

(2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$600.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On January 24, 2009 appellant, then a 61-year-old mail handler, filed a traumatic injury claim (Form CA-1) indicating that he injured his lower back, that same date, while in the performance of duty.³ He stopped work on the claimed date of injury. OWCP accepted appellant's traumatic injury claim for sacroiliac joint sprain, lumbar herniated disc, and lumbar radiculopathy. It paid him wage-loss compensation beginning April 19, 2009. OWCP placed appellant on the periodic compensation rolls effective June 7, 2009. Appellant continues to receive wage-loss compensation for temporary total disability every 28 days.

On September 22, 2018 the Social Security Administration (SSA) advised OWCP that appellant began receiving age-related retirement benefits in June 2012. However, in July 2012 appellant began receiving SSA disability benefits, which it noted are not subject to offset, which continued through June 2013. SSA further noted that his SSA age-related retirement benefits resumed in July 2013 and were ongoing. Additionally, it provided a monthly breakdown of appellant's SSA age-related retirement benefits for the above-noted periods. SSA calculated his monthly SSA age-related benefits with and without contributions from his federal service under the Federal Employees Retirement System (FERS). Including the appropriate offset for FERS, it indicated that appellant was entitled to a monthly pay rate of \$836.30 effective June 1, 2012; \$916.80 effective July 1, 2013; \$930.50 effective December 1, 2013; \$946.30 effective December 1, 2014 and December 1, 2015; \$949.10 effective December 1, 2016; and \$968.00 effective December 1, 2017. The corresponding SSA monthly rate including FERS contributions was \$1,402.80 effective June 1, 2012; \$1,537.80 effective July 1, 2013; \$1,560.80 effective December 1, 2013; \$1,587.30 effective December 1, 2014 and December 1, 2015; \$1,592.00 effective December 1, 2016; and \$1,623.80 effective December 1, 2017.

In a letter dated October 16, 2018, OWCP notified appellant that it adjusted his FECA compensation benefits to offset the portion of his SSA age-related retirement benefits attributable to federal service, as the concurrent receipt of FECA compensation benefits with retirement benefits under FERS was a prohibited dual benefit. It indicated that, effective the pay period beginning October 14, 2018, he would receive net compensation of \$2,501.75. Appellant reported receiving SSA age-related retirement benefits on various CA-1032 submitted on or after July 25, 2013.

On October 17, 2018 OWCP calculated the overpayment of compensation 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 had utilized a 28-day FERS offset amount of \$522.92 for the 30 days from June 1 to 30, 2012; \$573.23 for the 153 days from July 1 to November 30, 2013; \$581.82 for the 365 days from December 1, 2013 to November 30, 2014; \$591.69 for the 365-day

³ Appellant injured his back closing a tractor-trailer door.

periods from December 1, 2014 to November 30, 2015 and December 1, 2015 to November 30, 2016; \$593.45 for the 365 days from December 1, 2016 to November 30, 2017; and \$605.35 for the 317 days from December 1, 2017 to October 13, 2018. Using these figures, OWCP calculated that the total overpayment amount was \$41,313.81.

In a preliminary determination dated October 18, 2018, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$41,313.81 because it had failed to reduce his FECA compensation benefits for the periods June 1 to 30, 2012 and July 1, 2013 to October 13, 2018 by the portion of his SSA age-related retirement benefits attributable to his federal service. It explained how it calculated the overpayment, and further advised him that he was found without fault in the creation of the overpayment.⁴ OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, it notified him that, within 30 days of the date of the letter, he could request a final decision based on the written record or request a prerecouplement hearing.

On November 16 and 19, 2018 appellant, by telephone, requested an extension of time to file his Form OWCP-20.⁵

By decision dated November 20, 2018, OWCP finalized the preliminary determination regarding the overpayment of compensation in the amount of \$41,313.81 for the periods June 1 to 30, 2012 and July 1, 2013 through October 13, 2018. It also finalized its preliminary determination that appellant was without fault. However, OWCP denied waiver of recovery of the overpayment because he had not timely submitted evidence in response to the preliminary overpayment determination. Additionally, it determined that it would recover the overpayment by deducting \$600.00 every 28 days from appellant's continuing compensation payments.

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.⁶ 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.⁷

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA benefits that are attributable to federal service of the

⁴ OWCP noted that, due to the complexity in benefits administration, appellant could not have reasonably known that an improper payment occurred.

