

FECA wage-loss compensation benefits for the period January 1, 2010 through March 30, 2019; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$180.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On August 25, 1992 appellant, then a 47-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he sustained a left shoulder sprain when loosening lug nuts on a vehicle while in the performance of duty. He did not initially stop work. OWCP accepted the claim for left shoulder strain/sprain. It paid wage-loss compensation on the periodic rolls effective January 23, 1995 based upon appellant's loss of wage-earning capacity.

On March 7, 2019 OWCP received from SSA a July 24, 2018 Federal Employees Retirement System (FERS)/(SSA) dual benefits calculation form which indicated that appellant had been in receipt of SSA age-related retirement benefits since January 1, 2010. The form showed SSA benefit rates with and without a FERS offset. Beginning January 1, 2010, appellant's SSA rate with FERS was \$1,663.60 and without FERS was \$1,414.70; beginning January 1, 2011, appellant's SSA rate with FERS was \$1,663.60 and without FERS was \$1,425.10; beginning December 1, 2011, appellant's SSA rate with FERS was \$1,723.40 and without FERS was \$1,476.40; beginning January 1, 2012, appellant's SSA rate with FERS was \$1,723.40 and without FERS was \$1,486.10; beginning December 1, 2012, appellant's SSA rate with FERS was \$1,752.70 and without FERS was \$1,511.40; beginning January 1, 2013, appellant's SSA rate with FERS was \$1,752.70 and without FERS was \$1,519.80; beginning December 1, 2013, appellant's SSA rate with FERS was \$1,779.00 and without FERS was \$1,542.50; beginning January 1, 2014, appellant's SSA rate with FERS was \$1,785.00 and without FERS was \$1,560.80; beginning December 1, 2014, appellant's SSA rate with FERS was \$1,815.30 and without FERS was \$1,587.20; beginning January 1, 2015, appellant's SSA rate with FERS was \$1,829.10 and without FERS was \$1,612.20; beginning December 1, 2016, appellant's SSA rate with FERS was \$1,834.50 and without FERS was \$1,617.00; beginning December 1, 2017, appellant's SSA rate with FERS was \$1,871.20 and without FERS was \$1,649.30; and beginning December 1, 2018, appellant's SSA rate with FERS was \$1,923.50 and without FERS was \$1,695.40.

In a letter dated April 9, 2019, OWCP advised appellant that he had been receiving a prohibited dual benefit. It noted that the SSA had confirmed that a portion of his SSA benefits were attributed to his years of federal service as an employee under the FERS retirement program and that portion required an offset of his FECA compensation benefits. OWCP indicated that the adjustment of appellant's FECA benefits to account for his SSA offset would begin on April 26, 2019, and would reflect a new net compensation amount of \$1,224.01.

On April 26, 2019 OWCP issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$25,443.87, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period January 1, 2010 through March 30, 2019. It explained that it had calculated the overpayment of compensation by determining the difference between appellant's SSA benefit rate with and without FERS for each period, and then multiplying that amount by the number of days in each period.

The FERS offset calculation worksheet indicated that OWCP utilized a 28-day FERS offset amount of \$2,740.64 for the 334 days from January 1 to November 30, 2010; \$254.37 for the 31 days from December 1 to 31, 2010; \$2,626.12 for the 334 days from January 1 to November 30, 2011; \$252.43 for the 31 days from December 1 to 31, 2011; \$2,620.73 for the 335 days from January 1 to November 30, 2012; \$246.60 for the 31 days from December 1 to 31, 2012; \$2,564.46 for the 334 days from January 1 to November 30, 2013; \$241.70 for the 31 days from December 1 to 31, 2013; \$2,468.66 for the 334 days from January 1 to November 30, 2014; \$233.11 for the 31 days from December 1 to 31, 2014; \$2,388.28 for the 334 days from January 1 to November 30, 2015; \$2,617.10 for the 366 days from December 1, 2015 to November 30, 2016; \$2,617.17 for the 365 days from December 1, 2016 to November 30, 2017; \$2,670.12 for the 365 days from December 1, 2017 to November 30, 2018; and \$902.37 for the 120 days from December 1, 2018 to March 30, 2019.

Using these figures, OWCP calculated that the total overpayment amount was \$25,443.87. It further found that appellant was without fault in the creation of the overpayment, as he was not aware, nor could he reasonably have been aware, that OWCP had paid compensation incorrectly. OWCP requested that he complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, it notified appellant that within 30 days of the date of the letter, he could request a final decision based on the written record or a precouplement hearing.

Appellant submitted a completed Form OWCP-20 on May 16, 2019. His income totaled \$4,889.74, including FECA compensation benefits of \$1,224.01, SSA benefits of \$2,580.00,³ and other income.

Appellant reported that his monthly expenses totaled \$5,831.09, which included \$1,300.00 for rent or mortgage, \$600.00 for food, \$100.00 for clothing, \$1,316.00 for utilities, \$1,600.00 of miscellaneous expenses, and monthly payments to creditors of \$915.09. Appellant indicated that he had available assets of \$11,457.83 in an Individual Retirement Account (IRA) money market funds, \$300.00 in cash on hand, \$1,165.71 in a checking account, and \$60.92 in a savings account. He indicated that he was unaware of the overpayments. OWCP also received supporting financial documentation from appellant.

