

concurrently received FECA wage-loss compensation benefits and Social Security Administration (SSA) age-related retirement benefits for the period July 1, 2017 through September 14, 2019 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 \$225.79 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On November 1, 1995 appellant, then a 44-year-old explosives enforcement officer, filed an occupational disease claim (Form CA-2) alleging that he developed post-traumatic stress due to factors of his federal employment. OWCP accepted the claim for post-traumatic stress disorder, adjustment reaction with physical symptoms, and major depression, recurrent episode, severe. It paid appellant wage-loss compensation on the periodic rolls, effective February 2, 1997.

In an EN1032 form dated July 26, 2016, appellant indicated that he received SSA age-related retirement benefits in the amount of \$846.00 monthly. On EN1032 forms dated September 20, 2017 through July 25, 2019, he indicated that he did not receive SSA age-related retirement benefits.

On August 8, 2019 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form.

On August 15, 2019 an SSA representative provided OWCP with a FERS/SSA dual benefit calculation worksheet. The SSA representative provided corresponding monthly SSA benefit rates beginning July 2017 with and without appellant's FERS contributions. The form indicated that beginning July 1, 2017, the SSA rate with FERS was \$1,912.30 and without FERS was \$1,074.70. Beginning December 1, 2017, the SSA rate with FERS was \$1,950.50 and without FERS was \$1,096.10. Beginning December 1, 2018, the SSA rate with FERS was \$2,005.10 and without FERS was \$1,126.70.

On September 18, 2019 OWCP prepared a FERS offset calculation worksheet. It noted the calculation of appellant's SSA offset overpayment from July 1, 2017 through September 14, 2019. The total overpayment was determined to be \$22,845.76. OWCP found that appellant received an overpayment of compensation in the amount of \$4,224.82 for the period July 1 through November 30, 2017, an overpayment in the amount of \$10,280.97 for the period December 1, 2017 through November 30, 2018, and an overpayment in the amount of \$8,339.97 for the period December 1, 2018 through September 14, 2019.

In a letter dated October 7, 2019, OWCP notified appellant that, based on information provided by SSA regarding the amount of his age-related retirement benefits, which were attributable to federal service, his FECA wage-loss compensation had been adjusted.

On December 31, 2019 OWCP issued a preliminary determination finding that an overpayment of compensation in the amount of \$22,845.76 had been created because appellant received SSA age-related retirement benefits based upon his federal service, without appropriate offset at the same time he received FECA benefits for the period July 1, 2017 through September 14, 2019. It explained that the overpayment occurred because he relied on misinformation given in writing by OWCP as to the interpretation of FECA or its regulations, there

was documentation to substantiate that the misinformation was communicated to him, and there was no evidence in the case file to demonstrate that he knew or should have known the proper course of action to be followed. OWCP found appellant not at fault in the creation of the overpayment and forwarded an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). It requested that he provide supporting financial documentation including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support his reported income and expenses. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated February 6, 2020, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$22,845.76, for the period July 1, 2017 through September 14, 2019, because it had failed to offset his compensation payments by the portion of his SSA age-related retirement 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 the evidence of record was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$225.79 every 28 days from appellant's continuing 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.³ 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.⁴

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.⁵ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA age-related retirement 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$22,845.76, for which he was without fault, because he

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.W.*, Docket No. 19-0787 (issued October 23, 2019).

⁶ FECA Bulletin No. 97-09 (February 3, 1997); *see also S.M.*, Docket No. 20-0152 (issued August 10, 2020).

concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period July 1, 2017 through September 14, 2019 without an appropriate offset.

The record indicates that, while appellant was receiving FECA wage-loss compensation benefits, he was also receiving SSA age-related retirement benefits attributable to federal service. As noted, a claimant cannot receive both compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁷ 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 federal service. SSA provided the SSA rate with FERS and without FERS for specific periods commencing July 1, 2017 through September 14, 2019. OWCP provided its overpayment 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 appellant for the period July 1, 2017 through September 14, 2019, and finds that an overpayment of compensation in the amount of \$22,845.76 was created.⁸

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of FECA provides: "Adjustment or recovery [of an overpayment] by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience."⁹

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.¹⁰ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses

⁷ See *I.U.*, Docket No. 20-0129 (issued July 31, 2020).

⁸ *Id.*

⁹ 5 U.S.C. § 8129(b).

¹⁰ 20 C.F.R. § 10.436. OWCP's procedures provide that a claimant is deemed to need substantially all of his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Determinations*, Chapter 6.400.4a(3) (September 2018). OWCP's procedures further provide that assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent, plus \$1,200.00 for each additional dependent. *Id.* at Chapter 6.400.4a(2).

if monthly income does not exceed monthly expenses by more than \$50.00.¹¹ Also, assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.¹² An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.¹³

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.¹⁴

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.¹⁵

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, 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 or be against equity and good conscience.¹⁶ However, appellant had the responsibility to provide financial information to OWCP,¹⁷ but failed to do so.

In its preliminary determination, dated December 31, 2019, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support income and expenses. It advised him that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant did not provide the requested Form OWCP-20 or submit any financial information necessary for OWCP to

¹¹ *Id.* at Chapter 6.400.4(a)(3); *C.B.*, Docket No. 20-0031 (issued July 27, 2020); *N.J.*, Docket No. 19-1170 (issued January 10, 2020).

¹² *See supra* note 10 at Chapter 6.400.4(a)(2) (September 2018).

¹³ *Id.* at Chapter 6.400.4(b)(3).

¹⁴ *Id.* at § 10.437(a)(b).

¹⁵ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁶ *Id.* at § 10.436.

¹⁷ *Id.* at § 10.438; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

Accordingly, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.¹⁸

Section 10.441 of OWCP's regulations¹⁹ 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 or her 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.²⁰

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$225.79 every 28 days from appellant's continuing compensation payments.

OWCP provided appellant a Form OWCP-20 with its December 31, 2019 preliminary determination. It afforded him the opportunity to provide appropriate financial information and documentation to OWCP. Appellant however, did not complete the Form OWCP-20 or otherwise provide the necessary financial information to support his income and expenses prior to the final February 6, 2020 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²¹ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²² As appellant did not submit financial as requested, the Board finds that OWCP properly required recovery of the \$22,845.76 overpayment at the rate of \$225.79 every 28 days from appellant's continuing compensation payments.²³

¹⁸ *Id.* at § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

¹⁹ *Id.* at § 10.441(a).

²⁰ *Id.*; *see L.G.*, Docket No. 19-1274 (issued July 10, 2020).

²¹ 20 C.F.R. § 10.438(a).

²² *See J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.2 (September 2018).

²³ *See J.A.*, *id.*; *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$22,845.76, for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period July 1, 2017 through September 14, 2019 without an 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 \$225.79 every 28 days from his continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2021
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