

**United States Department of Labor  
Employees' Compensation Appeals Board**

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C.B., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
TRANSPORTATION SECURITY )  
ADMINISTRATION, LOS ANGELES )  
INTERNATIONAL AIRPORT, Los Angeles, CA, )  
Employer )

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**Docket No. 20-1256  
Issued: June 1, 2021**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 2, 2020 appellant filed a timely appeal from a May 5, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,490.13, for which he was without fault, because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits for the period October 25, 2010 through February 1, 2020, 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 \$212.35 from appellant's continuing compensation payments every 28 days.

## **FACTUAL HISTORY**

On July 17, 2006 appellant, then a 69-year-old transportation security screener, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2006 his right foot caught on a power cord when lifting luggage, he fell, and strained both hips while in the performance of duty. His retirement coverage was noted as Federal Employees Retirement System (FERS). OWCP accepted the claim for lumbosacral radiculopathy and paid appellant compensation on the supplemental rolls effective October 25, 2010, and on the periodic rolls effective November 21, 2010.

On December 11, 2019 OWCP forwarded a FERS/SSA dual benefits calculation form to SSA to determine whether an offset of compensation benefits was required.

On January 13, 2020 OWCP received from SSA a completed FERS/SSA dual benefits calculation form which indicated that appellant had been in receipt of SSA age-related retirement benefits since January 2006. The form showed appellant's SSA benefit rates with and without a FERS offset as follows: beginning January 2006, the SSA rate with FERS was \$1,531.30 and without FERS was \$1,521.50; beginning December 2006, the SSA rate with FERS was \$1,581.80 and without FERS was \$1,571.70; beginning December 2007, the SSA rate with FERS was \$1,624.60 and without FERS was \$1,607.70; beginning December 2008, the SSA rate with FERS was \$1,722.70 and without FERS was \$1,700.90; beginning December 2009, the SSA rate with FERS was \$1,728.90 and without FERS was \$1,700.90; beginning December 2010, the SSA rate with FERS was \$1,735.40 and without FERS was \$1,700.90; beginning December 2011, the SSA rate with FERS was \$1,801.20 and without FERS was \$1,762.10; beginning December 2012, the SSA rate with FERS was \$1,831.80 and without FERS was \$1,792.00; beginning December 2013, the SSA rate with FERS was \$1,859.20 and without FERS was \$1,818.80; beginning December 2014, the SSA rate with FERS was \$1,890.80 and without FERS was \$1,849.70; beginning December 2015, the SSA rate with FERS was \$1,890.80 and without FERS was \$1,849.70; beginning December 2016, the SSA rate with FERS was \$1,896.40 and without FERS was \$1,855.20; beginning December 2017, the SSA rate with FERS was \$1,934.30 and without FERS was \$1,892.20; beginning December 2018, the SSA rate with FERS was \$1,988.40 and without FERS was \$1,945.20; and beginning December 2019, the SSA rate with FERS was \$2,020.20 and without FERS was \$1,976.20.

OWCP completed a FERS offset calculation worksheet on February 21, 2020. It determined the 28-day FERS offset amount for the days in each period and computed a total overpayment amount of \$4,490.13. This form indicated that: from October 25 through November 30, 2010, appellant received an overpayment in the amount of \$34.15; from

December 1, 2010 through November 30, 2011, appellant received an overpayment in the amount of \$415.14; from December 1, 2011 through November 30, 2012, appellant received an overpayment in the amount of \$471.78; from December 1, 2012 through November 30, 2013, appellant received an overpayment in the amount of \$478.91; from December 1, 2013 through November 30, 2014, appellant received an overpayment in the amount of \$486.13; from December 1, 2014 through November 30, 2015, appellant received an overpayment in the amount of \$494.55; from December 1, 2015 through November 30, 2016, he received an overpayment in the amount of \$495.91; from December 1, 2016 through November 30, 2017, appellant received an overpayment in the amount of \$495.76; from December 1, 2017 through November 30, 2018, appellant received an overpayment in the amount of \$506.59; from December 1, 2018 through November 30, 2019, appellant received an overpayment in the amount of \$519.82; and from December 1, 2019 through February 1, 2020, appellant received an overpayment in the amount of \$91.38.

In a February 25, 2020 letter, OWCP informed appellant that it would begin deducting the portion of SSA age-related retirement benefits attributable to his federal service from his 28-day periodic compensation benefits. It advised him that his FECA compensation would be offset to a 28-day benefit in the amount of \$829.38.

On February 26, 2020 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$4,490.13 had been created because it had failed to reduce appellant's wage-loss compensation payments for the period October 25, 2010 through February 1, 2020, to offset his SSA age-related retirement benefits that were attributable to federal service. It determined that he was without fault in the creation of the overpayment because he could not have reasonably known that an improper payment had occurred, due to the complexity in benefits administration. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised him that he could request a waiver of the overpayment. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income, expenses, and assets. Additionally, OWCP further 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.

