

without fault, as he concurrently received FECA benefits and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$500.00 from appellant's continuing compensation benefits, every 28 days.

FACTUAL HISTORY

On September 25, 1997 appellant, then a 49-year-old office services supervisor, filed an occupational disease claim (Form CA-2) alleging that his February 2, 1997 myocardial infarction and subsequent coronary bypass surgery were caused or aggravated by factors of his federal employment. OWCP accepted the claim for myocardial infarction and bypass surgery and adjustment disorder with anxiety. Appellant stopped work on February 2, 1997 and returned to work March 24, 1997. His last day in pay status was January 2, 1999. OWCP paid appellant wage-loss compensation benefits on the periodic rolls commencing April 23, 2000.

In EN1032 forms dated September 24, 2010 and October 8, 2012, appellant denied receipt of SSA benefits based on an annuity under the Federal Employees Retirement System (FERS). On September 19, 2011, and in EN1032 forms completed as of 2013, he questioned whether he received SSA benefits as part of an annuity for federal service and listed the amount of SSA benefits received during the period.

On January 14, 2019 OWCP received SSA's FERS/SSA dual benefit calculation worksheet setting forth appellant's SSA rate with FERS and the rate without FERS from October 2010 through December 2018. The SSA rate with FERS/without FERS was reported as: \$410.00/\$373.00 for October 2010; \$410.00/\$373.00 for December 1, 2010; \$425.00/\$386.00 for December 2011; \$432.00/\$393.00 for December 2012; \$431.90/\$392.90 for August 1, 2013; \$438.90/\$398.90 for December 1, 2013; \$445.90/\$404.90 for December 2014; \$447.90/\$404.90 for January 2015; \$447.90/\$404.90 for December 2015; \$449.00/\$407.00 for December 2016; \$458.00/\$415.00 for December 1, 2017; and \$471.50/\$426.50 for December 1, 2018.

Effective February 3, 2019, OWCP adjusted appellant's compensation benefits to reflect the FERS/SSA offset.

In a February 13, 2019 letter, OWCP notified appellant that he had been receiving prohibited dual benefits from FERS and the SSA. It explained that the SSA age-related retirement benefits attributable to the federal service of an employee covered under FECA must be adjusted for the FERS portion of SSA benefits. OWCP indicated that appellant's compensation had been adjusted to reflect the appropriate offset and noted his new compensation amount payable each 28 days.

In an April 24, 2019 FERS offset calculation worksheet, OWCP found an overpayment amount of \$74.41 for the period October 1 through November 30, 2010; \$445.22 for the period December 1, 2010 through November 30, 2011; \$470.57 for the period December 1, 2011 through November 30, 2012; \$312.43 for the period December 1, 2012 through July 31, 2014; \$156.86 for the period August 1 through November 30, 2013; \$481.32 for the period December 1, 2013 through November 30, 2014; \$41.90 for the period December 1 through 31, 2014; \$473.47 for the

period January 1 through November 30, 2015; \$518.84 for the period December 1, 2015 through November 30, 2016; \$505.38 for the period December 1, 2016 through November 20, 2017; \$517.42 for the period December 1, 2017 through November 30, 2018; and \$94.95 for the period December 1, 2018 through February 2, 2019, for a total overpayment of \$4,092.76 for the period October 1, 2010 through February 2, 2019.

On April 25, 2019 OWCP issued a preliminary determination that appellant was overpaid compensation in the amount of \$4,092.76 for the period October 1, 2010 through February 2, 2019 because his FECA benefits were not reduced by the FERS portion of his SSA age-related retirement benefits. It found that he was without fault in the creation of the overpayment as there was no evidence of record to establish that he knew or should have known “the proper course of action to be followed.” OWCP provided appellant with an overpayment action request form and an overpayment recovery questionnaire (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 May 3, 2019 OWCP received an overpayment action request form, dated April 29, 2019, in which appellant requested that OWCP make a decision based on the written evidence regarding possible waiver of recovery of the overpayment. Appellant requested waiver of recovery of the overpayment as he was found to be without fault in the creation of the overpayment. He submitted a letter outlining his actions which he believed should have precluded the overpayment. On the front page of the overpayment recovery questionnaire, appellant wrote “I believe this form is irrelevant.”

