

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$67,875.37 for the period January 1, 2007 through March 30, 2019, for which he was without fault, because he concurrently received FECA wage-loss compensation 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 \$550.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On June 1, 1989 appellant, then a 50-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained a stress-related condition after being interrogated by postal inspectors. On the reverse side of the claim form, the employing establishment noted that appellant stopped work April 11, 1989. OWCP accepted the claim for adjustment reaction. It paid appellant wage-loss compensation on the periodic rolls as of February 11, 1990.

In response to a March 20, 2019 inquiry, on March 27, 2019, SSA provided OWCP with a FERS/SSA dual benefit calculation worksheet setting forth appellant's SSA benefit rates with FERS and without FERS from January 2007 through December 2018; effective January 2007, his rate with FERS was \$1,345.70 and without FERS was \$935.60; effective December 2007, his rate with FERS was \$1,376.60 and without FERS was \$957.10; effective December 2008, December 2009, and December 2010, his rate with FERS was \$1,456.40 and without FERS was \$1,012.60; effective December 2011, his rate with FERS was \$1,508.80 and without FERS was \$1,049.00; effective December 2012, his rate with FERS was \$1,534.30 and without FERS was \$1,066.80; effective December 2013, his rate with FERS was \$1,557.30 and without FERS was \$1,082.80; effective December 2014 and December 2015, his rate with FERS was \$1,583.70 and without FERS was \$1,101.20; effective December 2016, his rate with FERS was \$1,588.30 and without FERS was \$1,104.50; effective December 2017, his rate with FERS was \$1,620.00 and without FERS was \$1,126.50; effective December 2018, his rate with FERS was \$1,665.30 and without FERS was \$1,158.00.

OWCP completed a FERS offset calculation form on April 18, 2019. It calculated the amounts that it should have offset from appellant's wage-loss compensation from January 1, 2007 through March 30, 2019: effective January 1, 2007, the monthly offset was \$410.10 (\$1,345.70 - \$935.600), or \$378.55 every 28 days; effective December 1, 2007, the monthly offset was \$419.50 (\$1,376.60 - \$957.10), or \$387.23 every 28 days; effective December 1, 2008, December 1, 2009, and December 1, 2010, the monthly offset was \$443.80 (\$1,456.40 - \$1,012.60), or \$409.66 every 28 days; effective December 1, 2011, the monthly offset was \$459.80 (\$1,508.80 - \$1,049.00), or \$424.43 every 28 days; effective December 1, 2012, the monthly offset was \$467.50 (\$1,534.30 - \$1,066.80), or \$431.54 every 28 days; effective December 1, 2013, the monthly offset was \$474.50 (\$1,557.30 - \$1,082.80), or \$438.00 every 28 days; effective December 1, 2014 and December 1, 2015, the monthly offset was \$482.50 (\$1,583.70 - \$1,101.20), or \$445.38 every 28 days; effective December 1, 2016, the monthly offset was \$483.80 (\$1,588.30 - \$1,104.50), or \$446.58 every 28 days; effective December 1, 2017, the monthly offset was \$493.50 (\$1,620.00 - \$1,126.50), or \$455.54 every 28 days; and effective December 1, 2018 through March 30, 2019, the monthly

offset was \$507.30 (\$1,665.30 - \$1,158.00), or \$468.28 every 28 days.⁴ It divided the 28-day offset amount to find the daily amount, which it multiplied by the number of days in each period January 1, 2007 through March 30, 2019, to find the amount that it overpaid appellant for each period. OWCP added the amounts for each period and determined that it should have offset \$67,875.37 from his wage-loss compensation.

In a preliminary overpayment determination dated May 3, 2019, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$67,875.37 because it had failed to reduce his wage-loss compensation benefits for the period January 1, 2007 through March 30, 2019 by the FERS portion of his SSA age-based retirement benefits without an appropriate offset. It further advised him of its preliminary determination that he was without fault in the creation of the overpayment. 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 telephonic conference, a final decision based on the written evidence, or a prerecoupment hearing.

On June 4, 2019 OWCP received an undated letter from appellant which requested an extension of time to find counsel to help him complete the Form OWCP-20.⁵ The reasons appellant provided for not completing the Form OWCP-20 were his age, loss of memory, medications, and his May 29, 2019 release from the Veteran's Administration home following an April 16, 2019 operation. Appellant also noted that he was moving to Arkansas the next day. On the enclosed copy of the preliminary determination, he noted "need help. Also need attorney!" Appellant requested that OWCP waive recovery of the overpayment. The enclosed Form OWCP-20 was largely incomplete, noting only a checked box marked "No" indicating that appellant did not have any of the incorrectly paid checks or payments in his possession.

In a June 11, 2019 notice of telephone call (Form CA-110), OWCP reported that counsel called and related that appellant had brought paperwork to him regarding the overpayment. Appellant had indicated that OWCP was willing to waive the overpayment if he completed the forms and mailed them in. Counsel further noted that appellant was 80 years old, and suffered from PTSD. He related that he would submit the form with a cover letter that day.⁶ No additional information was received.

By decision dated June 14, 2019, OWCP finalized the overpayment determination, finding that appellant received an overpayment of wage-loss compensation in the amount of \$67,875.37, for which he was without fault, because he concurrently received SSA age-related retirement benefits and wage-loss compensation for the period January 1, 2007 through March 30, 2019 without appropriate offset. It denied waiver of recovery of the overpayment and required recovery by deducting \$550.00 from appellant's continuing compensation payments.

