

appropriate offset for the period June 1, 2011 through May 25, 2019; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

This case has previously been before the Board on another issue.³ The facts and circumstances of the case as set forth in the Board's prior decision and order are incorporated herein by reference. The facts relevant to the present appeal are as follows.

On March 17, 1997 appellant, then a 51-year-old carrier filed an occupational disease claim⁴ (Form CA-2) alleging that he developed a back condition causally related to delivering mail, driving, sitting, reaching, turning and twisting due to factors of his federal employment. He stated that he first became aware of his back condition on August 23, 1994 and noted that he first realized his condition was caused or aggravated by his federal employment on March 5, 1997. OWCP accepted appellant's claim for lumbar strain and later expanded the acceptance of the claim to include exacerbation of lumbosacral degenerative disc disease. Appellant stopped work on March 7, 1997 and resumed on March 25, 1997. On March 31, 1997 he resigned from the employing establishment and went on disability retirement. In an election of benefits form dated January 28, 2003, appellant elected to receive FECA benefits.

On April 17, 2019 SSA forwarded Federal Employees Retirement System (FERS)/SSA dual benefits calculation form to OWCP. SSA advised that no offset of appellant's compensation benefits were applicable from September 1997 to May 2011, because he was receiving disability benefits. SSA indicated that effective June 2011 appellant reached retirement age and was eligible for SSA retirement benefits. Beginning June 2011, the SSA rate with FERS was \$1,301.30 and without FERS was \$919.10. Beginning December 2011, the SSA rate with FERS was \$1,348.10 and without FERS was \$952.10. Beginning December 2012, the SSA rate with FERS was \$1,371.00 and without FERS was \$968.20. Beginning December 2013, the SSA rate with FERS was \$1,391.50 and without FERS was \$982.70. Beginning December 2014, the SSA rate with FERS was \$1,415.10 and without FERS was \$999.40. Beginning December 2015, the SSA rate with FERS was \$1,415.10 and without FERS was \$999.40. Beginning December 2016, the SSA rate with FERS was \$1,419.30 and without FERS was \$1,002.30. Beginning December 2017, the SSA rate with FERS was \$1,447.60 and without FERS was \$1,022.30. Beginning December 2018, the SSA rate with FERS was \$1,488.10 and without FERS was \$1,050.90.

In a June 18, 2019 letter, OWCP indicated that it determined that appellant had been concurrently receiving both FECA and FERS/SSA benefits, resulting in a prohibited dual benefit. It determined that his monthly SSA age-related retirement benefit was \$3,611.00. The monthly

³ Docket No. 01-545 (issued June 25, 2002).

⁴ The record indicates that the employing establishment informed OWCP on July 8, 1997 that, appellant changed the nature of his claim from an occupational disease claim to a traumatic injury claim.

offset was adjusted to a 28-day payment cycle of \$403.57 and resulted in a new net compensation payment of \$2,894.89.

A June 18, 2019 FERS offset calculation worksheet noted each alleged period of overpayment and provided calculations, which resulted in a total overpayment of \$39,539.87 during the period June 1, 2011 through May 25, 2019.

In a preliminary overpayment determination dated July 15, 2019, OWCP informed appellant that he had received an overpayment of compensation in the amount of \$39,539.87 because the SSA/FERS offset was not applied to payments for the period June 1, 2011 to May 25, 2019. It determined that appellant was without fault in the creation of the overpayment because he received benefits from SSA as part of an annuity under FERS concurrently with FECA benefits and due to the complexity in the benefits administration, he could not have reasonably known that an improper payment occurred. OWCP requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, it provided an overpayment action request form and 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 precoupment hearing.

In a July 22, 2019 overpayment action request form, appellant requested that OWCP make a decision based on the written evidence. He noted that to repay this debt would cause a severe financial hardship and loss for his family. In an attached Form OWCP-20, signed by appellant on July 22, 2019, he reported SSA income of \$1,874.00 and FECA benefits of \$2,894.89. Appellant reported expenses totaled \$3,415.32. He listed expenses as: \$854.00 for mortgage; \$648.28 for a car; \$247.48 for a loan; \$130.00 for A&P; \$73.00 for furniture; \$691.00 for revolving loans/credit cards; \$50.00 for water; \$56.56 for car insurance; \$200.00 for telephone bill; and \$538.00 to “Wanda Month.” Appellant attached financial information including bank statements, utility bills, and credit card bills.

