

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$4,362.06 for the period October 1, 2018 through March 30, 2019 because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits, for which he was not at fault; (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 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On February 27, 2007 appellant, then a 54-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on February 26, 2007 he sustained a muscle strain when resetting a snow plow blade while in the performance of duty. OWCP accepted the claim for upper back sprain and T6 compression fracture. Appellant stopped work on February 27, 2007, returned to full-time modified work on October 15, 2007, and then stopped work again on October 29, 2007. OWCP paid him wage-loss compensation on the supplemental rolls as of April 16, 2007, and then on the periodic rolls as of May 11, 2008.

In a Federal Employees Retirement System (FERS) Dual Benefits Calculation transmittal received by OWCP on March 6, 2019, SSA advised OWCP that appellant had concurrently received FECA benefits and age-related retirement benefits through FERS beginning October 2018. It provided the amount that he received in retirement benefits, including the amount earned through FERS and the hypothetical amount that he would have received without FERS. Including FERS, appellant was entitled to a monthly SSA rate of \$1,848.40 effective October 2018 and \$1,900.10 effective December 2018. SSA further advised that, without FERS, appellant would have been entitled to a monthly SSA rate of \$1,130.70 effective October 2018, and \$1,162.30 effective December 2018.

On April 22, 2019 OWCP calculated the FERS offset, and determined the 28-day FERS offset amount for the days for the period in question, which it added to find a total overpayment of \$4,362.06 for the period October 1, 2018 to March 30, 2019.

In a preliminary determination dated April 24, 2019, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$4,362.06 because it had failed to reduce his wage-loss compensation benefits for the period October 1, 2018 through March 30, 2019 by the portion of his SSA benefits that were attributable to his federal service. It calculated the overpayment amount by determining the difference between his SSA amount with and without FERS for each period and adding these amounts to find a total overpayment of \$4,362.06. OWCP further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment because he could not have reasonably known that it had paid compensation incorrectly. It requested that he complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and provide supporting financial documentation. OWCP informed appellant that, in order for it to consider the question of waiver of recovery of the overpayment or to determine a reasonable method for repayment, he must provide a completed Form OWCP-20, and attach supporting financial documentation. 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 precoupment hearing.

On May 8, 2019 appellant requested that OWCP issue a decision based on the written evidence of record. He submitted a Form OWCP-20 along with his request. Appellant noted total monthly income of \$6,200.00, \$2,000.00 in a checking account, and \$1,000.00 in a savings account. He also noted monthly expenses of \$1,200.00 for mortgage/rent payments, \$800.00 a month for food, \$100.00 a month for clothing, \$800.00 a month for utilities, \$1,500.00 for other expenses, \$220.00 in monthly payments for consumer debt, resulting in total monthly expenses of \$4,620.00.³ Appellant submitted documentation regarding his monthly rent, credit cards, as well as utility bills, cable bill, telephone bill, medical bills and co-payments, grocery bill, and automobile insurance coverage as documentation of various monthly expenses

By decision dated June 5, 2019, OWCP finalized the April 24, 2019 preliminary determination that appellant had received an overpayment of compensation in the amount of \$4,362.06 for the period October 1, 2018 through March 30, 2019 because it had failed to offset his compensation payments by the portion of his SSA benefits that were attributable to 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. In finding that appellant's income exceeded his expenses, OWCP explained that the expenses listed by appellant totaled \$4,620.00, not \$5,520.00 as calculated by appellant. It found that it would recover the overpayment by deducting \$600.00 every 28 days from his continuing wage-loss compensation payments.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA⁴ 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 duty.⁵ 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.⁶

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.⁷ 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

³ Appellant noted total monthly expenses of \$5,520.00, but the total of the expenses listed only totaled \$4,620.00.

⁴ *Supra* note 1.

⁵ *Id.* at § 8102(a).

⁶ *Id.* at § 8116.

⁷ 20 C.F.R. § 10.321(d); *see N.J.*, Docket No. 19-1170 (issued January 10, 2020); *D.S.*, Docket No. 18-1447 (issued July 22, 2019); *L.J.*, 59 ECAB 264 (2007).

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 \$4,362.09 for the period October 1, 2018 through March 30, 2019 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits.

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 benefits for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.⁹

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 during the time period in question. The SSA provided the rate with FERS, and without FERS for specific periods commencing October 1 and December 1, 2018. OWCP provided its calculations for each relevant period based on the SSA worksheet and its April 22, 2019 memorandum and April 24, 2019 preliminary overpayment determination. No contrary evidence was provided.

The Board has reviewed OWCP's calculation of benefits appellant received for the period October 1, 2018 through March 30, 2019 and finds that an overpayment in the amount of \$4,362.09 was created.¹⁰

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.¹¹

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

⁹ 5 U.S.C. § 8116(d)(2); *see L.M.*, Docket No. 19-1197 (issued January 8, 2020); *L.W.*, Docket No. 19-0787 (issued October 23, 2019).

¹⁰ *See L.M., id.*; *L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹¹ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see N.J., supra* note 7; *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

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.¹²

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.¹³ 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 \$50.00.¹⁴

According to 20 C.F.R. § 10.437 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.¹⁵

ANALYSIS -- ISSUE 2

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

OWCP found appellant without fault in the creation of the overpayment because he could not have known the amount of the SSA offset to be applied to his wage-loss compensation payments. The fact that a claimant is without fault in the creation of an overpayment does not preclude OWCP from recovering the overpayment.¹⁶ 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 of be against equity and good conscience.¹⁷ 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 limits as determined by OWCP procedures.¹⁸

The Board finds that OWCP properly determined that appellant did not require substantially all of his income to meet ordinary and necessary living expenses. Based on

¹² *N.J.*, *supra* note 7; *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83 (1989).

¹³ 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. 13-0784 (issued September 20, 2013).

¹⁴ *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *id.* at Chapter 6.400.4(a)(3).

¹⁵ 20 C.F.R. § 10.437(a), (b).

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

¹⁷ *Id.* at 10.436; *see also G.L.*, Docket No. 19-0297 (issued October 23, 2019).

¹⁸ *Supra* note 14.

appellant's May 8, 2019 overpayment recovery questionnaire and the record, as his monthly income of \$6,200.00 exceeded his ordinary and necessary living expenses of \$4,620.00 by more than \$50.00, he did not need substantially all of his income for ordinary and necessary living expenses.¹⁹

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 worse. Therefore, OWCP properly found the recovery of the overpayment would not defeat the purpose of FECA or be against equity or 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.²⁰ 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 repayment of the overpayment by deducting \$600.00 every 28 days from appellant's continuing compensation payments.

OWCP found that appellant had total monthly income of \$6,200.00 and monthly expenses of \$4,620.00. It found that his monthly income exceeded his expenses by \$1,580.00, which could be applied 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.²² The Board thus finds that it properly required recovery of the overpayment by deducting \$600.00 from appellant's continuing compensation payments.

¹⁹ *G.L.*, *supra* note 17.

²⁰ 20 C.F.R. § 10.441.

²¹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.2(a) (September 2018).

²² *See L.M.*, *supra* note 9; *T.G.*, Docket No. 17-1989 (issued June 6, 2018).

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$4,362.09 for the period October 1, 2018 through March 30, 2019 because he concurrently received SSA age-related 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 \$600.00 every 28 days from his continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the June 5, 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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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