



## **ISSUES**

The issues are: (1) whether the employee received an overpayment of compensation in the amount of \$29,591.10 for the period January 12, 2015 through November 12, 2016 because he concurrently received FECA wage-loss compensation benefits and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset; (2) whether OWCP properly found the employee at fault in creation of the \$29,591.10 overpayment, thereby precluding waiver of recovery of the overpayment; (3) whether OWCP properly determined that the employee received an overpayment of compensation in the amount of \$1,446.61, for which he was without fault, because he concurrently received sick leave pay and FECA wage-loss compensation during the period December 14 through 30, 2014; (4) whether OWCP properly denied waiver of recovery of the \$1,446.61 overpayment; and (5) whether OWCP properly required recovery of the \$29,591.10 and \$1,446.61 overpayments from the employee's estate.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 3, 2014 the employee, then a 75-year-old Federal Emergency Management Agency (FEMA) public assistance group supervisor, filed a traumatic injury claim (Form CA-1) alleging that he injured his hip when he tripped on a floor mat and fell, while in the performance of duty. The employee's retirement coverage was noted on the form as Federal Employees Retirement System (FERS). The employee stopped work and did not return. OWCP accepted the claim for closed fracture of neck of left femur. The record reflects that OWCP paid the employee FECA wage-loss compensation on the supplemental rolls as of December 14, 2014<sup>5</sup> and on the periodic rolls as of June 28, 2015.

In a June 10, 2015 narrative statement, the employee asserted that, to date, he had not received FECA wage-loss compensation benefits. He reported receiving federal salary net payments of \$2,181.56 on December 19, 2014 and \$1,182.33 on January 5, 2015.

On June 6, 2016 the employee submitted an affidavit of earnings and employment (EN1032 form) in which he answered "No" when asked if he received benefits from the SSA as part of an annuity for federal service.

By letter dated July 25, 2016, the employee notified OWCP that he retired as a full-time employee from the employing establishment on February 27, 2004. He then returned as a part-time employee later in 2004 on an as needed temporary basis. The employee reported that he started drawing his annuity after he retired and began receiving FECA wage-loss benefits after his November 26, 2014 employment injury. He reported that he could not understand why "they want to cancel" his FECA wage-loss compensation benefits and that he was never made aware of not being eligible to collect his regular pension concurrently with FECA benefits.

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<sup>4</sup> Docket No. 18-0171 (issued August 2, 2018).

<sup>5</sup> OWCP paid appellant compensation on the supplemental rolls retroactively on June 29, 2018.

On September 30 and October 21, 2016 OWCP forwarded a FERS/SSA dual benefits calculations worksheet to SSA.

In a November 14, 2016 FERS/SSA dual benefits calculations worksheet, SSA reported that as of January 2015, the employee's SSA rate with FERS was \$2,248.70 and SSA rate without FERS was \$911.00, and as of December 2016, the employee's SSA rate with FERS was \$2,255.40 and without FERS was \$913.70.

In a November 25, 2016 FERS offset calculation worksheet, the employee's SSA rate with FERS totaled \$2,248.70 and SSA without FERS totaled \$911.00 with a January 1, 2015 effective date. A monthly FERS offset of \$1,337.70 and a 28-day FERS offset of \$1,234.80 was reported. The overpayment start date was recorded as January 1, 2015 with an end date of November 12, 2016 for a total of 682 days. The worksheet reflected that the overpayment amount totaled \$30,076.20.

By notice dated November 23, 2016, OWCP issued a preliminary determination that an overpayment of compensation in the amount of \$30,076.20 was created for the period January 1, 2015 through November 12, 2016 as the employee was paid dual compensation under FECA and SSA without an appropriate offset. It found that the employee was with fault in the creation of the overpayment because he accepted a payment that he knew or reasonably should have known was incorrect. The November 14, 2016 FERS/SSA dual benefits calculations worksheet and November 25, 2016 FERS offset calculation worksheet were provided. OWCP informed the employee of his options if he wished to contest the fact or amount of overpayment or request a waiver of recovery and provided him with an overpayment recovery questionnaire (Form OWCP-20).

