

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

R.M., Appellant)	
)	
and)	Docket No. 19-1570
)	Issued: June 1, 2020
U.S. POSTAL SERVICE, POST OFFICE, Alpharetta, GA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 17, 2019 appellant filed a timely appeal from a June 21, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$41,177.89, for which he was not at fault, as he concurrently received Social Security Administration (SSA) age-related retirement benefits while

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the June 21, 2019 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.*

receiving FECA wage-loss compensation for the period May 20, 2011 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 \$404.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On January 23, 1999 appellant, then a 56-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained an injury to the right side of his head when he was struck by a coworker while in the performance of duty. OWCP initially accepted the claim for cervical strain, lumbar strain, and right face contusion and laceration, and later expanded acceptance of the claim to include the additional conditions of lumbar spondylosis with myelopathy and lumbar spinal stenosis.

Appellant stopped work on January 23, 1999 and returned to work on March 6, 1999 in a full-time light-duty position. The record reveals that the employing establishment no longer had light-duty work available for him and recommended that he be placed on the periodic rolls. OWCP paid appellant compensation benefits on the supplemental rolls from May 20, 2011 and on the periodic rolls for wage-loss compensation as of June 5, 2011.

In an EN1032 form dated January 16, 2012, appellant indicated that he had not received SSA benefits as part of an annuity for federal service; however, he also noted receipt of Social Security benefits as of December 15, 2011 when he reached 65 years and 10 months of age. He continued to indicate that he had not received SSA benefits as part of an annuity for federal service in EN1032 forms dated through March 18, 2019.

On March 13, 2019 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form. On March 18, 2019 it received a transmittal in which SSA submitted the completed form which showed SSA benefit rates with a FERS offset and without a FERS offset from October 2008 through December 2018. Beginning December 2010, the SSA rate with FERS was \$1,359.60, and without FERS was \$948.00. Beginning December 2011, the SSA rate with FERS was \$1,449.80 and without FERS was \$982.10. Beginning December 2012, the SSA rate with FERS was \$1,483.70 and without FERS was \$998.70. Beginning December 2013, the SSA rate with FERS was \$1,505.90 and without FERS was \$1,013.60. Beginning December 2014 through December 2015, the SSA rate with FERS was \$1,536.60 and without FERS was \$1,030.80. Beginning December 2016, the SSA rate with FERS was \$1,541.20 and without FERS was \$1,033.80. Beginning December 2017, the SSA rate with FERS was \$1,572.00 and without FERS was \$1,054.40. Beginning December 2018, the SSA rate with FERS was \$1,616.00 and without FERS was \$1,083.90.

In a letter dated April 9, 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 beginning March 31, 2019.

On April 25, 2019 OWCP issued a preliminary determination that appellant was overpaid compensation in the amount of \$41,777.89 for the period May 20, 2011 through March 30, 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 that 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 financial documentation, including 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 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 precoupment hearing. OWCP attached a FERS offset calculation form which demonstrated the 28-day FERS offset amount for the days in each period May 20, 2011 through March 30, 2019, and computed a total overpayment of \$41,177.89.

In a letter dated May 10, 2019, appellant requested copies of OWCP's exchange with the SSA regarding his overpayment. He explained that he did not know he had checked the wrong box in his regular submission of EN1032 forms.

In a letter dated May 14, 2019, appellant requested a copy of all OWCP records for the period of overpayment and requested more time to process the information requested by OWCP.

On May 21, 2019 appellant requested that OWCP make a decision based on the written evidence regarding possible waiver of recovery of this overpayment. With his request, he returned an incomplete Form OWCP-20 overpayment recovery questionnaire. Appellant also included a letter dated May 13, 2019 from the SSA, which noted a regular monthly benefit amount of \$1,616.00.

By decision dated June 21, 2019, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$41,177.89 because the SSA/FERS offset had not been applied to payments for the period May 20, 2011 through March 30, 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 recovery questionnaire. OWCP concluded that there was no evidence to substantiate 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 \$404.00 from his continuing compensation benefit payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 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 duty.³ Section 8116 limits the right of an employee to receive compensation. While an employee

³ 5 U.S.C. § 8102(a).

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 FECA's implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA 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

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$41,177.89 as he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period May 20, 2011 through March 30, 2019.

As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.⁷ The information provided by SSA accurately indicated that appellant had received SSA age-related retirement benefits that were attributable to his own federal service from May 20, 2011 through March 30, 2019. Thus, the record establishes that he received an overpayment of FECA wage-loss compensation.⁸

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 May 20, 2011 through March 30, 2019 resulted in an overpayment total of \$41,177.89.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$41,177.89, thus creating an overpayment of compensation in that amount, for the period from May 20, 2011 through March 30, 2019.

⁴ *Id.* at § 8116.

⁵ 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).

⁶ FECA Bulletin No. 97-09 (February 3, 1997).

⁷ *Supra* note 5. *See also N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁸ *Id.*

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.”⁹ 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.¹⁰

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.¹¹ Appellant, was afforded the opportunity to provide the appropriate financial information and documentation to OWCP.¹²

In its preliminary determination dated April 25, 2019, OWCP clearly explained the importance of providing the completed Form OWCP-20 overpayment recovery questionnaire and 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 sufficient 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

⁹ 5 U.S.C. § 8129.

¹⁰ 20 C.F.R. § 10.438.

¹¹ *Id.* at § 10.436.

¹² *Id.* at § 10.438.

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

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.¹⁴ Section 10.441(a) of the regulations¹⁵ provides:

“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 soon as the error is discovered or his or her attention is called to 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.”¹⁶

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$404.00 from appellant's continuing compensation payments every 28 days.

OWCP provided appellant a Form OWCP-20 with the April 25, 2019 preliminary determination. Appellant did not complete the overpayment recovery questionnaire or provide the necessary financial information to support his income and expenses prior to the final June 21, 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 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 \$41,177.89 overpayment at the rate of \$404.00 every 28 days from his continuing compensation payments.¹⁹

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$41,177.89 for the period May 20, 2011 through March 30, 2019, for which he was without fault,

¹⁴ See C.A., Docket No. 18-1284 (issued April 15, 2019); *Albert Pineiro*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

¹⁵ 20 C.F.R. § 10.441(a).

¹⁶ *Id.*

¹⁷ *Supra* note 10.

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).

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 \$404.00 every 28 days from his continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 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