

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

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J.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,  
Morehead, KY, Employer**

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**Docket No. 20-1073  
Issued: December 1, 2020**

*Appearances:*

*Appellant, pro se*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

CHRISTOPHER J. GODFREY, Deputy Chief Judge

JANICE B. ASKIN, Judge

**JURISDICTION**

On April 24, 2020 appellant filed a timely appeal from an April 8, 2020 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 this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$37,435.32, for the period November 1, 2017 through January 4, 2020, for which he was without fault, because he concurrently received Social Security Administration (SSA) age-

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

<sup>2</sup> The Board notes that following the April 8, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

related retirement benefits and FECA wage-loss compensation for this period without appropriate offset; (2) whether OWCP properly denied appellant's request for waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On August 4, 2011 appellant, then a 55-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he sustained injury to his back, left shoulder, and right leg when he went over a speed bump in his postal vehicle causing him depress the accelerator and driving off the road. Upon exiting his vehicle, he fell down a steep bank while in the performance of duty. OWCP accepted the claim for left shoulder sprain and contusion; temporary aggravation of lumbar spinal stenosis and sciatica; and temporary aggravation of degenerative lumbar disc disease. Appellant stopped work on August 4, 2011 and OWCP paid him wage-loss compensation on the supplemental rolls for disability from work on September 25, 2011. Commencing the next day, OWCP paid him wage-loss compensation on the periodic rolls for continuing disability from work. It subsequently expanded the claim by accepting a right knee meniscus tear and a left shoulder rotator cuff tear.

In a June 11, 2019 letter, the employing establishment informed OWCP that appellant was in the Federal Employees Retirement System (FERS) and was entitled to receive SSA age-related retirement benefits. It requested that OWCP contact SSA to enquire about the possible application of a FERS/SSA offset to appellant's FECA compensation benefits.

On December 23, 2019 OWCP received a FERS/SSA dual benefits calculation form completed by an SSA official on December 12, 2019. The information provided by SSA indicated that appellant received age-related SSA benefits that were attributable to federal service commencing November 1, 2017 and continuing thereafter. The document also advised that appellant received retirement benefits subject to an FERS/SSA offset commencing November 1, 2017 and continuing thereafter. SSA delineated the specific amount of age-related SSA retirement benefits that were attributable to federal service and provided the SSA payment rates with FERS, and without FERS, respectively, for the following periods: November 1 through 30, 2017 (\$1,453.20 and \$72.30); December 1, 2017 through November 30, 2018 (\$1,482.20 and \$73.70); December 1, 2018 through November 30, 2019 (\$1,523.70 and \$75.70); and December 1, 2019 and continuing (\$1,548.00 and \$76.90).

In a January 23, 2020 FERS offset calculation worksheet based on the SSA documentation (providing the SSA payment rates both with and without FERS), an OWCP official calculated overpayment amounts for the following periods: November 1 through 30, 2017 (\$1,365.73); December 1, 2017 through November 30, 2018 (\$16,948.43); December 1, 2018 through November 30, 2019 (\$17,423.74); and December 1, 2019 through January 4, 2020 (\$1,697.42).<sup>3</sup> The official added these figures together to find a total overpayment of \$37,435.32.

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<sup>3</sup> Commencing January 5, 2020, OWCP applied a FERS/SSA offset to appellant's continuing FECA compensation benefits.

In a January 29, 2020 notice, OWCP advised appellant of its preliminary determination that he received an overpayment of compensation in the amount of \$37,435.32 for the period November 1, 2017 through January 4, 2020 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for this period without appropriate offset.<sup>4</sup> OWCP also made a preliminary determination that appellant was without fault in the creation of the overpayment because he relied on misinformation provided by OWCP. It advised him that he could submit evidence challenging the fact, or amount, and request waiver of recovery of the overpayment. OWCP informed appellant that he could submit additional evidence in writing or at prerecoupment hearing, but that a prerecoupment hearing must be requested within 30 days of the date of the written notice of overpayment. It requested that appellant complete and return an enclosed overpayment recovery questionnaire (Form OWCP-20) within 30 days even if he was not requesting waiver of recovery of the overpayment.