On December 18, 2016 the employee, through counsel, requested a prerecoupment hearing before an OWCP hearing representative. The employee disagreed with the amount of the overpayment and reported that it occurred through no fault of his own.

A hearing was held on June 16, 2017, where counsel argued that an overpayment occurred through no fault of the employee and that repayment would cause a financial hardship.

By letter dated July 26, 2017, the employee reiterated that he was never made aware that he could not collect FECA concurrently with his monthly federal retirement benefits to which he was entitled after 20 years of federal service.

By decision dated September 21, 2017, an OWCP hearing representative found that an overpayment of compensation in the amount of \$30,076.20 was created for the period January 1, 2015 through November 12, 2016 because the employee was paid dual compensation under FECA and SSA without an appropriate offset. She overturned the preliminary determination's finding of fault, explaining that the employee was without fault in the creation of the overpayment because it was reasonable that he may not have understood that he was in receipt of dual benefits. The hearing representative explained that the employee's letters established that he was unclear regarding the benefits he was receiving. She further found that the employee failed to submit a Form OWCP-20 or any supporting financial information and that the overpayment was, therefore, not subject to waiver. Based on his current 28-day compensation benefit of \$1,230.50, the hearing representative determined that the employee could repay the overpayment by deducting \$275.00 every 28 days from his continuing compensation benefits.

On October 27, 2017 the employee, through counsel, submitted a completed Form OWCP-20 dated September 27, 2017, which listed his monthly expenses, assets, and income in support of waiver of recovery of the overpayment due to financial hardship. Counsel for the employee noted that his monthly expenses exceeded his income and requested waiver of the overpayment in light of the recent finding that he was without fault in the creation of the overpayment. In the alternative, counsel requested a reduction of the monthly recoupment amount to \$50.00 for each compensation period as \$275.00 would cause him severe prejudice.

On October 30, 2017 the employee, through counsel, filed a timely appeal to the Board from OWCP's September 21, 2017 merit decision.

On June 19, 2018 the employing establishment forwarded a claim for compensation (Form CA-7) to OWCP claiming disability while in a leave without pay (LWOP) status from December 14 to 30, 2014.

The record reflects that the employee passed away on July 5, 2018.

On July 12, 2018 the employing establishment forwarded another Form CA-7 to OWCP claiming disability while in an LWOP status from December 1 to 30, 2014.

By letter dated July 17, 2018, OWCP notified the employee that it had received the CA-7 forms claiming compensation for the period beginning December 1 through 30, 2014. It informed him that the continuation of pay (COP) period ran from November 27, 2014 through January 10, 2015, which was paid by his employing establishment, and that any wage-loss subsequent to that date could be covered under compensation if he were disabled for work. By decision dated August 2, 2018, the Board vacated OWCP's September 21, 2017 merit decision in part. The Board found that OWCP had established fact of overpayment, but that OWCP had not established the amount of the overpayment.<sup>6</sup> The Board found that OWCP did not provide a complete payment history substantiating the employee's receipt of dual SSA age-related retirement and FECA wage-loss compensation benefits during the purported overpayment period January 1, 2015 through November 12, 2016 as there was evidence of record that appellant received COP benefits through January 11, 2015.<sup>7</sup> The Board found that the record was unclear regarding the amount of overpayment and remanded the case for further development.

Following the Board's remand, in a September 12, 2018 Form CA-110 telephone memorandum, the employing establishment advised OWCP that the employee used sick leave from November 26, 2014 through January 11, 2015.

In a September 12, 2018 FERS offset calculation worksheet, the employee's SSA rate with FERS totaled \$2,248.70 and SSA without FERS totaled \$911.00 with a January 12, 2015 effective

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<sup>6</sup> *Supra* note 4.

