

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

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**J.R., Appellant**

**and**

**DEPARTMENT OF THE ARMY, U.S. ARMY  
CORPS OF ENGINEERS, Jacksonville, FL,  
Employer**

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**Docket No. 19-1418  
Issued: March 4, 2020**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On June 17, 2019 appellant filed a timely appeal from a May 23, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$15,652.19 for the period January 1, 2014 through March 2, 2019, for which he was without fault, as he concurrently received age-related Social Security Administration (SSA)

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the May 23, 2019 decision, OWCP and the Board 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.*

retirement benefits while receiving FECA wage-loss compensation; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On August 30, 1993 appellant, then a 41-year-old electronic technician, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his back when pushing a cart of equipment while in the performance of duty. OWCP accepted the claim for lumbar sprain and herniated nucleus pulposus (HNP) at L5-S1 and paid intermittent wage-loss compensation benefits. It paid appellant wage-loss compensation on the periodic rolls as of August 17, 2000.

In a letter dated December 2, 2013, 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 as his 62<sup>nd</sup> birthday was approaching.

In a letter dated December 11, 2013, appellant advised OWCP that he had applied for SSA age-related retirement benefits and that he would begin receiving these benefits in approximately February 2014.

On March 21, 2019 OWCP notified appellant by letter that he had been receiving SSA age-related retirement benefits since January 1, 2014 and that the SSA had confirmed that a portion of his SSA benefits were attributed to his years of federal service. It explained that his federal service increased his monthly social security payment by \$263.50, which must be offset against his continuing compensation benefits. OWCP explained that, effective March 3, 2019, his compensation benefits would be offset by the portion of his SSA retirement benefits attributable to his federal service on account of age, resulting to a new net compensation payment of \$778.77, every 28 days.<sup>3</sup>

In a Federal Employees Retirement System (FERS) Dual Benefits Calculation transmittal dated March 12, 2019, SSA advised OWCP that appellant had concurrently received FECA benefits and retirement benefits through FERS from January 1, 2014 through December 1, 2018. It provided the amount that he received in retirement benefits, including the amount earned through FERS and the amount that he would have received without FERS. Including FERS, appellant was entitled to a monthly SSA rate of \$877.40 effective January 2014, \$892.30 effective December 2014, \$892.30 effective December 2015, \$894.90 effective December 2016, \$912.80 effective December 2017, and \$938.30 effective December 2018. SSA further advised that, without FERS, appellant would have been entitled to a monthly SSA rate of \$631.00 effective January 2014, \$641.70 effective December 2014, \$641.70 effective December 2015, \$643.60 effective December 2016, \$656.50 effective December 2017, and \$674.80 as of December 2018.

In a March 21, 2019 FERS offset calculation worksheet, OWCP found that an overpayment of compensation benefits had been created in the amount of \$15,652.19 for the period January 1, 2014 through March 2, 2019.

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<sup>3</sup> The record reflects that, effective March 3, 2019, OWCP adjusted appellant's compensation benefits to reflect his FERS/SSA offset.

On March 29, 2019 OWCP issued a preliminary determination that appellant was overpaid in the amount of \$15,652.19 for the period January 1, 2014 through March 2, 2019 because his FECA benefits were not reduced by the FERS portion of his SSA retirement benefits. 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 \$15,652.19. It further made a preliminary determination that appellant was without fault in the creation of the overpayment because he relied on erroneous information given in writing by OWCP. 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 prerecoupment hearing.

Appellant, in an April 16, 2019 overpayment action request form, requested that OWCP make a decision based on the written record. He also requested waiver of recovery of the overpayment. In an accompanying Form OWCP-20, appellant indicated that he had \$175.00 in funds on hand and a total monthly income of \$1,123.00, accounting for \$804.00 per month in social security benefits and \$319.00 in retirement benefits. He reported total monthly expenses amounting to \$2,290.00 which included \$35.00 property tax; \$500.00 food; \$10.00 clothing; \$300.00 utilities; and \$100.00 for other expenses. Appellant further indicated monthly debt that included \$487.00 to a credit union; \$111.00 to a credit union loan; \$500.00 to a credit card; \$147.00 Life Insurance; \$100.00 Synchrony Bank; and \$122.00 Medicare. Appellant explained that his FECA benefits made up the difference between his other income sources and his expenses. He indicated that he was in no position to repay this compensation error which had occurred through no fault of his own. No evidence documenting his expenses was provided.

On April 29, 2019 appellant elected OPM benefits in preference to FECA benefits. In a letter dated May 10, 2019, OWCP advised OPM of appellant's election, effective April 29, 2019.