By decision dated October 2, 2019, OWCP finalized the July 15, 2019 preliminary determination that appellant had received an overpayment of compensation in the amount of \$39,539.87 for the period June 1, 2011 to May 25, 2019 because it failed to offset his compensation payments by the portion of his SSA age-related benefits that were attributable to his federal service. It further found that he was not at fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP found that it would recover the overpayment by deducting \$200.00 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.⁵ Section 8116 limits the right of an employee to receive

⁵ 5 U.S.C. § 8102(a).

compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.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 benefits that are attributable to the employee's federal service.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$39,539.87 for the period June 1, 2011 through May 25, 2019 because he concurrently received FECA benefits and SSA age-related retirement benefits without appropriate offset.

The record supports that appellant received FECA wage-loss compensation for total disability beginning in September 1997 and that he received SSA age-related retirement benefits beginning June 1, 2011. As noted, a claimant cannot receive concurrent FECA compensation for wage loss and SSA retirement benefits attributable to federal service for the same period.⁹ The information provided by SSA accurately indicated that appellant had received SSA age-related retirement benefits that were attributable to his federal service from June 1, 2011 to May 25, 2019. Thus, the record establishes that he received an overpayment of FECA wage-loss compensation.¹⁰

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. The Board also finds that OWCP properly determined the amount of the overpayment. The Board properly explained that no deduction for SSA age-related retirement benefits had been recorded for the period appellant received FECA wage-loss benefits, June 1, 2011 through May 25, 2019. Therefore, an overpayment of compensation was created during this period. OWCP provided its calculations of the amount that it should have offset for the relevant period based on the SSA worksheet.

⁶ *Id.* at § 8116.

⁷ 20 C.F.R. § 10.421(d); *see 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 20 C.F.R. § 10.421(d); *S.M.*, Docket No. 17-1802 (issued August 20, 2018); *supra* note 6; *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹⁰ *Id.*

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$39,539.87, thus creating an overpayment of compensation in that amount, for the period June 1, 2011 through May 25, 2019.

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

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.¹² An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹³ 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.¹⁴ 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.¹⁵

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 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

¹¹ 5 U.S.C. § 8129.

¹² 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).

¹³ *Id.* at Chapter 6.400.4(a)(3); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁴ *See supra* note 12 at Chapter 6.400.4(a)(2) (September 2018).

¹⁵ *Id.* at Chapter 6.400.4(b)(3).

¹⁶ 20 C.F.R. § 10.437(a)(b).

purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.¹⁷

ANALYSIS -- ISSUE 2

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

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.¹⁸ Evidence in the case record shows that appellant has income totaling \$4,768.89. Appellant listed expenses as: \$854.00 for mortgage; \$648.28 for a car; \$247.48 for loan; \$130.00 for A&P; \$73.00 for furniture; \$691.00 for revolving loans/credit cards; \$50.00 for water; \$56.56 for car insurance; \$200.00 for telephone bill; and \$538.00 to “Wanda Month.”

Based upon the information provided on the overpayment questionnaire and evidence received after the hearing, appellant’s household income was \$4,768.89 with expenses totaling \$3,415.32. As his monthly income exceeds his monthly expenses by \$1,353.57, appellant does not need substantially all of his monthly income to meet current and ordinary living expenses.

Appellant has not established that recovery of the overpayment would be against equity and good conscience. He has not submitted evidence that he would experience severe financial hardship in attempting to repay the debt, or that in reliance on the overpayment he gave up a valuable right or changed his position for the worse.¹⁹ Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.

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 soon 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

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

¹⁸ 5 U.S.C. § 8129.

¹⁹ *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

²⁰ 20 C.F.R. § 10.441(a); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly requested recovery of the overpayment by deducting \$200.00 every 28 days from appellant's continuing compensation payments.

In determining that appellant could repay the overpayment through \$200.00 deductions from continuing compensation payments, OWCP took into account his financial information as well as factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize any resulting hardship, not necessarily eliminate it, while at the same time liquidating the debt in a reasonably prompt fashion.²¹ The Board finds that OWCP gave due regard to the financial information provided by him and noted that appellant was not deemed to need substantially all of his monthly income to meet current and ordinary living expenses as monthly income exceeds monthly expenses by \$1,353.57. OWCP further applied its procedures, which require an appropriate payment amount should be deducted in order to recover the overpayment within three years. Therefore, the Board finds that OWCP properly required recovery of the overpayment by deducting \$200.00 from appellant's compensation payments every 28 days.

CONCLUSION

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$39,539.87, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period June 1, 2011 through May 25, 2019. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$200.00 every 28 days from his continuing compensation payments.

²¹ See *L.F.*, Docket No. 15-0489 (issued May 11, 2015) (where the Board affirmed an OWCP hearing representative's decision that a claimant was not entitled to waiver of recovery of an overpayment because he and his spouse had over \$17,000.00 in their savings account, and the hearing representative determined that his assets exceeded the specified resource base).

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 28, 2021
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