<sup>7</sup> The Board noted that OWCP's June 29, 2015 initial payment memorandum and July 1, 2015 letter indicated that the record was unclear regarding whether the employee received COP from November 27, 2014 through January 11, 2015. A June 30, 2015 supplemental rolls payment worksheet reflected that the employee received disability compensation from January 12 through June 27, 2015. OWCP requested clarification regarding the matter, but failed to discharge its burden in developing the evidence as the issue remained unresolved. As such, it was unclear how it determined the overpayment began on January 1, 2015 and OWCP should not have relied on SSA's unverified report to determine that the overpayment began on that date.

date. A monthly FERS offset of \$1,337.70 and a 28-day FERS offset of \$1,234.80 was reported. The overpayment start date was recorded as January 12, 2015, with an end date of November 12, 2016, for a total of 671 days. The worksheet reported that the overpayment amount totaled \$29,591.10.

By preliminary determination dated September 13, 2018, OWCP advised the employee's estate of an overpayment of compensation in the amount of \$29,591.10 because the employee was paid dual wage-loss compensation benefits under FECA and SSA age-related retirement benefits without an appropriate offset for the period January 12, 2015 through November 12, 2016. It also found that the employee had been at fault in the creation of the overpayment because he accepted a payment that he knew or reasonably should have known was incorrect. OWCP advised the employee's estate that it could submit evidence challenging the fact, amount, or finding of fault, and request waiver of recovery of the overpayment. It also directed the employee's estate to complete a Form OWCP-20, and advised it of its appeal rights.

In another notice dated September 18, 2018, OWCP advised the employee's estate of its preliminary determination of an overpayment of compensation in the amount of \$1,446.61 for the period December 14 through 30, 2014, because the employee was paid sick leave and FECA wage-loss compensation for the same period of time. It found that he was without fault in the creation of the overpayment because the employee was not aware nor could reasonably have been expected to know that OWCP had paid compensation incorrectly. OWCP requested that the employee's estate complete the enclosed Form OWCP-20 and submit supporting financial documentation. Additionally, it notified the estate that, within 30 days of the date of the letter, it could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing.

On October 9, 2018 appellant, the employee's widow, contested the fact that the overpayments had occurred, the finding of fault, and requested a waiver of recovery of the overpayments. She denied having knowledge of the alleged overpayment, which occurred almost four years ago. Appellant again informed OWCP that the employee passed away on July 5, 2018 and if an overpayment existed, it should be waived because she was unable to afford the payments. She reported that she had no knowledge or information pertaining to any overpayment between the employee and OWCP and did not understand the situation. Appellant did not complete or return the Form OWCP-20 or provide financial documentation.

By decision dated October 23, 2018, OWCP issued a final overpayment determination to the employee's estate finding a \$29,591.10 overpayment of compensation for the period January 12, 2015 through November 12, 2016, because the employee was paid dual wage-loss compensation benefits under FECA and SSA age-related retirement benefits without an appropriate offset.<sup>8</sup> It further finalized the finding of fault, thereby precluding waiver of recovery of the overpayment. OWCP required repayment of the overpayment in full.

In a separate decision dated October 24, 2018, OWCP issued a final overpayment determination to the employee's estate, finding a \$1,446.61 overpayment of compensation for the

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<sup>8</sup> OWCP noted that under the current debt number 906325805, an overpayment in the amount of \$29,591.10 that was declared in the case for the period January 12, 2015 through November 12, 2016. It further noted that \$2,750.00 was collected under the prior debt number 906297328 due to lack of an SSA/FERS offset. That record was voided and a new one created following the Board's August 2, 2018 decision. Therefore the current remaining balance of the overpayment amounted to \$26,841.10.

period December 14 through 30, 2014, because the employee was paid leave for the same period he received FECA wage-loss compensation. It determined that he was without fault in the creation of the overpayment because the employing establishment erred in sending OWCP the Form CA-7 claiming compensation for lost wages, but denied waiver of recovery of the overpayment of compensation because the employee's estate failed to provide any of the financial information requested. OWCP concluded that there was no evidence to substantiate that recovery of the overpayment would either defeat the purpose of FECA or be against equity and good conscience. It required repayment of the overpayment in full.