⁵ In a notice of telephone call (CA-110) appellant spoke with an OWCP representative to request an extension of time to submit financial documentation in support of a request for waiver, as advised in the preliminary notice of overpayment. He was informed that his request for extension would be reviewed, but the record does not contain further documentation regarding his request.

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8116.

employee.⁸ 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$41,313.81 for the periods June 1 through 30, 2012 and July 1, 2013 through October 13, 2018, for which he was without fault. The overpayment was based on the evidence received from SSA on September 22, 2018 regarding benefits paid to him. 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 in part to his federal service. A claimant may not receive both compensation for wage-loss and SSA retirement benefits attributable to federal service for the same period.¹⁰

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 \$41,313.81. The record includes a worksheet explaining the overpayment calculation. Appellant has not contested the amount of the overpayment and no contrary evidence has been provided to establish that OWCP's calculations were incorrect. The Board has reviewed OWCP's calculation of benefits he received for the periods June 1 through 30, 2012 and July 1, 2013 through October 13, 2018 and finds that an overpayment of compensation in the amount of \$41,313.81 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 If OWCP finds a claimant to be without fault in the matter of an overpayment, then, in accordance with section 8129(b), OWCP may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of FECA, nor be against equity and good conscience.

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

⁹ FECA Bulletin No. 97-09 (February 3, 1997).

¹⁰ *See supra* notes 6 and 7.

¹¹ *See D.S.*, Docket No. 18-1447 (issued July 22, 2019); *S.O.*, *supra* note 8; *G.T.*, Docket No. 15-1314 (issued September 9, 2016).

¹² 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437.

¹³ *See Robert Atchison*, 41 ECAB 83, 87 (1989).

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.¹⁴ Additionally, recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when any 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.¹⁵

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. This information will also be used to determine the repayment schedule, if necessary.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$41,313.81 overpayment of compensation.

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.¹⁷ Appellant did not provide the financial information to OWCP which it had requested.¹⁸

In its preliminary determination dated October 18, 2018, OWCP clearly explained the importance of providing the completed overpayment recovery questionnaire (Form OWCP-20) and financial information. It advised appellant that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant did not submit a completed overpayment recovery questionnaire or otherwise submit financial information regarding monthly income and expenses. As a result, OWCP did not have the necessary financial

¹⁴ 20 C.F.R. § 10.436(a)(b); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(b) (September 2018).

¹⁵ *Id.* at § 10.437(a)(b).

¹⁶ *Id.* at § 10.438(a); *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

¹⁷ *See N.C.*, Docket No. 18-1070 (issued January 9, 2019); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

¹⁸ Under 20 C.F.R. 10.438(b), failure to submit the requested information within 30 days of the request for information about income, expenses, and assets shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished. *See A.F.*, Docket No. 19-0054 (issued June 12, 2019). The Board notes that appellant contacted OWCP within 30 days following the issuance of the preliminary notice of overpayment to request additional time to provide the necessary information. While OWCP finalized the overpayment findings without the OWCP-20 Form, such form can be furnished to OWCP to require a new determination on the issue of waiver and recovery issues.

information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.¹⁹

Consequently, as appellant had not submitted the financial information required under section 10.438 of OWCP's regulations, the Board finds that OWCP properly denied waiver of recovery of the overpayment.²⁰

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.²¹

Section 10.441(a) of the 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 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.²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$600.00 every 28 days from appellant's continuing compensation payments.

As noted, appellant did not complete the Form OWCP-20, nor did he submit financial information as requested prior to the final November 20, 2018 decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²³ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁴ As appellant failed to timely submit information to OWCP as requested, the Board finds that there is no evidence of record to demonstrate that it erred in directing recovery of the \$41,313.81 overpayment of compensation at the rate of \$600.00 every 28 days from his continuing compensation payments.²⁵

¹⁹ See *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

²⁰ *Supra* note 17.

²¹ See *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

²² See *L.F.*, Docket No. 15-0489 (issued May 11, 2015).

²³ *Supra* note 15.

²⁴ *L.L.*, Docket No. 18-1103 (issued March 5, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

²⁵ See *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$41,313.81 for the periods June 1 through 30, 2012 and July 1, 2013 through October 13, 2018 due to a prohibited dual benefit. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$600.00 every 28 days from appellant's continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 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