

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$21,923.27 for the period June 1, 2015 through August 18, 2018 because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits, for which he was without fault; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$800.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On August 14, 2012 appellant, then a 58-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on August 13, 2012 he injured his left arm when holding/pushing a battery to prevent it from falling while in the performance of duty. OWCP accepted the claim for left elbow and forearm sprain and a left rotator cuff sprain. On June 11, 2013 appellant's hours were reduced to four hours a day and OWCP paid him wage-loss compensation on the supplemental rolls. On May 13, 2015 he underwent an OWCP-authorized left shoulder surgical repair. As of March 6, 2016, OWCP paid appellant wage-loss compensation on the periodic rolls.

In a March 14, 2016 letter, OWCP advised appellant of the conditions under which he would be paid compensation benefits. It indicated that he should advise OWCP immediately upon filing for, or receiving, SSA age-related retirement benefits.

In a February 6, 2017 EN1032, appellant reported that he was receiving SSA benefits as part of an annuity for federal service and indicated the monthly amount of his benefits. In a January 26, 2018 EN1032, he reported that he received SSA benefits, but not as part of an annuity for federal service.

On July 27, 2018 SSA sent OWCP a FERS/SSA dual benefit calculation worksheet setting forth appellant's SSA rate with FERS and without FERS from June 1, 2015 through December 1, 2017. The SSA rate with FERS/without FERS was reported as: \$1,201.60/\$639.00 as of June 2015; \$1,201.60/\$639.00 as of December 2015; \$1,205.10/\$640.90 as of December 2016; and \$1,229.20/\$653.70 as of December 2017.

In an August 27, 2018 FERS offset calculation worksheet, OWCP found that an overpayment of compensation benefits had been created in the amount of \$3,394.15 for the period June 1 to November 30, 2015; \$6,788.29 for the period December 1, 2015 to November 30, 2016; \$6,789.00 for the period December 1, 2016 to November 30, 2017; and \$4,951.83 for the period December 1, 2017 to August 18, 2018, for a total overpayment of \$21,923.27 for the period June 1, 2015 through August 18, 2018.

Effective August 19, 2018, OWCP adjusted appellant's compensation benefits to reflect his FERS/SSA offset.

On September 20, 2018 OWCP issued a preliminary determination that appellant was overpaid in the amount of \$21,923.27 for the period June 1, 2015 through August 18, 2018 because his FECA benefits were not reduced by the FERS portion of his SSA retirement benefits. It found that he was at fault in the creation of this overpayment as he had accepted payments that he knew

or reasonably should have known were incorrect. OWCP provided appellant with an overpayment action request form and a Form OWCP-20. Additionally, it 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.

On September 27 and October 3, 2018 appellant requested a prerecoupment hearing. He disagreed with the fact and the amount of the overpayment and requested waiver of recovery of the overpayment as he believed that the overpayment occurred through no fault of his. Appellant advised that he had not received a check for \$21,923.27 and he had no idea that he was overpaid. In a Form OWCP-20, he listed total monthly income of \$8,571.62,⁴ monthly expenses of \$7,919.29, and assets of \$7,416.94. No supporting financial documentation was received.

A prerecoupment telephonic hearing was held on February 8, 2019. Counsel argued that appellant was without fault in the creation of the overpayment. Appellant testified that his rent/mortgage, which included utilities, was \$3,000.00 per month.

In a February 15, 2019 statement, appellant delineated the monthly income for his household, which totaled \$8,571.62. No supporting financial documentation was received.

By decision dated April 17, 2019, an OWCP hearing representative finalized the determination that appellant received an overpayment of compensation in the amount of \$21,923.27 for the period June 1, 2015 through August 18, 2018 as he had received wage-loss compensation from OWCP without an appropriate offset for SSA age-related retirement benefits attributable to FERS. The hearing representative reversed the finding that appellant was at fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. The hearing representative found that recoupment of the overpayment would not defeat the purpose of FECA or be against equity or good conscience. With respect to appellant's monthly income, the hearing representative found that appellant had an additional \$500.00 in income per month as a previous overpayment had been paid off, resulting in a total monthly income of \$9,071.62.⁵ The hearing representative also reduced appellant's reported expenses of \$7,919.29 by \$580.00⁶ to \$7,339.29 as he testified that utilities were included in his rent/mortgage. The hearing representative found that appellant's monthly income of \$9,071.62 exceeded his expenses of \$7,339.29 by \$1,732.33 and, after adjusting the statutory amount of \$50.00, the hearing representative found that appellant had \$1,682.33 for debt repayment on a monthly basis. The hearing representative determined that the overpayment would be recovered by withholding \$800.00 every 28 days from appellant's continuing 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 This included \$1,965.00 in Social Security benefits and \$6,606.62 in other benefits.

