

properly required recovery of the overpayment by deducting \$1,927.72 from appellant's continuing compensation benefits, every 28 days.

FACTUAL HISTORY

On October 8, 2003 appellant, then a 54-year-old supervisory law enforcement specialist, filed an occupational disease claim (Form CA-2) alleging that employment-related stress resulted in acid reflux which caused him to develop throat cancer. He noted that he first became aware of his condition on August 14, 2001 and of its relationship to his federal employment on March 11, 2003. On the reverse side of the claim appellant's supervisor noted that appellant had Federal Employees Retirement System (FERS) retirement coverage. By decision dated May 27, 2004, OWCP accepted the claim for gastroesophageal reflux disease and laryngeal carcinoma. It later expanded acceptance of the claim to include major recurrent depression. Appellant stopped work and OWCP paid him wage-loss compensation on the periodic rolls beginning August 8, 2004.

In EN1032 forms submitted beginning September 16, 2015, appellant indicated that he was in receipt of SSA age-related retirement benefits as part of an annuity for federal service beginning in September 2015.

On October 4, 2019 OWCP provided SSA with a FERS/SSA dual benefits calculation form. On October 7, 2019 SSA returned the completed form which showed SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from September 2011 through December 2018. The SSA rate with FERS/without FERS was reported as: \$840.10/\$548.10 as of September 2015; \$840.10/\$548.10 as of December 2015; \$842.60/\$549.70 as of December 2016; \$859.40/\$560.60 as of December 2017; and \$883.40/\$576.20 as of December 2018.

By letter dated October 18, 2019, OWCP notified appellant that he had been receiving SSA age-related retirement benefits since September 1, 2015 and that the SSA had confirmed that a portion of his SSA benefits were attributed to his years of federal service. It explained that his federal service increased his monthly Social Security payment by \$307.20, which must be offset against his compensation benefits. OWCP explained that, effective November 9, 2019, his compensation benefits would be offset by the portion of his SSA age-related retirement benefits attributable to his federal service, resulting in a new net compensation payment of \$7,710.99, every 28 days.

In an October 30, 2019 FERS offset calculation worksheet, OWCP found that an overpayment of compensation benefits had been created in the amount of \$14,719.44 for the period September 1, 2015 through October 12, 2019. It related that, during the period September 1 through November 30, 2015, appellant had received an overpayment of \$876.00, from December 1, 2015 through November 30, 2016 an overpayment of \$3,523.25, from December 1, 2016 through November 30, 2017 an overpayment of \$3,524.46, from December 1, 2017 through November 30, 2018 an overpayment of \$3,595.45, and from December 1, 2018 through October 12, 2019 an overpayment in the amount of \$3,200.28, resulting in a total overpayment amount of \$14,719.44.

On November 6, 2019 OWCP issued a preliminary determination that an overpayment of compensation in the amount of \$14,719.44 was created for the period September 1, 2015 through October 12, 2019 because appellant's FECA benefits were not reduced by the FERS portion of his SSA age-related retirement benefits. It calculated the overpayment by determining the difference

between his SSA amount with and without FERS for each period. OWCP then multiplied the daily offset amount by the number of days in each period to find a total overpayment of \$14,719.44. It further made a preliminary determination that appellant was without fault in the creation of the overpayment. OWCP requested that he complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, it notified appellant 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 prerecoument hearing.

On November 19, 2019 appellant requested a decision based upon the written evidence regarding possible waiver of recovery of his overpayment. He explained that he never asked for FERS payments and did not know how such a large discrepancy could occur. With his request, appellant returned an incomplete Form OWCP-20 in which he asserted that repayment of the overpayment should be waived because it was a significant sum and the mistake was made by someone else. He included a letter requesting waiver of recovery stating that he was unaware of an overpayment until he received OWCP's notice. Appellant explained that he was never asked when he wanted to receive SSA or FERS benefits and requested someone call him regarding the matter. No supporting financial information or documentation was received.

By decision dated December 17, 2019, OWCP finalized its preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$14,719.44 for the period September 1, 2015 through October 12, 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 because he 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 indicated that the overpayment would be recovered by withholding \$1,927.72 from his continuing compensation benefit payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

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.² 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.³

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to federal service of the employee.⁴ 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

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116.

