

offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$174.50 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On February 9, 2015 appellant, then a 63-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 4, 2015 he developed sharp neck and back pain while pushing a cart. OWCP accepted the claim for neck sprain, and subsequently expanded acceptance of the claim to include cervical stenosis and cervicothoracic stenosis. It placed appellant on the supplemental rolls commencing March 27, 2015 and on the periodic rolls as of May 31, 2015.

On February 1, 2017 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form. On June 3, 2019 it received the FER/SSA benefits calculations transmittal, dated May 29, 2019 in which SSA reported appellant's SSA benefits with a FERS offset and without a FERS offset from September 2016 through December 2018. Beginning September 2016, the SSA rate with FERS was \$1,804.80 and without FERS was \$397.80. Beginning December 2016, the SSA rate with FERS was \$1,810.00 and without FERS was \$399.00. Beginning December 2017, the SSA rate with FERS was \$1,847.00 and without FERS was \$407.00. Beginning December 2018, the SSA rate with FERS was \$1,898.00 and without FERS was \$418.00.

In a FERS offset calculation worksheet dated July 25, 2019, OWCP calculated that from September 1 through November 30 2016 appellant received an overpayment in the amount of \$4,221.00; from December 1, 2016 through November 30, 2017 an overpayment in the amount of \$16,978.52; for the period December 1, 2017 through November 30, 2018 an overpayment in the amount of \$17,327.47; and for the period December 1, 2018 through July 20, 2019 an overpayment in the amount of \$11,319.56, for a total overpayment in the amount of \$49,846.55.

On July 30, 2019 OWCP issued a preliminary determination that appellant was overpaid compensation in the amount of \$49,846.55 for the period September 1, 2016 through July 20, 2019 because the SSA/FERS offset was not applied to payments for this period. It determined that he was without fault in the creation of the overpayment because he relied on misinformation given in writing by OWCP as to the interpretation of FECA or its regulations, there was documentation to substantiate that the misinformation was communicated to him, and there was no evidence in the case file to demonstrate that he knew or should have known the proper course of action to be followed. OWCP requested that appellant submit a completed overpayment action request and overpayment recovery questionnaire (Form OWCP-20) to determine a fair repayment method, and advised him that he could request a waiver of recovery of the overpayment. It requested that he provide supporting copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP advised appellant that it would deny waiver of recovery of the overpayment if he failed to furnish the requested financial information within 30 days. It further notified him 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.

In a letter dated July 31, 2019, OWCP informed appellant that it would begin deducting the portion of SSA benefits attributable to his federal service from his 28-day periodic compensation.

By decision dated August 30, 2019, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$49,846.55 because the SSA/FERS offset had not been applied to payments for the period September 1, 2016 through July 29, 2019. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because he had not completed and returned OWCP's overpayment questionnaire. OWCP concluded that there was no evidence to conclude that recovery of the overpayment would either defeat the purpose of FECA or be against equity and good conscience. It indicated that the overpayment would be recovered by withholding \$174.50 from appellant's continuing compensation benefit payments every 28 days.

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 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.⁵

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.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

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$49,846.55 as he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period September 1, 2016 through July 20, 2019.

As noted, a claimant cannot receive concurrent FECA compensation for wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same

³ *Supra* note 1 at § 8102(a).

⁴ *Id.* at § 8116.

⁵ *Id.* at § 8129(a).

⁶ 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).

⁷ FECA Bulletin No. 97-09 (February 3, 1997).

period.⁸ The information provided by SSA accurately identified that appellant had received SSA age-related retirement benefits that were attributable to his own federal service from September 1, 2016 through July 20, 2019. Thus, the record establishes that he received an overpayment of FECA wage-loss compensation.⁹

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. The Board finds that OWCP properly determined the amount of the overpayment. The SSA provided appellant's SSA rate with FERS and without FERS during the applicable period. OWCP determined that the difference of the portion of SSA benefits attributed to his federal service needed to be offset against his FECA compensation benefits. It calculated that the lack of offset from September 1, 2016 through July 20, 2019 resulted in an overpayment total of \$49,846.55.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$49,846.55, thus creating an overpayment of compensation in that amount for the period September 1, 2016 through July 20, 2019.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of FECA provides that "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."¹⁰ 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.¹¹

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.¹²

In its preliminary determination dated July 30, 2019, OWCP clearly explained the importance of providing the completed Form OWCP-20 overpayment recovery questionnaire and

⁸ *Supra* note 6; *see also R.M.*, Docket No. 19-1570 (issued June 1, 2020); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁹ *Id.*

¹⁰ 5 U.S.C. § 8129(b).

¹¹ 20 C.F.R. § 10.438.

¹² *Id.* at § 10.436.

supporting financial documentation, to support listed income and expenses. It advised appellant that it would deny waiver of recovery of the overpayment if he failed to furnish the requested financial information within 30 days. Appellant, however, did not submit a completed Form OWCP-20 or submit 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.

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹³

On appeal appellant asserts that requiring repayment of the overpayment would create a financial hardship and is inequitable. As explained above, it was appellant's responsibility to provide a completed Form OWCP-20 with supporting financial information within 30 days, which was explained in the preliminary overpayment determination that he received. Since he failed to provide the requested information within 30 days, OWCP properly denied waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations¹⁴ 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.¹⁵

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$174.50 from appellant's continuing compensation every 28 days.

OWCP provided appellant a Form OWCP-20 with its July 30, 2019 preliminary determination. It afforded him the opportunity to provide appropriate financial information and documentation to OWCP.¹⁶ Appellant did not complete the overpayment recovery questionnaire or provide the necessary financial information to support his income and expenses prior to the final August 30, 2019 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁷ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines

¹³ See *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

¹⁴ 20 C.F.R. § 10.441(a).

¹⁵ *Id.*; see *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

¹⁶ *Id.* at § 10.438.

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

designed to collect the debt promptly and in full.¹⁸ As appellant did not submit supporting financial documentation to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in directing recovery of the \$49,846.55 overpayment at the rate of \$174.50 every 28 days from his continuing compensation payments.¹⁹

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$49,846.55 for the period September 1, 2016 through July 20, 2019, for which he was not at fault, as he concurrently received FECA benefits and SSA age-related retirement benefits without an 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 \$174.50 every 28 days from his continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2020
Washington, DC

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

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

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

¹⁸ See *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.3 (September 2018).

¹⁹ See *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).