⁵ The hearing representative noted that OWCP had been deducting \$500.00 per month due to an overpayment of compensation which had resulted from the receipt of incorrectly augmented compensation. The hearing representative found that as the most recent compensation payment of March 30, 2019 reflected a debt balance of \$100.00, appellant's debt would be paid off.

⁶ On his OWCP-20 form, appellant listed utilities in the amount of \$580.00.

performance of his or her duty.⁷ 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.⁸

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.⁹ 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$21,923.27 for the period June 1, 2015 through August 18, 2018 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits.

In its April 17, 2019 decision, OWCP's hearing representative found that an overpayment of compensation was created for the period June 1, 2015 through August 18, 2018. The overpayment was based on the evidence received from SSA with respect to age-related 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.¹¹ The information provided by SSA indicated that appellant received age-related SSA benefits that were attributable to federal service during the period June 1, 2015 through August 18, 2018.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of age-related SSA retirement benefits that were attributable to federal service. The SSA provided the SSA rate with FERS, and without FERS for specific periods commencing June 1, 2015 through August 18, 2018. OWCP provided its calculations for each relevant period based on an SSA worksheet and in its September 20, 2018 preliminary overpayment determination. No contrary evidence was provided.

⁷ 5 U.S.C. § 8102(a).

⁸ *Id.* at § 8116.

⁹ 20 C.F.R. § 10.421(d); *see T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

¹⁰ FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

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

The Board has reviewed OWCP's calculation of benefits appellant received for the period June 1, 2015 through August 18, 2018 and finds that an overpayment of compensation in the amount of \$21,923.27 was created.¹²

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.¹³ 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.¹⁴

Recovery of an overpayment will defeat the purpose of FECA if 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.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

OWCP's 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 Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹⁸

ANALYSIS -- ISSUE 2

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

¹² See *L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹³ 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).

¹⁴ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); see *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁵ 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).

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 § 10.438(b).

Appellant completed a Form OWCP-20 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.

OWCP considered appellant's financial information, as reported on the OWCP-20 form and in appellant's statements, and determined that he had not established that all of his current income was substantially needed to meet ordinary and necessary living expenses. The hearing representative found that appellant's total reported income of \$8,571.62 included an additional \$500.00 income per month due to a previously paid-off overpayment, for a total monthly income of \$9,071.62. The hearing representative also reduced appellant's listed expenses by \$580.00, from \$7,919.29 to \$7,339.29, as he had testified that utilities were included in his rent/mortgage. The hearing representative found that appellant's monthly income of \$9,071.62 exceeded his expenses of \$7,339.29 by \$1,732.33 and, after adjusting the statutory amount of \$50.00, found that appellant had \$1,682.33 for debt repayment each month. As appellant's monthly income exceeded his ordinary and necessary living expenses by more than \$50.00, the Board finds that he does not need substantially all of his income for ordinary and necessary living expenses.¹⁹

The Board also finds that the evidence of record fails to demonstrate that recovery of the overpayment would be against equity and good conscience because appellant has not shown 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.²⁰

Because appellant has not established 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 recovery of the overpayment.²¹

On appeal counsel contends that OWCP's decision is contrary to fact and law. As discussed, appellant failed to submit financial documentation to support waiver of recovery of the overpayment.²²

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.²³

¹⁹ See *supra* note 18 at Chapter 6.400.4(a)(3) (September 2018); *A.C.*, *supra* note 17; *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²⁰ See *V.T.*, Docket No. 18-0628 (issued October 25, 2018).

²¹ See *D.M.*, Docket No. 17-0810 (issued October 2, 2017).

²² See *id.*

²³ 20 C.F.R. § 10.441(a); see *A.F.*, *supra* note 16; *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$800.00 every 28 days from appellant's continuing compensation payments.

The hearing representative found that appellant had a total monthly income of \$9,071.62. The hearing representative also reduced appellant's listed expenses of \$7,919.29 by \$580.00 to \$7,339.29, based upon appellant's testimony. The hearing representative found that appellant's monthly income exceeded his expenses by \$1,732.33 and, after adjusting the statutory amount of \$50.00, found that appellant had \$1,682.33 for debt repayment each month. OWCP gave due regard to the relevant factors noted above and did not abuse its discretion in setting the rate of recovery.²⁴ The Board thus finds that it properly required recovery of the overpayment by deducting \$800.00 from appellant's continuing compensation payments.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$21,923.27 for the period June 1, 2015 through August 18, 2018 because he concurrently received age-related SSA retirement benefits while receiving FECA 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 \$800.00 every 28 days from his continuing compensation payments.

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 April 17, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2020
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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