On May 16, 2019 appellant requested that OWCP make a decision based on the written record regarding possible waiver of recovery of the overpayment.

By decision dated June 3, 2019, OWCP finalized the preliminary determination that appellant had received an overpayment of compensation in the amount of \$25,443.87 for the period January 1, 2010 through March 30, 2019, as he had received FECA wage-loss compensation benefits without an appropriate offset for SSA age-related retirement benefits attributable to FERS. It denied waiver of recovery of the overpayment, finding that he currently had assets of \$11,457.83, which exceeded the set amount of \$10,300.00 for an individual with a spouse. OWCP required

³ Appellant listed his SSA income as \$1,788.00 and his wife's SSA income as \$792.00.

recovery of the overpayment by deducting \$180.00 every 28 days from appellant's continuing compensation payments until the debt was paid in full.

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.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 When an overpayment has been made to an individual 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 the individual is entitled.⁶

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.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$25,443.87, as he received SSA age-related retirement benefits while concurrently receiving FECA wage-loss compensation benefits for the period January 1, 2010 through March 30, 2019.

In its June 3, 2019 decision, OWCP found that an overpayment of compensation was created for the period January 1, 2010 through March 30, 2019. The overpayment was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant. A claimant cannot receive both FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁹ The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service during the period January 1, 2010 through March 30, 2019.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ *Id.* at § 8129(a).

⁷ 20 C.F.R. § 10.421(d); *see R.R.*, Docket No. 19-0104 (issued March 9, 2020); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *L.J.*, 59 ECAB 264 (2007).

⁸ FECA Bulletin No. 97-09 (February 3, 1997).

⁹ 5 U.S.C. § 8116(d)(2); *see C.M.*, Docket No. 19-1451 (issued March 4, 2020); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. The SSA provided their rate with and without FERS for specific periods commencing January 1, 2010 through March 30, 2019. OWCP provided its calculations for each relevant period based on a FERS offset calculation worksheet and in its April 26, 2019 preliminary overpayment determination. No contrary evidence was received.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period January 1, 2010 through March 30, 2019 and finds that an overpayment of compensation in the amount of \$25,443.87 was created.¹⁰

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of FECA states: "Adjustment or recovery [of an overpayment] by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience."¹¹

Recovery of an overpayment will defeat the purpose of FECA when 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.¹² An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹³ Also, assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.¹⁴ An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.¹⁵

¹⁰ See *C.M., id.; L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹¹ 5 U.S.C. § 8129(b).

¹² 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).

¹³ *Id.* at Chapter 6.400.4.a(3); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁴ See *supra* note 12 at Chapter 6.400.4.a(2) (September 2018).

¹⁵ *Id.* at Chapter 6.400.4.b(3).

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.¹⁶

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.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the 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.¹⁸ OWCP considered appellant's financial information to determine if recovery of the overpayment would defeat the purpose of FECA. Appellant provided his current monthly income and expenses in Form OWCP-20 on May 16, 2019, as well as a summary of his liquid assets. OWCP properly determined that appellant listed available assets of \$11,457.83, which exceeds the base asset amount of \$10,300.00 for individuals with a spouse or dependent.¹⁹ It was therefore unnecessary for OWCP to consider whether his monthly income exceeds his monthly ordinary and necessary expenses by more than \$50.00.²⁰

Appellant also has not established that recovery of the overpayment would be against equity and good conscience. He has not submitted evidence to substantiate that he would experience severe financial hardship in attempting to repay the debt, or that in reliance on the overpayment he gave up a valuable right or changed his position for the worse. Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.²¹

¹⁶ *Id.* at § 10.437(a)(b).

¹⁷ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁸ *Id.* at § 10.436.

¹⁹ *Supra* note 12.

²⁰ *Id.*

²¹ *See supra* note 16.

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 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.²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$180.00 every 28 days from appellant's continuing compensation payments.

In setting the recovery rate at \$180.00 every 28 days, OWCP explained that the factors set forth at 20 C.F.R. § 10.441(a) had been considered to minimize hardship, while liquidating the debt, as appellant had financial resources sufficient for more than ordinary needs.²³ As noted, appellant submitted a Form OWCP-20 on May 16, 2019 showing that he had assets of \$11,457.83. Thus, OWCP did not abuse its discretion in setting the rate of recovery.²⁴ The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$180.00 every 28 days.

CONCLUSION

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$25,443.87 for which he was not at fault, as he concurrently received SSA age-related retirement benefits while receiving FECA wage-loss compensation benefits for the period January 1, 2010 through March 30, 2019. The Board finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$180.00 every 28 days from appellant's continuing compensation payments.

²² 20 C.F.R. § 10.441(a); *see C.M.*, *supra* note 9.

²³ *See D.S.*, Docket No. 18-1447 (issued July 22, 2019).

²⁴ *See T.G.*, Docket No. 17-1989 (issued June 5, 2018); *M.D.*, Docket No. 11-1751 (issued May 7, 2012).

ORDER

IT IS HEREBY ORDERED THAT the June 3, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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