### **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 duty.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> FECA Bulletin No. 97-09 states 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>12</sup>

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

The Board finds that the employee received an overpayment of compensation in the amount of \$29,591.10, because he concurrently received FECA benefits and SSA age-related retirement benefits for the period January 12, 2015 through November 12, 2016 without an appropriate offset.<sup>13</sup>

By decision dated August 2, 2018, the Board remanded the case for OWCP to determine whether an overpayment of compensation was created in the amount of \$30,076.20 for the period January 1, 2015 through November 12, 2016 as OWCP had failed to provide a complete payment history substantiating the employee's receipt of dual SSA age-related retirement and FECA wage-loss compensation benefits during the purported overpayment period

In September 2018, OWCP developed a complete payment history substantiating the employee's receipt of FECA benefits during the purported overpayment period, from January 12,

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<sup>9</sup> 5 U.S.C. § 8102(a).

<sup>10</sup> *Id.* at § 8116.

<sup>11</sup> 20 C.F.R. § 10.421(d); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

<sup>12</sup> FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>13</sup> *T.B.*, Docket No. 18-1449 (issued March 19, 2019).

2015 through November 12, 2016 while also receiving SSA age-related retirement benefits without an appropriate offset. The record indicates that, while the employee was receiving compensation for total disability under FECA, he was also receiving SSA age-related retirement benefits. A claimant cannot receive both compensation for wage-loss under FECA and SSA age-related retirement benefits attributable to federal service for the same period.<sup>14</sup> As the employee received SSA age-related retirement benefits that were attributable to federal service during the period January 12, 2015 through November 12, 2016, the fact of overpayment has been established.<sup>15</sup>

To determine the amount of the overpayment, OWCP must calculate the portion of the SSA benefits that were attributable to federal service. It received documentation from SSA providing appellant's SSA rate with FERS, and without FERS for the period January 12, 2015 through November 12, 2016. OWCP provided its calculations for each relevant period based on the SSA worksheet. No contrary evidence was provided. The Board has reviewed OWCP's calculation of benefits received by the employee for the period January 12, 2015 through November 12, 2016 and finds that an overpayment of compensation in the amount of \$29,591.10 was created.<sup>16</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129(b) of FECA<sup>17</sup> provides that an overpayment of compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.

To determine if an individual was at fault with respect to the creation of an overpayment, OWCP examines the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.<sup>18</sup>

When a claimant receives benefits from SSA as part of an annuity under FERS concurrently with disability/wage-loss compensation, the claimant should be found without fault

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<sup>14</sup> See *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

<sup>15</sup> *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

<sup>16</sup> See *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

<sup>17</sup> 5 U.S.C. § 8129(b).

<sup>18</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.300.4(d) (September 2018).

unless there is evidence on file that the claimant was aware that the receipt of full SSA benefits concurrent with disability/wage-loss compensation was prohibited.<sup>19</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP improperly found the employee at fault in the creation of the overpayment for the period January 12, 2015 through November 12, 2016.

In the prior September 21, 2017 decision, OWCP's hearing representative overturned the preliminary determination's finding of fault in the overpayment claim, explaining that it was reasonable that the employee may not have understood that he was in receipt of dual benefits. The hearing representative correctly determined that the employee was not at fault in the creation of the overpayment because the evidence failed to establish that he knowingly accepted a payment which he knew to be incorrect.<sup>20</sup> The September 21, 2017 decision further discussed and addressed the relevant evidence provided by the employee, including various letters he submitted, which established that he was unclear regarding the benefits he was receiving and attempted to correct the situation by advising OWCP that he wanted to elect FECA benefits if he was required to do so.

The September 13, 2018 preliminary notice and the October 23, 2018 final overpayment decision, however, failed to consider this evidence, OWCP's hearing representative's prior finding, and its own procedures when issuing its determination that the employee was at fault in the creation of the overpayment for the period January 12, 2015 through November 12, 2016.<sup>21</sup> The Board finds that the employee was without fault in the creation of the overpayment.

