

because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits for the period April 1, 2013 through August 17, 2019 without 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 \$597.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On September 2, 1999 appellant, then a 52-year-old engineer equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on September 1, 1999 he injured his lower back and left leg when installing fireproof doors while in the performance of duty. He stopped work on September 2, 1999. OWCP accepted appellant's claim for thoracic strain/lumbar strain and displacement of lumbar intervertebral disc without myelopathy. The record reflects that OWCP paid appellant compensation on the periodic rolls commencing June 16, 2002.³

In response to a July 2, 2019 OWCP inquiry, on July 18, 2019 SSA forwarded a FERS/SSA dual benefits calculation form to OWCP. The form indicated that: beginning in April 2013 appellant's SSA rate with FERS was \$1,478.20 and without FERS \$860.70; beginning in December 2013, his SSA rate with FERS was \$1,500.30 and without FERS \$873.60; beginning in December 2014 and December 2015, his SSA rate with FERS was \$1,525.80 and without FERS \$888.400; beginning in December 2016, his SSA rate with FERS was \$1,550.30 and without FERS \$891.00; beginning in December 2017, his SSA rate with FERS was \$1,560.90 and without FERS \$908.80; and beginning in December 2018, his SSA rate with FERS was 1,604.60 and without FERS \$934.20. SSA noted on this form that appellant had received SSA disability benefits from February 2000 until March 2013.

OWCP prepared a FERS offset calculation worksheet verifying its calculations, for a total overpayment of \$49,154.50. It noted that from April 1 until November 30, 2013 appellant had received a \$4,967.14 overpayment; from December 1, 2013 to November 30, 2014 a \$7,541.06 overpayment; from December 1, 2014 until November 30, 2015 a \$7,669.81 overpayment; from December 1, 2015 until November 30, 2016 a \$7,690.83 overpayment; from December 1, 2016 until November 30, 2017 a \$7,692.68 overpayment; from December 1, 2017 until November 30, 2018 a \$7,846.70 overpayment; and from December 1, 2018 until August 17, 2019 a \$5,746.29 overpayment.

On August 23, 2019 OWCP issued a preliminary determination finding that an overpayment of compensation in the amount of \$49,154.50 had been created. It explained that the overpayment occurred because a portion of appellant's SSA age-related retirement benefits that he received for the period April 1, 2013 through August 17, 2019 were based on credits earned during federal service, and that this portion of his SSA benefit was a prohibited dual benefit. OWCP found him not at fault in the creation of the overpayment. It explained its calculation of the overpayment, attached its calculation worksheet, and informed him of the actions he could

³ A memorandum of telephone call (CA-110 notes) dated March 23, 2009 indicates that appellant confirmed that he was covered under a Federal Employees Retirement System (FERS) retirement plan and that he inquired whether claiming SSA age-related retirement benefits would be in his best interest.

pursue. OWCP provided an overpayment action request form and an overpayment recovery questionnaire (OWCP-20). It requested that appellant provide documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and other records which supported the income and expenses listed. Appellant was afforded 30 days to respond.

In a letter dated August 28, 2019, OWCP notified appellant that, based on information provided by SSA regarding the amount of his SSA benefit attributable to federal service, his FECA wage-loss compensation would be reduced effective August 18, 2019.

On September 24, 2019 OWCP received appellant's request for waiver of recovery of the overpayment. In a note dated September 20, 2019, appellant asserted that OWCP should waive recovery of the overpayment because he did not have sufficient income and repayment would cause hardship. No financial documentation requested by OWCP was received.

By decision dated September 25, 2019, OWCP finalized its preliminary determination finding that appellant had received an overpayment of compensation in the amount of \$49,154.50 for the period April 1, 2013 through August 17, 2019 because a portion of his SSA age-related retirement benefits was based on credits earned in federal service, and that this portion of his SSA benefit was a prohibited dual benefit. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery. OWCP determined that the overpayment could not be waived because it received no evidence to substantiate that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. It required recovery of the overpayment by a deduction of \$597.00 every 28 days from appellant's continuing wage-loss compensation payments.

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.⁴ 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.⁵ When an overpayment of compensation has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.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

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ *Id.* at § 8129(a).

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 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 \$49,154.50, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period April 1, 2013 through August 17, 2019, without appropriate offset.

The record indicates that during the period at issue, appellant was concurrently receiving compensation for disability under FECA, and SSA age-related retirement benefits. A claimant cannot receive both compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.⁹ Consequently, the fact of the overpayment has been established.

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 his federal service. The SSA provided the rates with FERS and without FERS for specific periods commencing April 1, 2013 through August 17, 2019. OWCP provided its calculations for each relevant period based on the SSA worksheet and in its August 23, 2019 preliminary overpayment determination. No contrary evidence was provided.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period April 1, 2013 through August 17, 2019 and finds that an overpayment of compensation in the amount of \$49,154.50 was created.¹⁰

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in 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.¹¹ Section 10.438 of OWCP's regulations provides that the individual who received

⁷ 20 C.F.R. § 10.421(d); *see J.S.*, Docket No. 19-0824 (issued October 4, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁸ FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁹ *See D.M.*, Docket No. 19-1369 (issued June 30, 2020); *D.C.*, Docket No. 19-0118 (issued January 15, 2020).

¹⁰ *See L.W.*, Docket No. 19-0787 (issued October 23, 2019); *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.

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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹²

ANALYSIS -- ISSUE 2

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

As OWCP found appellant not at fault in the creation of the overpayment, therefore, 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. Appellant, however, had the responsibility to provide financial information to OWCP, and failed to do so.¹³

In its preliminary determination dated August 23, 2019, OWCP clearly explained the importance of providing the completed overpayment recovery questionnaire and supporting financial documentation, 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 if he failed to furnish the requested financial information within 30 days. In a note, appellant requested waiver due to financial hardship, but he did not complete the Form OWCP-20 or submit the financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

Consequently, as appellant did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁴

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 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 the error is discovered or his or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into

¹² 20 C.F.R. § 10.438.

¹³ *Id.*

¹⁴ *Id.*

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.”¹⁵

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment of compensation by deducting \$597.00 every 28 days from appellant’s continuing compensation payments.

The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁶ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.¹⁷ As appellant did not submit the financial information to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in directing recovery of the overpayment of compensation at the rate of \$597.00 every 28 days from appellant’s continuing compensation.¹⁸

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$49,154.50, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period April 1, 2013 through August 17, 2019, without appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment, and that it properly required recovery of the overpayment by deducting \$597.00 every 28 days from appellant’s continuing compensation payments.

¹⁵ 20 C.F.R. § 10.441(a); *see Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

¹⁶ *Id.* at § 10.438.

¹⁷ *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(2) (May 2004).

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

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 2020
Washington, DC

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

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

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