⁴ 20 C.F.R. § 10.421(d).

federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁵

ANALYSIS

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$14,719.44 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits for the period September 1, 2015 through October 12, 2019 without appropriate offset.

In its December 17, 2019 decision, OWCP found that an overpayment of compensation was created for the period September 1, 2015 through October 12, 2019. The overpayment was based on the evidence received from SSA with respect to retirement benefits paid to appellant. The record indicates that, while appellant was receiving compensation for total disability under FECA, he was also receiving SSA age-based 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.⁶ Consequently, the fact of overpayment has been established.⁷

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 rates of SSA age-related retirement benefits that were attributable to federal service. The SSA provided the SSA rate with FERS, and without FERS for periods commencing September 1, 2015 through October 12, 2019. OWCP provided its overpayment calculations for each relevant period based on the SSA worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period September 1, 2015 through October 12, 2019 and finds that an overpayment of compensation in the amount of \$14,719.44 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 recovery would defeat the purpose of FECA or would be against equity and good conscience.⁸

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

⁵ FECA Bulletin No. 97-09 (February 3, 1997).

⁶ See *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

⁷ *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

⁸ 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).

not exceed a specified amount as determined by OWCP.⁹ 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.¹⁰

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.¹¹ 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.¹²

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$14,719.44 overpayment of compensation.¹³

As OWCP found appellant without fault in the creation of the overpayment, 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.¹⁴ Appellant, however, had the responsibility to provide the appropriate financial information to OWCP.¹⁵

In its preliminary determination dated November 6, 2019, OWCP explained the importance of providing the completed overpayment 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 if he failed to furnish the requested information within 30 days. Appellant, however, did not respond. As such, 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.¹⁶

⁹ 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).

¹⁰ *Id.* at § 10.437(a)(b).

¹¹ *Id.* at § 10.438(a).

¹² *Id.* at § 10.438(b).

¹³ A.C., Docket No. 18-1550 (issued February 21, 2019).

¹⁴ 20 C.F.R. § 10.436.

¹⁵ *Id.* at § 10.438; *see N.J.*, Docket No. 19-1170 (issued January 10, 2020).

¹⁶ *R.M.*, Docket No. 19-1570 (issued June 1, 2020); *G.G.*, Docket No. 19-0684 (issued December 23, 2019).

As appellant did not submit the information required under 20 C.F.R. § 10.438, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁷

On appeal, appellant contends that the overpayment occurred due to OWCP's error. As noted above, OWCP found him not at fault in the creation of the overpayment; however, the Board finds that OWCP properly denied waiver of recovery of the overpayment as he failed to submit the required financial information.

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.¹⁸

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$1,927.72 every 28 days from appellant's continuing compensation payments.¹⁹

OWCP provided appellant a Form OWCP-20 with the November 6, 2019 preliminary overpayment determination. Appellant did not complete the form or provide the necessary financial information to support his income and expenses prior to the final December 17, 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 collect the debt promptly and in full.²¹ The Federal (FECA) Procedure Manual provides that in these instances, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.²² While appellant did not submit the financial information requested, the record reflects that his continuing 28-day compensation as of March 31, 2019 was \$7,994.56. Therefore, deducting \$1,927.72 every 28 days from his continuing compensation is not in excess of the 25 percent repayment rate.²³

¹⁷ *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

¹⁸ 20 C.F.R. § 10.441(a).

¹⁹ *L.D.*, Docket No. 19-1423 (issued March 2, 2020).

²⁰ 20 C.F.R. § 10.438. *See also A.F.*, Docket No. 19-0054 (issued June 12, 2019).

²¹ *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

²² FECA Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.8(c)(1) (September 2018).

²³ *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

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 \$14,719.44 overpayment at the rate of \$1,927.72 every 28 days from appellant's continuing compensation payments.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$14,719.44 for the period September 1, 2015 through October 12, 2019 for which he was not at fault, as he concurrently received Social Security Administration (SSA) age-related retirement benefits while receiving FECA wage-loss benefits without 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 \$1,927.72 from his continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 21, 2020
Washington, DC

Alec J. Koromilas, 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