

Administration (SSA), for which he was without fault in its creation; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly directed recovery of the overpayment by deducting \$470.17 every 28 days from appellant's continuing compensation benefits.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On October 3, 1994 appellant, then a 47-year-old laborer, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his right knee when he slipped on an orange and banged his knee against the gun port of the monument he was cleaning while in the performance of duty. He stopped work on the date of injury. OWCP accepted the claim for right knee contusion and right posterior horn meniscal tear.

In a letter dated September 5, 1995, OWCP notified appellant that he was placed on the periodic compensation rolls effective July 13, 1995. On May 2, 1996 appellant returned to limited-duty part-time work, but stopped work again effective August 30, 1996 due to his inability to perform the position. OWCP again commenced payment of appellant's wage-loss compensation benefits on the periodic compensation rolls.

In a form dated May 8, 2012, SSA reported the amount of age-related retirement benefits appellant received including the amount earned through the Federal Employees' Retirement System (FERS) and the amount that he would have received without FERS. The form indicated that beginning in March 2009 appellant's SSA rate with FERS was \$561.50 and without FERS was \$189.40, beginning in December 2011 his SSA rate with FERS was \$581.70 and without FERS was \$196.20.

By letter dated February 4, 2013, OWCP notified appellant that it adjusted his FECA compensation benefits to offset the portion of his SSA retirement benefits attributable to federal service as his concurrent receipt of FECA compensation benefits with retirement benefits under FERS was a prohibited dual benefit. It noted that SSA confirmed that his current monthly SSA retirement benefit amount with FERS was \$581.70, but without FERS was \$196.20. OWCP indicated that beginning March 9, 2013 and continuing, he would receive net compensation of \$1,683.15.

On February 1, 2019 OWCP calculated the overpayment by determining the difference between appellant's SSA amount 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 found a 28-day FERS offset amount of \$3,373.43 for the 275 days from March 1 to November 30, 2009, \$4,477.47 for the 365 days from December 1, 2009 to November 30, 2010, \$4,477.47 for the 365 days from December 1, 2010 to November 30, 2011, \$4,651.42 for the 366

³ Docket No. 98-0903 (issued July 27, 1998); Docket No. 00-0729 (issued February 26, 2001); Docket No. 11-1016 (issued December 12, 2011); Docket No. 14-0889 (issued June 26, 2014); Docket No. 15-1543 (issued December 7, 2015).

days from December 1, 2011 to November 30, 2012, and \$902.32 for the 71 days from December 1, 2012 to February 9, 2013. In total, OWCP found an overpayment in the amount of \$17,882.11.

In a preliminary determination dated February 1, 2019, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$17,882.11 because it had failed to reduce his FECA compensation benefits for the period March 1, 2009 to February 9, 2013 by the portion of his SSA benefits that were attributable to his federal service. It calculated the overpayment by determining the difference between his SSA amount with and without FERS for each period. OWCP then multiplied the daily offset amount by the number of days in each period to find a total overpayment of \$17,882.11. It further made a preliminary determination that appellant was without fault in the creation of the overpayment. OWCP requested that he complete the 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 telephone conference, a final decision based on the written evidence, or a precouplement hearing.

Appellant submitted an overpayment action request form dated February 12, 2019 indicating that he disagreed with both fact and amount of overpayment and requested waiver of recovery of the overpayment. He asserted that the information provided by SSA was erroneous as only a fraction of the amount was attributable to his federal service and the current claim.⁴ Appellant further submitted an overpayment recovery questionnaire (Form OWCP-20) which listed monthly income of \$1,450.50 in SSA benefits for his spouse, \$483.00 in SSA benefits for himself, \$108.00 and \$1,710.61 for civil service benefits, for a total monthly income of \$3,751.61. He also listed total monthly expenses of \$3,354.00, which included \$1,400.60 for rent or mortgage, \$420.00 for food, \$215.00 for cable TV, \$275.00 for utilities, \$373.50 for car insurance, and \$671.47 in other debts. Appellant noted that he had assets of \$450.00 in a checking account. He also submitted financial documentation in support of his request for waiver of recovery of the overpayment.

By decision dated March 25, 2019, OWCP finalized its determination that appellant received an overpayment of compensation in the amount of \$17,882.11 for the period March 1, 2009 to February 9, 2013, finding that it had failed to offset appellant's FECA compensation payments for the portion of his SSA retirement benefits that were attributable to his federal service. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because his income exceeded his expenses by more than \$50.00. OWCP also related that appellant had not reported a monthly pension benefit in the amount of \$580.95 and therefore it required recovery of the overpayment by deducting \$470.17 every 28 days from his continuing FECA compensation payments.