By decision dated May 31, 2019, OWCP finalized its preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$4,092.76 for the period October 1, 2010 through February 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 lack of financial information provided. OWCP found that it would recover the overpayment by deducting \$500.00, every 28 days, from appellant’s continuing compensation payments beginning May 26, 2019.

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 performance of his or her duty.³ 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.⁴

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

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.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 appellant received an overpayment of compensation in the amount of \$4,092.76 for the period October 1, 2010 through February 2, 2019, for which he was without fault, as he concurrently received FECA benefits and SSA age-related retirement benefits without an appropriate offset.

OWCP found that an overpayment of compensation was created for the period October 1, 2010 through February 2, 2019. The overpayment was based on the evidence received from SSA with respect to age-related retirement 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.⁷

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 SSA age-related retirement benefits that were attributable to federal service. The SSA provided the SSA rate with FERS, and without FERS for specific periods commencing October 1, 2010 through December 1, 2018. OWCP provided its calculations for each relevant period based on an SSA worksheet and in its preliminary and final overpayment determinations. No contrary evidence was provided and appellant has not contested that an overpayment occurred.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period October 1, 2010 through February 2, 2019 and finds that an overpayment of compensation in the amount of \$4,092.76 was created.

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

⁵ 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).

⁶ FECA Bulletin No. 97-09 (February 3, 1997); *see also E.M.*, Docket No. 19-0857 (issued December 31, 2019); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁷ 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).

recovery would defeat the purpose of FECA or would be against equity and good conscience.⁸ 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.⁹

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.¹⁰ 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.¹¹

OWCP 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.¹² Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery of the overpayment, and no further request for waiver shall be considered until the requested information is furnished.¹³

ANALYSIS -- ISSUE 2

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

The fact that OWCP may have been negligent in the creation of the overpayment does not entitle appellant to waiver of recovery of the overpayment.¹⁴ As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless recovery of the overpayment would defeat the purpose of FECA or be against equity and

⁸ 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).

⁹ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁰ 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).

¹¹ *Id.* at § 10.437(a)(b).

¹² *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹³ *Id.* at § 10.438(b).

¹⁴ *See L.D.*, Docket No. 19-0606 (issued November 21, 2019); *R.B.*, Docket No. 15-0808 (issued October 26, 2015).

good conscience.¹⁵ Appellant, however, did not provide the requisite financial documentation to OWCP.¹⁶

In its preliminary determination dated April 25, 2019, OWCP clearly explained the importance of providing the completed Form OWCP-20 and supporting financial documentation. It advised appellant that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant, however, deemed the Form OWCP-20 “irrelevant” and he did not provide the necessary financial documentation supporting his income and expenses. As a result, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.¹⁷ It was, therefore, required to deny waiver of recovery of the overpayment.¹⁸

On appeal appellant argues that recovery of the overpayment should have been waived because he was not at fault in the creation of the overpayment. As explained above, 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.¹⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$500.00 every 28 days from appellant’s continuing compensation payments.

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 May 31, 2019 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²⁰ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to

¹⁵ 5 U.S.C. § 8129.

¹⁶ 20 C.F.R. § 10.438.

¹⁷ See *E.M.*, *supra* note 6.

¹⁸ *Id.* at § 10.438; see *L.D.*, *supra* note 14.

¹⁹ *Id.* at § 10.441(a); see *A.F.*, *supra* note 8; *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

²⁰ *Supra* note 16.

collect the debt promptly and in full.²¹ As appellant did not submit the 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 \$4,092.76 overpayment at the rate of \$500.00 every 28 days from appellant's continuing compensation payments.²²

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$4,092.76 for the period October 1, 2010 through February 2, 2019, for which he was without fault, 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 \$500.00 every 28 days from his continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 2, 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

²¹ See *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual *supra* note 10 at Chapter 6.500.2 (September 2018).

²² See *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).