⁴ The 28-day offset amount is calculated by multiplying the monthly FERS offset amount by 12 and then dividing this amount by 13.

⁵ The Board notes that OWCP failed to retain a photocopy of the envelope in which the letter and appeal form were sent, which would bear the postmark.

⁶ The Board notes that OWCP, at that time, had not yet received authorization for counsel to represent appellant.

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.⁷ 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.⁸

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.⁹ 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received a \$67,875.37 overpayment of compensation for the period January 1, 2007 through March 30, 2019 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without appropriate offset.

In its June 14, 2019 decision, OWCP found that an overpayment of compensation was created for the period January 1, 2007 through March 30, 2019. The overpayment was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant without an appropriate offset. A claimant cannot receive wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.¹¹ The information provided by SSA indicated that appellant received age-related SSA retirement benefits that were attributable to his federal service during the period January 1, 2007 through March 30, 2019. The Board therefore finds that an overpayment has been established.

To determine the amount of the overpayment, the portion of the SSA age-related retirement 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 rates with FERS, and without FERS for specific periods commencing January 1, 2007 through March 30, 2019. OWCP

⁷ 5 U.S.C. § 8102(a).

⁸ *Id.* at § 8116.

⁹ 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).

¹⁰ FECA Bulletin No. 97-09 (February 3, 1997); *see also L.M.*, Docket No. 19-1197 (issued January 8, 2020); *M.D.*, Docket No. 19-1500 (issued February 24, 2020); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹¹ *Id.*

provided its calculations for each relevant period based on an SSA worksheet and in its May 3, 2019 preliminary overpayment determination. No contrary evidence was received.

The Board has reviewed OWCP's calculation of benefits appellant received for the period January 1, 2007 through March 30, 2019 and finds that an overpayment of compensation in the amount of \$67,875.37 was created.¹²

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.¹³ 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.¹⁴

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.¹⁵ 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.¹⁶

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.¹⁷ Failure to submit the requested information within 30 days of the request will result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹⁸

¹² *M.D.*, *supra* note 10; *A.S.*, Docket No. 19-0171 (issued June 12, 2019).

¹³ 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).

¹⁴ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁵ 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).

¹⁶ *Id.* at § 10.437(a)(b).

¹⁷ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁸ *Id.* at § 10.438(b).

ANALYSIS -- ISSUE 2

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

OWCP found that appellant was without fault in the creation of the overpayment of compensation. The fact that a claimant is without fault in the creation of an overpayment does not preclude OWCP from recovering the overpayment.¹⁹ Waiver is only possible if recovery would defeat the purpose of FECA or be against equity and good conscience.²⁰ Appellant, however, did not provide the requisite financial documentation to OWCP.²¹

In its preliminary determination dated May 3, 2019, OWCP explained the importance of providing the completed Form OWCP-20 overpayment recovery questionnaire 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. On June 4, 2019 OWCP received a Form OWCP-20 that was largely incomplete, noting only a checked box marked “No” indicating that appellant did not have any of the incorrectly paid checks or payments in his possession. No additional evidence was received prior to OWCP’s June 14, 2019 final overpayment determination. OWCP therefore did not have the necessary financial information to determine whether waiver of recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience within 30 days of the preliminary decision.²² It was, therefore, required to deny waiver of recovery of the overpayment.²³

On appeal counsel asserts that on June 11, 2019 he helped appellant with OWCP’s paperwork, specifically Form OWCP-20, and sent in the same that day. As explained above, however, neither a completed Form OWCP-20 nor supporting financial documentation was received as of the issuance of OWCP’s June 14, 2019 final overpayment determination. Counsel further argues that appellant is entitled to waiver of recovery as he was without fault in the creation of the overpayment, as acknowledged in OWCP’s May 3, 2019 correspondence, and appellant had acted accordingly. However, as explained above, the fact that he was not at fault does not relieve him from liability for repayment of the overpayment of compensation and the Board finds that OWCP properly denied waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

Section 10.411 of OWCP’s regulations provides in pertinent part:

“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

¹⁹ See *M.D.*, *supra* note 10; *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *R.B.*, Docket No. 15-0808 (issued October 26, 2015).

²⁰ 20 C.F.R. § 10.436; *J.C.*, Docket No. 19-0122 (issued June 11, 2019).

²¹ *Id.* at § 10.438(b); *T.J.*, Docket No. 19-1242 (issued January 13, 2020).

²² See *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

²³ *Supra* note 18.

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.”²⁴

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$550.00 from appellant’s continuing compensation payments every 28 days.

As discussed, OWCP did not receive a completed overpayment recovery questionnaire or any of the necessary financial information to support his income and expenses prior to the final June 14, 2019 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²⁵ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁶ 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 \$67,875.37 overpayment at the rate of \$550.00 every 28 days from his continuing compensation payments.²⁷

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$67,875.37 for the period January 1, 2007 through March 30, 2019 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset, 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 \$550.00 from his continuing compensation payments every 28 days.

²⁴ 20 C.F.R. § 10.441(a); *see G.G.*, Docket No. 19-0684 (issued December 23, 2019).

²⁵ *Id.* at § 10.438.

²⁶ *E.M.*, *supra* note 22; Federal (FECA) Procedure Manual, *supra* note 15 at Chapter 6.500.2 (September 2018).

²⁷ *See E.K.*, Docket No. 18-0587 (issued October 1, 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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