As the employee was not at fault in the creation of the overpayment for the period January 1, 2015 through November 12, 2016, the case will be remanded to OWCP to consider the issue of waiver of recovery of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 3**

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>22</sup> 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.<sup>23</sup>

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<sup>19</sup> See *J.B.*, Docket No. 19-1244; *G.G.*, Docket No. 19-0684 (issued December 24, 2019) (The Board affirmed OWCP's finding that, due to the complexity of SSA age-related retirement benefits administration, appellant was not with fault in the creation of the overpayment because he could not have reasonably known that an improper payment had occurred. OWCP determined that appellant was not expected to be able to calculate the amount of the offset prior to receipt of information for the SSA).

<sup>20</sup> *Id.*

<sup>21</sup> *K.B.*, Docket No. 19-1332 (issued July 17, 2020).

<sup>22</sup> 5 U.S.C. § 8102(a).

<sup>23</sup> *Id.* at § 8116.



Section 8118(c) provides that compensation for disability does not begin until termination of COP or the use of annual or sick leave ends.<sup>24</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly determined that the employee received an overpayment of compensation in the amount of \$1,446.61 because he received both wage-loss compensation and paid sick leave for the period December 14 through 30, 2014.

The record indicates that on June 19, 2018 the employing establishment sent OWCP a Form CA-7 indicating LWOP for the period December 14 through 30, 2014. In a Form CA-110 telephone memorandum dated September 12, 2018, the employing establishment notified OWCP that the employee used sick leave from November 26, 2014 through January 11, 2015.<sup>25</sup>

On June 21, 2018 OWCP paid the employee wage-loss compensation for a portion of the period December 14 through 30, 2014, when he had previously used sick leave for the same period. As noted, compensation for wage loss is not payable for periods when a claimant has used sick or annual leave.<sup>26</sup> Since the employee received \$1,446.61 in compensation for a period when sick or annual leave was used, the Board will affirm the fact and amount of the overpayment.<sup>27</sup>

### **LEGAL PRECEDENT -- ISSUE 4**

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>28</sup>

Recovery of an overpayment will defeat the purpose of FECA when 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>29</sup> Additionally recovery of an overpayment is considered to be against equity and good conscience when an individual who

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<sup>24</sup> *Id.* at § 8118(c).

<sup>25</sup> The Board also notes that the evidence of record indicates that the employee's COP period ran from November 27, 2014 through January 11, 2015. The record is unclear as to whether appellant's sick leave was converted to COP. Nevertheless, receipt of wage-loss benefits from OWCP during the COP period also creates an overpayment of compensation. *D.G.*, Docket No. 16-0281 (issued April 21, 2016).

<sup>26</sup> *S.T.*, Docket No. 19-0318 (issued November 12, 2019); *see also D.E.*, Docket No. 10-0458 (issued November 9, 2010).

<sup>27</sup> *Id.*

<sup>28</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>29</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).

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>30</sup>

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.<sup>31</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>32</sup>

### **ANALYSIS -- ISSUE 5**

The Board finds that this case is not in posture for decision as to whether recovery of the overpayment should be waived.

In the case of *William A. Couch*,<sup>33</sup> the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

In its October 24, 2018 decision, OWCP denied waiver of recovery finding that appellant failed to submit a Form OWCP-20 or supporting financial documentation. The record reflects that an overpayment action request submitted on October 9, 2018 by appellant contested the fact that the overpayment occurred, the finding of fault, and requested waiver of recovery. While appellant did not complete or return the Form OWCP-20 or provide financial documentation, the record reflects that prior to his death, the employee had previously submitted this information in support of waiver of recovery of the overpayment. Notably, the employee submitted a completed Form OWCP-20 on October 27, 2017 documenting his income, expenses, and assets as specified by OWCP. In an accompanying letter, counsel for the employee asserted that his monthly expenses exceeded his income and requested waiver of the overpayment in light of the recent finding that he was without fault in the creation of the overpayment and the financial hardship it would cause him. OWCP failed to review the information submitted by the employee in support of his request for waiver of recovery of the overpayment, therefore, failing to follow its procedures by properly discussing all of the relevant evidence of record received prior to issuing the final overpayment decision on October 24, 2018.<sup>34</sup>

On remand OWCP shall review all evidence of record and, following any further development as it deems necessary, it shall issue a *de novo* decision.

