity for federal service.

In a form dated June 16, 2017, the SSA advised OWCP that appellant had concurrently received FECA benefits and retirement benefits through the Federal Employees Retirement System (FERS) beginning in March 2013. It provided the amount that he had received in retirement benefits, including the amount earned through FERS and the hypothetical amount that he would have received without FERS. Including FERS, appellant was entitled to a monthly SSA rate of \$1,825.30 effective March 2013, \$1,852.60 effective December 2013, \$1,884.00 effective December 2014, \$1,884.00, effective December 2015, and \$1,889.60 effective December 2016.

SSA further advised that, without FERS, appellant would have been entitled to a monthly SSA rate of \$1,092.80 effective March 2013, \$1,109.10 effective December 2013, \$1,127.90 effective December 2014, \$1,127.90 effective December 2015, and \$1,131.20 effective December 2016.

OWCP completed a FERS offset calculation on November 2, 2017. It determined the 28-day FERS offset amount for the days in each period, which it added to find a total overpayment of \$41,759.19.

In a letter dated November 2, 2017, OWCP advised appellant that it was adjusting his compensation, effective October 15, 2017, to offset the portion of his SSA retirement benefits attributable to his federal service. It informed him that he would receive net compensation of \$2,950.84 every 28 days.

In a preliminary determination dated November 3, 2017, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$41,759.19 because it had failed

to reduce his wage-loss compensation benefits for the period March 1, 2013 through October 15, 2017 by the portion of his SSA benefits that were attributable to federal service. It calculated the overpayment amount by determining the difference between his SSA amount with and without FERS for each period and adding these amounts to find a total of \$41,759.19. OWCP further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment and requested that he complete the enclosed overpayment recovery questionnaire (Form OWCP-20). It informed him that, in order for it to consider the question of waiver of recovery of the overpayment or to determine a reasonable method for condition, he must provide a completed Form OWCP-20, and attach supporting financial documentation. 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 a response to the preliminary overpayment determination or complete an overpayment recovery questionnaire (Form OWCP-20).

By decision dated July 10, 2018, OWCP found that appellant had received an overpayment of wage-loss compensation in the amount of \$41,759.19 for the period March 1, 2013 through October 14, 2017 because it failed to offset his compensation payments by the portion of his SSA age-related benefits that were attributable to his federal service. It determined that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment of compensation. OWCP found that it would recover the overpayment by deducting \$500.00 every 28 days from appellant's continuing wage-loss compensation payments.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA³ 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 his or her duty.⁴ 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.⁵

Section 10.421(d) of OWCP's 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.⁶ 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.⁷

³ *Supra* note 1.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁷ FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

Section 404.310 of SSA regulations provides that entitlement to SSA compensation begins at 62 years.⁸ Section 404.409 of SSA regulations provides that, for individuals born from 1943 to 1954, full retirement age is 66 years.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation in the amount of \$41,759.19 for the period March 1, 2013 through October 14, 2017.

OWCP accepted that appellant sustained an emotional condition and a cardiac condition due to factors of his employment as a range support technician. It paid him wage-loss compensation for total disability, effective June 15, 2007. Beginning March 1, 2013, appellant also received age-related retirement benefits from SSA. As noted, a claimant cannot receive concurrent compensation for wage-loss and SSA retirement benefits attributable to federal service for the same period.¹⁰ The information provided by SSA indicated that appellant received age-based SSA benefits that were attributable to his federal service from March 1, 2013 through October 14, 2017 without an appropriate offset, and thus, he received an overpayment of wage-loss compensation.¹¹

OWCP calculated the overpayment of compensation by determining the portion of SSA benefits that were attributable to appellant's federal service. It received documentation from SSA with respect to the specific amount of age-based SSA retirement benefits that were attributable to federal service. SSA provided appellant's SSA rate with FERS and without FERS for specific periods March 1, 2013 through October 14, 2017.¹² OWCP provided its calculations of the amount that it should have offset for each relevant period based on the SSA worksheet. No contrary evidence was provided.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$41,759.19, thus creating an overpayment of compensation in that amount, for the period March 1, 2013 through October 14, 2017.¹³

⁸ 20 C.F.R. § 404.310.

⁹ *Id.* at § 404.409.

¹⁰ *Supra* note 7; A.C., Docket No. 18-1550 (issued February 21, 2019).

¹¹ *Id.*

¹² The SSA worksheet provided applicable rates effective the following dates: March 1 and December 1, 2013, December 1, 2014, December 1, 2015, and December 1, 2016.

¹³ *See L.L.*, Docket No. 18-1103 (issued March 5, 2019). The Board notes that, for the period December 1, 2013 to November 30, 2014, OWCP incorrectly noted amounts of \$1,825.30 with FERS and \$1,092.80 without FERS, instead of \$1,852.60. The proper amounts were \$1,852.60 with FERS and \$1,109.10 without FERS. However, it properly noted the deduction of FERS offset as \$743.50 (\$1852.60 - \$1109.10).

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.”¹⁴ Section 10.438 of OWCP’s 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 of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$41,759.19 overpayment.

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.¹⁶ Appellant, however, had the responsibility to provide financial information to OWCP,¹⁷ and he did not do so.

In its preliminary determination dated November 3, 2017, OWCP clearly explained the importance of providing the completed overpayment recovery questionnaire (Form OWCP-20) and supporting financial documentation. It advised appellant that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant did not submit a completed overpayment recovery questionnaire or otherwise submit financial information supporting his income and expenses within the defined period. As a result, OWCP did not have the 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.

On appeal, appellant alleges that the information asked for on OWCP-20 form was too intrusive and violated his privacy. As explained, however, he has the responsibility to provide the necessary financial information in order for OWCP to determine his eligibility for waiver. Consequently, as appellant did not submit the financial information required under section 10.438 of OWCP’s regulations, OWCP properly denied waiver of recovery of the overpayment of compensation in the amount of \$41,759.19.¹⁸

¹⁴ 5 U.S.C. § 8129.

¹⁵ 20 C.F.R. § 10.438.

¹⁶ *Supra* note 14.

¹⁷ *Supra* note 15.

¹⁸ *See S.M.*, Docket No. 17-1802 (issued August 20, 2018).

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides in pertinent part: 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 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 any hardship.¹⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment of compensation by deducting \$500.00 every 28 days from appellant's continuing compensation payments.

Although OWCP provided appellant an overpayment recovery questionnaire (Form OWCP-20) with the November 3, 2017 preliminary determination, he did not submit a completed overpayment recovery questionnaire or other financial information that OWCP requested prior to the final July 10, 2018 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²⁰ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²¹ As appellant did not submit the financial information to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in directing recovery of the \$41,759.19 overpayment at the rate of \$500.00 every 28 days.²²

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$41,759.19 for the period March 1, 2013 through October 14, 2017, that OWCP properly denied waiver of recovery of the overpayment, and that it properly required recovery by deducting \$500.00 every 28 days from appellant's continuing compensation payments.

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

²⁰ *Id.* at § 10.438.

²¹ *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(2) (May 2004).

²² See *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

ORDER

IT IS HEREBY ORDERED THAT the July 10, 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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board