On February 21, 2020 OWCP received a Form OWCP-20, signed on February 4, 2020, in which appellant provided figures for monthly income, monthly expenses, and assets. Appellant challenged the fact and amount of the \$37,435.32 overpayment and requested waiver of recovery of the overpayment. He also submitted financial documents, including a credit card statement and tax records. During a telephone conference, held on March 5, 2020, an OWCP claims examiner advised appellant that additional supporting financial documentation was needed and, on March 17, 2020, OWCP received additional documents from appellant, including bills and payment records. During a telephone conference held on April 6, 2020, appellant and OWCP's claims examiner further discussed appellant's financial circumstances. OWCP's claims examiner found that the following monthly expenses were substantiated: \$800.00 for food, \$200.00 for clothing, \$956.00 for home mortgage, \$216.00 for credit card payments, \$80.00 for taxes, \$55.86 for home insurance, \$483.24 for utilities, \$454.85 for vehicle expenses, \$400.00 for child day care, and \$436.28 for miscellaneous expenses. It listed monthly expenses which totaled \$4,082.23, but inadvertently indicated that they totaled \$4,072.23. The figure for monthly income included the incomes of both appellant and his wife. OWCP's claims examiner determined that the documentation of record supported that appellant had \$4,691.00 in monthly income, \$4,082.23 in monthly expenses, and \$8,200.00 in assets.

By decision dated April 8, 2020, OWCP determined that appellant received a \$37,435.32 overpayment for the period November 1, 2017 through January 4, 2020 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for this period without appropriate offset. It found that appellant was without fault in the creation of the overpayment. OWCP determined that the overpayment was not subject to waiver of recovery of the overpayment because appellant's monthly income exceeded his monthly expenses by more than \$50.00.<sup>5</sup> It required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

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<sup>4</sup> OWCP provided calculations based on the December 12, 2019 FERS/SSA dual benefits calculation form and the January 23, 2020 FERS offset calculation worksheet.

<sup>5</sup> OWCP inadvertently indicated that appellant's monthly income exceeded his monthly expenses by approximately \$619.00, whereas a proper calculation utilizing the figures provided by OWCP would yield a difference of approximately \$609.00.

## **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 his or her duty.<sup>6</sup> 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.<sup>7</sup>

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.<sup>8</sup> 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.<sup>9</sup>

## **ANALYSIS -- ISSUE 1**

The Board finds that appellant received an overpayment of compensation in the amount of \$37,435.32, for the period November 1, 2017 through January 4, 2020, for which he was without fault, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for this period without appropriate offset.

Commencing September 24, 2011, OWCP paid appellant wage-loss compensation for total disability due to his accepted injury. Commencing November 1, 2017, appellant received SSA age-related retirement benefits. As noted, a claimant cannot receive compensation for wage-loss compensation and SSA retirement benefits attributable to federal service for the same period.<sup>10</sup> The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to his federal service. As OWCP neglected to offset his FECA wage-loss compensation benefits for the period November 1, 2017 through January 4, 2020, the Board finds that he received an overpayment of wage-loss compensation.<sup>11</sup>

Based on the rates provided by SSA, OWCP calculated the overpayment of compensation by determining the portion of SSA age-related retirement benefits that were attributable to appellant's federal service. It received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided appellant's SSA rate with FERS and without FERS for specific periods commencing

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<sup>6</sup> 5 U.S.C. § 8102.

<sup>7</sup> *Id.* at § 8116.

<sup>8</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

<sup>9</sup> FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>10</sup> *Id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>11</sup> *Id.*

November 1, 2017.<sup>12</sup> OWCP provided its calculations outlined in a FERS offset calculation worksheet regarding the amount that it should have offset for each relevant period based on the SSA worksheet.<sup>13</sup> The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$37,435.32, thereby creating an overpayment of compensation in that amount.<sup>14</sup>

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

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.<sup>15</sup> Section 8129 of FECA<sup>16</sup> provides that an overpayment must be recovered 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." Thus, a finding that appellant was without fault does not automatically result in waiver of recovery of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>17</sup>

According to 20 C.F.R. § 10.436, 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 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.<sup>18</sup> An individual's liquid assets include, but are not limited to, cash on hand, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits. Nonliquid assets include, but are not limited to, the fair market

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<sup>12</sup> SSA's December 12, 2019 document provided the SSA payment rate with FERS, and without FERS, respectively, for the following periods: November 1 through 30, 2017 (\$1,453.20 and \$72.30); December 1, 2017 through November 30, 2018 (\$1,482.20 and \$73.70); December 1, 2018 through November 30, 2019 (\$1,523.70 and \$75.70); and December 1, 2019 and continuing (\$1,548.00 and \$76.90).

<sup>13</sup> In a January 23, 2020 FERS offset calculation document based on the SSA documentation, an OWCP official calculated overpayment amounts for the following periods: November 1 through 30, 2017 (\$1,365.73); December 1, 2017 through November 30, 2018 (\$16,948.43); December 1, 2018 through November 30, 2019 (\$17,423.74); and December 1, 2019 through January 4, 2020 (\$1,697.42).