On March 24, 2020 OWCP received appellant's completed Form OWCP-20, dated March 17, 2020, and supporting financial documentation which included bank statements and tax returns. Appellant reported total monthly income of \$3,011.54 and total monthly expenses of \$2,164.70. He listed annual expenses which included property taxes of \$3,396.80 for a Hawthorne, California property and \$2,032.19 for a Big Bear, California property. The additional annual expenses appellant listed totaled \$8,586.95 and divided by 12 months amounted to \$715.58 per month. Appellant added these to his other expenses for total monthly expenses of \$2,880.28. He listed no cash on hand, \$1,010.00 in checking, \$59.65 in savings, no stocks or bonds, and responded "unknown" with regard to value of other personal property or funds. Appellant provided copies of financial documentation including mortgage statements, bank statements, and tax returns. He requested waiver as the overpayment was not his fault.

By decision dated May 5, 2020, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount

of \$4,490.13 for the period October 25, 2010 through February 1, 2020, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without an appropriate offset. It also found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP noted that appellant's monthly income exceeded his expenses by \$131.26, and therefore, as his monthly income exceeded expenses by more than \$50.00, waiver was denied. It explained that he failed to meet the first prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it was not necessary to consider the second prong of the test based on assets. OWCP also found that appellant had not submitted evidence to establish that recovery of the overpayment would be against equity and good conscience.

It required recovery of the overpayment by deducting \$212.38 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.<sup>3</sup> 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.<sup>4</sup>

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.<sup>5</sup> 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 benefits 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.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,490.13, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period October 25, 2010 to February 1, 2020, without an appropriate offset.<sup>7</sup>

The evidence of record indicates that, while appellant was receiving wage-loss compensation benefits under FECA, he was also receiving SSA age-related retirement benefits

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8116.

<sup>5</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>6</sup> FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>7</sup> *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

based upon his federal service. A claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period.<sup>8</sup> The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service during the period October 25, 2010 through February 1, 2020. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of 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 its rate with FERS and without FERS for specific periods from October 25, 2010 through February 1, 2020. OWCP provided its calculations for each relevant period based on the SSA worksheet and determined that appellant received an overpayment of compensation in the amount of \$4,490.13. The Board thus finds that he received prohibited dual benefits for the period October 25, 2010 through February 1, 2020, totaling \$4,490.13.

### **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.<sup>9</sup> Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>10</sup>

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.<sup>11</sup> 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.<sup>12</sup>

Section 10.437 of OWCP's implementing regulations provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who

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<sup>8</sup> 20 C.F.R. § 10.421(d); *see S.M., supra note 5; L.J., supra note 5.*

<sup>9</sup> 5 U.S.C. § 8129(a)-(b).

<sup>10</sup> *L.S.*, 59 ECAB 350 (2008).

<sup>11</sup> 20 C.F.R. § 10.436. OWCP's procedures provide that the 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a (3) (September 2018).

<sup>12</sup> *Id.* at Chapter 6.400.4(a)(3) (September 2018).

received an overpayment would experience severe financial hardship attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>13</sup> OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.<sup>14</sup>

### **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.<sup>15</sup>

As his monthly income of \$3,011.54 exceeds his monthly expenses of \$2,880.28 by more than \$50.00, appellant has not shown that he needs substantially all of his current income to meet current ordinary and necessary living expenses.<sup>16</sup>

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because he has not shown that he would experience severe financial hardship in attempting to repay the debt or that he relinquished a valuable right or changed his position for the worse in reliance on the payment which created the overpayment.<sup>17</sup>

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, he has failed to establish that OWCP acted improperly by denying waiver of recovery of the \$4,490.13 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.<sup>18</sup>

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<sup>13</sup> 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

<sup>14</sup> *Supra* note 11 at Chapter 6.400.4c(3) (September 2018).

<sup>15</sup> 20 C.F.R. § 10.436.

<sup>16</sup> *Id.* at § 10.437(a), (b).

<sup>17</sup> *Id.*

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

Section 10.441(a) of OWCP's regulations<sup>19</sup> 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 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.”<sup>20</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$212.35 every 28 days from appellant's continuing compensation payments.

In setting the recovery rate at \$212.35, OWCP explained how it considered the factors set forth at 20 C.F.R. § 10.441(a) in setting the amount of repayment from continuing compensation benefits to minimize hardship, while liquidating the debt, as appellant had financial resources sufficient for more than ordinary needs. Thus, it did not abuse its discretion in setting the rate of recovery.<sup>21</sup> The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$212.35 every 28 days.

The Board therefore finds that OWCP properly determined the rate of recovery with regard to the relevant factors noted above in setting the rate of recovery.<sup>22</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,490.13, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period October 25, 2010 through February 1, 2020, without an appropriate offset, and that OWCP properly denied waiver of recovery of the overpayment. The Board further finds that it properly required recovery of the overpayment by deducting \$212.35 from appellant's continuing compensation payments every 28 days.

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<sup>19</sup> *Id.* at § 10.441(a).

<sup>20</sup> *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

<sup>21</sup> *T.G.*, Docket No. 17-1989 (issued June 5, 2018); *M.D.*, Docket No. 11-1751 (issued May 7, 2012).

<sup>22</sup> *See R.L.*, Docket No. 20-0186 (issued September 14, 2020); *L.M.*, Docket No. 19-1197 (issued January 8, 2020); *T.G.*, Docket No. 17-1989 (issued June 6, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 5, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2021  
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