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

⁴ Appellant also alleged that OWCP had not timely provided him travel reimbursement forms and COLA increases. These matters are not relevant to the issues on appeal. These issues are not presently before the Board in this appeal.

performance of duty.⁵ However, section 8116 also 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.⁶

Section 10.421(d) of OWCP's implementing regulations requires that it reduce the amount of compensation by the amount of any SSA benefits that are attributable to the federal service of the employee.⁷ FECA Bulletin No. 97-09 states 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 determined that appellant received an overpayment of compensation in the amount of \$17,882.11 for the period March 1, 2009 to February 9, 2013, for which he was without fault.

The overpayment was based on the evidence received from SSA regarding age-related retirement benefits paid to appellant. The record indicates that while appellant was receiving compensation for total disability under FECA he concurrently received SSA age-related retirement benefits that were attributable to federal services during the period March 1, 2009 to February 9, 2013. 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

OWCP calculated the amount of overpayment by determining the difference between the SSA amount with and without FERS for each period and multiplying the daily offset amount by the number of days in each period, to find a total overpayment of \$17,882.11. The record includes a worksheet explaining the overpayment calculation. Appellant contested the fact and amount of the overpayment, arguing that SSA provided incorrect information as his overpayment should only be based the portion of his SSA benefits attributed to the federal service under the current claim and not based on his entire period of federal service. Appellant, however, failed to submit evidence substantiating that the information provided by SSA was incorrect. OWCP's procedures do not provide for an apportionment of SSA benefits due to calculation of federal service for the claim on which an overpayment is based. As noted above, OWCP's implementing regulations and FECA Bulletin No. 97-09 refer to SSA benefits earned while in federal employment.¹⁰ The Board has reviewed OWCP's calculation of benefits received by appellant for the period March 1, 2009

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8116.

⁷ 20 C.F.R. § 10.421(d); *see D.S.*, Docket No. 18-1447 (issued July 22, 2019); *S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

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

⁹ *See supra* notes 5 and 6.

¹⁰ *Id.*

to February 9, 2013 and finds that an overpayment of compensation in the amount of \$17,882.11 was created.¹¹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹² 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.¹³

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.¹⁴ 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 \$50.00.¹⁵

Additionally, 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

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$17,882.11 overpayment of compensation.¹⁷

As OWCP found appellant without fault in the creation of the overpayment, waiver of recovery of the overpayment 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

¹¹ See *D.S.*, *supra* note 7; *S.O.*, *supra* note 7; *G.T.*, Docket No. 15-1314 (issued September 9, 2016).

¹² 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; see *A.F.*, Docket No. 19-0054 (issued June 12, 2019); *A.S.*, Docket No. 17-0606 (issued December 21, 2017).

¹³ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); see *Robert Atchison*, 41 ECAB 83 (1989).

¹⁴ 20 C.F.R. § 10.436. See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4.a.(2) (September 2018); *L.C.*, Docket No. 19-0320 (issued July 26, 2019); *B.F.*, Docket No. 13-0785 (issued September 20, 2013).

¹⁵ *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *id.* at Chapter 6.400.4.a(3).

¹⁶ *Id.* at § 10.437(a), (b).

¹⁷ See *A.C.*, *supra* note 13.

conscience.¹⁸ In order to establish that repayment of the overpayment would defeat the purpose of FECA, appellant must show that he requires substantially all of his income to meet current ordinary and necessary living expenses and that his assets do not exceed the established limit as determined by OWCP procedures.¹⁹

The Board finds that OWCP properly determined that appellant did not require substantially all of his income to meet ordinary living expenses. Based on appellant's February 12, 2019 overpayment recovery questionnaire and the record, appellant's monthly income exceeded his ordinary and necessary living expenses by more than \$50.00, he did not need substantially all of his income for ordinary and necessary living expenses.²⁰

Additionally, the evidence does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant did not submit evidence to substantiate that he would experience severe financial hardship in attempting to repay the debt, or that in reliance on such payment he gave up a valuable right or changed his position for the worst. Therefore OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.

Accordingly, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

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 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.²¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment of compensation by deducting \$470.17 every 28 days from appellant's continuing compensation payments.

In setting the recovery rate at \$470.17, OWCP found that appellant had listed income which exceeded expenses in the amount of \$396.54; however; appellant's bank statements reflected that he received a monthly pension of \$580.95 which appellant had not reported as income. The March 25, 2019 decision explained how it considered the factors set forth at 20 C.F.R. § 10.441(a) in setting the amount of repayment from continuing compensation benefits to minimize hardship,

¹⁸ 20 C.F.R. § 10.436. *See also G.L.*, Docket No. 19-0297 (issued October 23, 2019).

¹⁹ *Supra* note 14.

²⁰ *G.L.*, *supra* note 18.

²¹ *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

while liquidating the debt, as appellant had financial resources sufficient for more than ordinary needs.²² The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$470.17 every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$17,882.11 during the period March 1, 2009 to February 9, 2013 as he concurrently received FECA benefits and SSA age-related retirement benefits, for which he was without fault. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$470.17 every 28 days from his continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 10, 2020
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

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