<sup>14</sup> See A.S., Docket No. 19-0171 (issued June 12, 2019).

<sup>15</sup> See L.D., Docket No. 18-1317 (issued April 17, 2019); P.J., Docket No. 18-0248 (issued August 14, 2018); Robert Atchison, 41 ECAB 83, 87 (1989).

<sup>16</sup> 5 U.S.C. § 8129(1)-(b); A.C., Docket No. 18-1550 (issued February 21, 2019); see D.C., Docket No. 17-0559 (issued June 21, 2018).

<sup>17</sup> A.C., *id.*; see V.T., Docket No. 18-0628 (issued October 25, 2018).

<sup>18</sup> 20 C.F.R. § 10.436. OWCP's procedures provide that a claimant is deemed to need substantially all of his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Determinations*, Chapter 6.400.4a(3) (September 2018). OWCP's procedures further provide that 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. *Id.* at Chapter 6.400.4a(2).

value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401 (k)), jewelry, and artwork.<sup>19</sup>

According to 20 C.F.R. § 10.437 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 attempting to repay the debt and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>20</sup> To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained, and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.<sup>21</sup>

Section 10.438 of OWCP's regulations provides 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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver of recovery of the overpayment.<sup>22</sup>

## **ANALYSIS -- ISSUE 2**

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

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because he has not shown both that he needs substantially all of his current income to meet ordinary and necessary living expenses and that his assets do not exceed the allowable resource base. The Board finds that OWCP's hearing representative properly found that the evidence of record supported that appellant has \$4,691.00 in monthly income, \$4,082.23 in monthly expenses, and no assets.<sup>23</sup> Appellant's monthly income exceeds his monthly ordinary and necessary expenses by approximately \$609.00. As appellant's current income exceeds his current ordinary and necessary living expenses by more than \$50.00 appellant has not shown that he needs substantially all of his current income to meet current ordinary and necessary living expenses.<sup>24</sup> Because appellant has not met the first prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is unnecessary for OWCP to consider the second prong of the test, *i.e.*, whether appellant's assets exceed the allowable resource base.

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<sup>19</sup> *Id.* at Chapter 6.400.4b(3)(a), (b).

<sup>20</sup> 20 C.F.R. § 10.437(a), (b).

<sup>21</sup> *Id.* at § 10.437(b)(1).

<sup>22</sup> 20 C.F.R. § 10.438.

<sup>23</sup> OWCP listed monthly expenses which totaled \$4,082.23, but inadvertently indicated that they totaled \$4,072.23.

<sup>24</sup> See *supra* note 19.

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because he has not shown, for the reasons noted above, that he would experience severe financial hardship in attempting to repay the debt or that he relinquished a valuable right or changed his position for the worse in reliance on the payment which created the overpayment.<sup>25</sup>

Because appellant has failed to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, he has failed to show that OWCP abused its discretion by refusing to waive the overpayment.

### **LEGAL PRECEDENT -- ISSUE 3**

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.<sup>26</sup> Section 10.441 of Title 20 of the Code of Federal Regulations provides that if an overpayment of compensation has been made to one entitled to future payments, proper adjustment shall be made by decreasing subsequent 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."<sup>27</sup> When an individual fails to provide the requested information on income, expenses and assets, OWCP should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.<sup>28</sup>

### **ANALYSIS -- ISSUE 3**

The record supports that, in requiring recovery of the overpayment by deducting \$200.00 from appellant's compensation payments every 28 days, OWCP took into consideration the financial information submitted by appellant as well as the factors set forth in section 10.441 and found that this method of recovery would minimize any resulting hardship on appellant. OWCP followed minimum collection guidelines by requiring installments large enough to collect the full debt promptly. Therefore, OWCP properly required recovery of the overpayment by deducting \$200.00 from appellant's compensation payments every 28 days.

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$37,435.32, for the period November 1, 2017 through January 4, 2020, for which he was without fault because he concurrently received SSA age-related retirement benefits and FECA wage-loss

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<sup>25</sup> See *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

<sup>26</sup> *R.W.*, Docket No. 19-0451 (issued August 7, 2019); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Albert Pinero*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

<sup>27</sup> 20 C.F.R. § 10.441; see *A.F.*, Docket No. 19-0054 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>28</sup> *R.O.*, Docket No. 18-0076 (issued August 3, 2018); *Gail M. Roe*, 47 ECAB 268 (1995).

compensation for this period without appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 8, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2020  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board