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<sup>30</sup> *Id.* at § 10.437(a)(b).

<sup>31</sup> *Id.* at § 10.438(a).

<sup>32</sup> *Id.* at § 10.438(b).

<sup>33</sup> 41 ECAB 548 (1990); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

<sup>34</sup> *M.R.*, Docket No. 19-1626 (issued August 19, 2020).

### **LEGAL PRECEDENT -- ISSUE 5**

If OWCP finds that an overpayment exists and the employee has recently passed away OWCP's procedures require that steps be taken to offset the overpayment prior to recovery from the estate.<sup>35</sup> These procedures provide as follows:

“Upon learning that a claimant with an existing overpayment has died, the District Office shall immediately contact the OPM [Office of Personnel Management] to determine the availability of any OPM benefits payable at the time of death that may be administratively offset, *e.g.*, basic employee death benefits, survivor annuity benefits, or lump[-]sum refund of the deceased employee's retirement contributions (5 C.F.R. § 831.1805).<sup>36</sup>

“If the claimant recently passed away, OWCP may refer the debt to FMS [Financial Management System] for offset of the deceased claimant's last Federal tax refund under the Treasury's Offset Program (TOP). 31 C.F.R. § 285.2. The OWCP has a special profile with FMS under TOP for the collection of these specific estate debts.”<sup>37</sup>

### **ANALYSIS -- ISSUE 5**

The Board finds that this case is not in posture for decision with regard to recovery of the overpayment debt. The evidence of record does not substantiate the actions OWCP has taken to recover the overpayment of debt before requiring payment in full from the employee's estate.<sup>38</sup>

OWCP was required to follow certain procedures to protect appellant in overpayment cases wherein it has knowledge that a beneficiary with an existing overpayment has died.<sup>39</sup> In this case, the evidence of record does not substantiate the actions OWCP has taken to recover the overpayment debt through an offset from OPM benefits or through the TOP, prior to taking overpayment actions against the estate. The case shall therefore be remanded for OWCP to follow its procedures as outlined in Chapter 6.500.15 of its procedures.<sup>40</sup> Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that the employee received an overpayment of compensation in the amount of \$29,591.10, because he concurrently received FECA benefits and SSA age-related retirement

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<sup>35</sup> *J.P.*, Docket No. 18-1194 (issued April 28, 2020); *see* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Recovery of an Existing Debt from a Deceased Debtor's Estate*, Chapter 6.500.15(e-f) (September 2018).

<sup>36</sup> *Id.* at Chapter 6.500.15(f).

<sup>37</sup> *Id.* at Chapter 6.500.15(e).

<sup>38</sup> *W.J.*, Docket No. 18-1035 (issued July 9, 2019).

<sup>39</sup> *Supra* note 36.

<sup>40</sup> *Id.*; *see also S.B.*, Docket No. 18-1420 (issued June 20, 2019).

benefits for the period January 12, 2015 through November 12, 2016 without an appropriate offset. The Board further finds that OWCP improperly found the employee at fault in the creation of the overpayment for the period January 12, 2015 through November 12, 2016. The Board also finds that OWCP properly determined that the employee received an overpayment of compensation in the amount of \$1,446.61 for which he was without fault because he concurrently received wage-loss compensation and paid sick leave for the period December 14 through 30, 2014. The Board further finds that this case is not in posture for decision regarding the issue of waiver of recovery of the \$1,446.61 overpayment. The Board also finds that the case is not in posture for decision regarding recovery of the overpayments against the estate.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 24 and 23, 2018 decisions of the Office of Workers' Compensation Programs are affirmed in part, and set aside in part, and the case is remanded for further action consistent with this decision of the Board.

Issued: November 19, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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