By decision dated May 23, 2019, OWCP finalized its preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$15,652.19 for the period January 1, 2014 through March 2, 2019, because it failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to his federal service. It determined that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment of compensation based on the financial information provided. OWCP requested that appellant forward payment in the amount of \$435.00 each month.

### **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.<sup>4</sup> Section 8116 limits the right of an employee to receive compensation.

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<sup>4</sup> 5 U.S.C. § 8102(a).

While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.<sup>5</sup>

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to federal service of the employee.<sup>6</sup> 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.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$15,652.19 because he concurrently received age-related SSA retirement benefits while receiving FECA benefits for the period January 1, 2014 through March 2, 2019 without an appropriate offset.<sup>8</sup>

In its May 23, 2019 decision, OWCP found that an overpayment of compensation was created for the period January 1, 2014 through March 2, 2019. The overpayment was based on the evidence received from SSA with respect to retirement benefits paid to appellant. Appellant has not challenged the fact or amount of the overpayment. The record indicates that, while appellant was receiving compensation for total disability under FECA, he was also receiving SSA age-based retirement benefits. A claimant cannot receive both compensation for wage-loss and SSA age-based benefits attributable to federal service for the same period.<sup>9</sup> The information provided by SSA established that appellant received age-based SSA benefits that were attributable to federal service during the period January 1, 2014 through March 2, 2019. Consequently, the fact of overpayment has been established.<sup>10</sup>

To determine the amount of the overpayment, the portion of age-related SSA retirement 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. The SSA provided the SSA rate with FERS, and without FERS for specific periods commencing January 1, 2014 through March 2, 2019. OWCP provided its calculations for each relevant period based on the SSA worksheet. No contrary evidence was provided.

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<sup>5</sup> *Id.* at § 8116.

<sup>6</sup> 20 C.F.R. § 10.421(d); *see L.J.*, 59 ECAB 264 (2007).

<sup>7</sup> FECA Bulletin No. 97-09 (February 3, 1997).

<sup>8</sup> *T.B.*, Docket No. 18-1449 (issued March 19, 2019).

<sup>9</sup> *See E.K.*, Docket No. 18-0587 (issued October 1, 2018).

<sup>10</sup> *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

The Board has reviewed OWCP's calculation of benefits received by appellant for the period January 1, 2014 through March 2, 2019 and finds that an overpayment of compensation in the amount of \$15,652.19 was created.<sup>11</sup>

### **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.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup> 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.<sup>17</sup>

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<sup>11</sup> See *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

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

<sup>13</sup> See *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>14</sup> 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).

<sup>15</sup> *Id.* at § 10.437(a)(b).

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

<sup>17</sup> *Id.* at § 10.438(b).

## **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the \$15,652.19 overpayment of compensation.<sup>18</sup>

The fact that a claimant is without fault in creating an overpayment does not preclude OWCP from recovering the overpayment.<sup>19</sup> Even though 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.<sup>20</sup> Appellant, however, had the responsibility to provide the appropriate financial information to OWCP.<sup>21</sup>

In its preliminary determination dated March 29, 2019, OWCP clearly explained the importance of providing the completed overpayment questionnaire and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support 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. While appellant submitted a completed Form OWCP-20, he did not provide the necessary financial documentation supporting his claimed income and expenses. As a result, OWCP did not have the necessary information to determine whether recovery of the overpayment would defeat the purpose of FECA or whether recovery would be against equity and good conscience.<sup>22</sup> It, therefore, waiver of recovery of the overpayment.

Appellant has submitted no evidence that he had relied upon the incorrect payments to his detriment or that he would experience severe financial hardship attempting to repay the debt.<sup>23</sup> Consequently, as he did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.<sup>24</sup>

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<sup>18</sup> *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>19</sup> *See D.H.*, Docket No. 19-0384 (issued August 12, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019).

<sup>20</sup> 20 C.F.R. § 10.436.

<sup>21</sup> *Id.* at § 10.438; *see N.J.*, Docket No. 19-1170 (issued January 10, 2020).

<sup>22</sup> *G.G.*, Docket No. 19-0684 (issued December 23, 2019).

<sup>23</sup> *See V.T.*, Docket No. 18-0628 (issued October 25, 2018).

<sup>24</sup> With respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *B.W.*, Docket No. 18-1412 (issued February 8, 2019). As appellant was not in receipt of continuing compensation at the time of OWCP's final overpayment decision, the Board does not have jurisdiction over the method of recovery of the overpayment in this case.

**CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$15,652.19 for the period January 1, 2014 through March 2, 2019. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 2020  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

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