

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

R.P., Appellant)	
)	
and)	Docket No. 20-1606
)	Issued: June 4, 2021
)	
U.S. POSTAL SERVICE, CARROLLTON)	
STATION POST OFFICE, New Orleans, LA,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 8, 2020 appellant filed a timely appeal from a July 27, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$20,862.82 for the period January 1, 2013 through November 9, 2019 for which he was

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 27, 2020 decision, appellant submitted additional evidence to OWCP. 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.*

without fault because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether it properly required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On February 23, 2012 appellant, then a 64-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his left shoulder and left side of the neck when he was involved in a motor vehicle accident while in the performance of duty.³ He stopped work on February 24, 2012 and returned on March 5, 2012. OWCP accepted appellant's claim for neck and left shoulder, elbow, and forearm sprains. It subsequently expanded acceptance of his claim to include cervical spondylosis. On April 29, 2012 appellant stopped work again. OWCP paid him wage-loss compensation benefits on the supplemental rolls and placed him on the periodic rolls, effective December 16, 2012.

In a January 25, 2013 letter, OWCP advised appellant that annuity benefits paid by the Office of Personnel Management (OPM) and benefits for wage loss paid by OWCP are not payable for the same period of time; therefore, employees must elect which benefit to receive. It also advised him that if he elected FECA benefits in lieu of OPM benefits, his FECA benefits would be reduced by the SSA age-related retirement benefits paid that were attributable to his federal service.

On March 20 and August 20, 2019 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form. It listed the computation period as 2009 and continuing.

On August 26, 2019 an SSA representative completed the dual benefits calculation form. The SSA representative provided corresponding monthly SSA benefits rates beginning January 2013 that both included and excluded appellant's FERS contributions. The form indicated: beginning January 2013, his SSA rate with FERS was \$1,660.90 and without FERS was \$1,417.90; beginning December 2013, his SSA rate with FERS was \$1,685.90 and without FERS was \$1,438.90; beginning December 2014, his SSA rate with FERS \$1,714.90 and without FERS was \$1,462.90; beginning December 2016, his SSA rate with FERS was \$1,720.00 and without FERS was \$1,467.00; beginning December 2017, his SSA rate with FERS was \$1,754.00 and without FERS was \$1,497.00; and beginning December 2018, his SSA rate with FERS was \$1,803.50 and without FERS was \$1,538.50.

³ The record reflects that appellant was working part-time, modified-duty for six hours per day due to a work-related September 26, 2005 occupational disease (Form CA-2) claim under OWCP File No. xxxxxx075. OWCP accepted that claim for bilateral inguinal hernia, malignant neoplasms abdomen, scar conditions and fibrosis of the skin, abdominal or pelvic swelling, and pain in limb. Appellant worked intermittently and received corresponding wage-loss compensation. On March 6, 2012 he began working part-time, modified duty for six hours per day. OWCP paid wage-loss compensation benefits for the remaining two hours per day. It administratively combined File No. xxxxxx075 with the current claim under File No. xxxxxx488, designating File No. xxxxxx075 as the master file.

Effective November 10, 2019, OWCP paid appellant at the adjusted amount of \$3,132.38 to include the offset of his SSA age-related retirement benefits attributable to his federal service.

OWCP completed a FERS offset calculation worksheet dated November 26, 2019. It calculated the overpayment amount by determining the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$20,862.82. The form indicated that, from January 1 through November 30, 2013, appellant received an overpayment in the amount of \$2,675.67; from December 1, 2013 through November 30, 2014, he received an overpayment in the amount of \$2,972.14; from December 1, 2014 through November 30, 2016, he received an overpayment in the amount of \$6,072.92; from December 1, 2016 through November 30, 2017, he received an overpayment in the amount of \$3,044.34; from December 1, 2017 through November 30, 2018, he received an overpayment in the amount of \$3,092.47; and from December 1, 2018 through November 9, 2019, he received an overpayment in the amount of \$3,005.27.

On December 10, 2019 OWCP advised appellant that it was adjusting his wage-loss compensation to offset the portion of his SSA age-related retirement benefits attributable to his federal service. It informed him that the portion of the SSA benefits that he earned as a federal employee was part of the FERS retirement package and that FECA did not allow the simultaneous receipt of workers' compensation and federal retirement benefits.

In a preliminary overpayment determination dated December 20, 2019, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$20,862.82 because it had failed to reduce his wage-loss compensation benefits for the period January 1, 2013 through November 9, 2019 by the portion of his SSA age-related retirement benefits that were attributable to federal service. It further advised him of its preliminary overpayment determination that he was not at fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20), with supporting financial documentation, to determine a reasonable payment method, and advised him that he could request waiver of recovery of the overpayment. Additionally, it notified him that within 30 days of the date of the letter he could request a teleconference, a final decision based on the written evidence, or a prerecoupment hearing.

On January 7, 2020 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. He requested a waiver of the overpayment because he was found to be without fault in the creation of the overpayment. Appellant explained that he did not know that his SSA benefits would become an issue concerning his FECA benefits until OWCP sent him a letter notifying him of the problem.

Appellant also submitted a completed Form OWCP-20 dated January 5, 2020. He reported a total monthly income of \$1,551.00 from SSA benefits and total monthly expenses of \$2,350.00. Appellant also indicated that he had monthly payments of \$487.00 and \$200.00 to banking institutions and a checking account balance of \$14,000.00.

On May 11, 2020 a prerecoupment hearing was held. Appellant's then representative⁴ argued that the EN1032 forms that appellant completed were difficult to understand. Appellant indicated that he thought the questions regarding benefits applied to retirement benefits due to disability.

By decision dated July 27, 2020, an OWCP hearing representative finalized the December 20, 2019 preliminary overpayment determination, finding that appellant had received an overpayment in the amount of \$20,862.82 for the period January 1, 2013 through November 9, 2019 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without appropriate offset. She also found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP determined that recovery of the overpayment would require deducting \$300.00 from appellant's continuing compensation payments every 28 days.

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 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 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.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 \$20,862.82 for the period January 1, 2013 through November 9, 2019 for which he was without fault because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without appropriate offset.⁹

⁴ Appellant's representative at the time was Kevin Card of the National Association of Letter Carriers.

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8116.

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

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

⁹ *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

The evidence of record indicates that, while appellant was receiving compensation for wage-loss compensation benefits under FECA, he was concurrently receiving SSA age-related retirement benefits 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.¹⁰ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service during the period January 1, 2013 through November 9, 2019. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, OWCP must calculate the portion of SSA benefits that were attributable to federal service. It 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 January 1, 2013 through November 9, 2019. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that he received an overpayment of compensation in the amount of \$20,862.82. The Board, thus, finds that appellant received prohibited dual benefits for the period January 1, 2013 through November 9, 2019 totaling \$20,862.82.

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.¹¹ 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.¹²

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.¹³ 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 \$50.00.¹⁴

¹⁰ *Supra* notes 6 & 7.

¹¹ 5 U.S.C. § 8129(a)-(b).

¹² *L.S.*, 59 ECAB 350 (2008).

¹³ 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 6.400.4(a) (September 2020).

¹⁴ Federal (FECA) Procedure Manual *id.* at Chapter 6.400.4(a)(3) (September 2020).

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 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.¹⁵ 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.¹⁶

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.¹⁷

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA because he has not provided supporting financial information. Appellant completed a Form OWCP-20 on January 5, 2020 and noted a total monthly income of \$1,551.00 from SSA benefits, total monthly expenses of \$2,350.00, monthly payments of \$487.00 and \$200.00 to banking institutions and a checking account balance of \$14,000.00. He did not, however, provide any supporting financial documentation to establish his purported income or expenses. Although appellant had been advised by OWCP to submit documentation substantiating his income and expenses, he failed to provide sufficient documentation of his income and expenses as required by section 10.438 of its regulations.¹⁸ Furthermore, appellant also failed to report his continued monthly wage-loss compensation payments in the amount of \$3,132.38. OWCP, therefore, did not have the financial information necessary to determine if appellant needed substantially all of his current income to meet current ordinary and necessary living expenses and, also, if his assets exceeded a specified amount as determined by OWCP.¹⁹

The Board also finds that appellant did not establish that he was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience. Appellant did not provide any financial information to show that he would experience severe financial hardship in attempting to repay the debt or that he gave up a valuable right in reliance on his wage-

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

¹⁶ Federal (FECA) Procedure Manual, *supra* note 13 at Chapter 6.400.4(c)(3) (September 2020).

¹⁷ 20 C.F.R. § 10.436.

¹⁸ *See P.B.*, Docket No. 20-0862 (issued November 25, 2020); *see also R.W.*, Docket No. 18-1059 (issued February 6, 2019).

¹⁹ *Supra* notes 13 & 14.

loss compensation benefits. He, therefore, did not establish that recovery of the overpayment was against equity and good conscience.²⁰

On appeal appellant argues that the questions in the EN1032 forms regarding SSA benefits were completely ambiguous and alleged that he answered the questions to the best of his ability. As noted above, a finding that a claimant was without fault does not automatically result in waiver of the overpayment.²¹ Therefore, it is immaterial whether appellant believed that he answered the EN1032 forms correctly as he failed to submit any financial documentation to establish that recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.

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.²²

Section 10.441(a) of OWCP's regulations²³ 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.”²⁴

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments every 28 days.

OWCP provided appellant a Form OWCP-20 with its December 20, 2019 preliminary overpayment determination. It afforded him the opportunity to provide appropriate financial information and documentation to OWCP.²⁵ Although appellant completed the Form OWCP-20 overpayment recovery questionnaire, he did not provide the necessary financial documentation to support his income and expenses he reported prior to the final July 27, 2020 overpayment determination. The overpaid individual is responsible for providing information about income,

²⁰ *R.C.*, *supra* note 9; *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

²¹ *Supra* note 12.

²² 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²³ *Id.* at § 10.441(a).

²⁴ *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²⁵ 20 C.F.R. § 10.438.

expenses, and assets as specified by OWCP.²⁶ When an individual fails to provide requested financial information, OWCP shall follow minimum collection guidelines designed to collect the debt promptly and in full.²⁷ The Board, therefore, finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$300.00 every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$20,862.82, for the period January 1, 2013 through November 9, 2019 for which he was without fault because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits 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 \$300.00 from his continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 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

²⁶ *Id.* at § 10.438(a); *see M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²⁷ *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, *supra* note 13 at Chapter 6.400.3 (September 2018).