

overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$51.25 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On September 18, 2003 appellant then a 53-year-old firefighter, filed a traumatic injury claim (Form CA-1) alleging that on August 26, 2003 while he was walking down a steep grade he injured his left knee while in the performance of duty. OWCP accepted his claim for sprain/strain medial collateral ligament of the left knee. It paid appellant wage-loss compensation on the supplemental rolls from April 1 through August 27, 2011, and on the periodic rolls effective August 28, 2011. As of June 2, 2013 OWCP paid appellant wage-loss compensation pursuant to a loss of wage-earning capacity determination dated May 7, 2013, based on the constructed position of a bus driver.

On March 12, 2012 OWCP informed appellant that section 8116(d)(2) of FECA (5 U.S.C. § 8116(d)(2)) requires that a claimant's continuing compensation benefits be reduced if he begins receiving SSA retirement benefits based on his age and federal service. It advised that because he was approaching his 62nd birthday they were notifying him of this requirement. OWCP further advised that failure to report receipt of retirement benefits to OWCP could result in an overpayment of compensation, which could be subject to recovery.

On November 25, 2012 appellant elected to receive FECA benefits effective November 17, 2012.

On August 20, 2014 OWCP sent a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form to SSA.

In a letter dated March 2, 2015, appellant informed OWCP that he was presently receiving regular SSA age-related retirement benefits in addition to his FECA wage-loss compensation benefits. He asserted that there was no place to report this information on the CA-1032 forms. From 2013 through 2014 appellant received regular retirement social security income of \$591.00 a month and on January 1, 2015, it increased to \$603.00 a month. SSA informed him that because he was turning 65 years of age this month he was eligible to collect Social Security Disability Income of \$833.00 a month without it being affected by his OWCP income. Appellant reported that there would be no more "offset."

On February 24, 2020 OWCP sent a FERS/SSA dual benefits calculation form to SSA for its completion.

OWCP received a completed FERS/SSA dual benefits calculation form from SSA dated March 9, 2020 on which SSA advised that, effective March 2016, appellant reached normal retirement age and became eligible for SSA age-related retirement benefits. It noted that, since his retirement coverage was under FERS, his compensation benefits must be offset by any part of his SSA benefit that was calculated by using his federal employment earnings. SSA calculated appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from March 2016 through December 2019. Beginning March 2016, the SSA rate with FERS was \$961.80 and without FERS was \$799.70. Beginning December 2016, the SSA rate with FERS

was \$964.60 and without FERS was \$802.00. Beginning December 2017, the SSA rate with FERS was \$983.80 and without FERS was \$818.00. Beginning December 2018, the SSA rate with FERS was \$1,011.30 and without FERS was \$840.90. Beginning December 2019, the SSA rate with FERS was \$1,027.40 and without FERS was \$854.30.

On April 13, 2020 OWCP prepared a fiscal pay rate memorandum wherein it noted the calculation of appellant's SSA offset overpayment from March 1, 2016 through March 28, 2020 and computed a total overpayment amount of \$8,150.72. This form indicated: from March 1 through November 30, 2016 appellant received an overpayment in the amount of \$1,469.59; from December 1, 2016 through November 30, 2017 appellant received an overpayment in the amount of \$1,956.56; from December 1, 2017 through November 30, 2018 appellant received an overpayment in the amount of \$1,995.07; from December 1, 2018 through November 30, 2019 appellant received an overpayment in the amount of \$2,050.42; and December 1, 2019 through March 28, 2020 appellant received an overpayment in the amount of \$679.08.

On April 13, 2020 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$8,150.72 had been created because appellant received SSA age-related retirement benefits from March 1, 2016 through March 28, 2020 that were partially based on credits earned while working in the Federal Government, which constituted a prohibited dual benefit. It determined that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method, and advised him that he could request waiver of recovery of the overpayment. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records which support income and expenses. Additionally, OWCP further 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.

On June 7, 2020 appellant completed an overpayment action request form and requested that OWCP make a decision based on the written evidence. He explained that he cooperated with the employing establishment, OWCP, and SSA and was honest and forthright in providing information from the date of injury to the present time. Appellant indicated that OWCP and SSA "messed" this up and he was claiming financial hardship as he was 70 years old and had high blood pressure and was prediabetic.

On a Form OWCP-20 completed on June 7, 2020, appellant reported that his total monthly income included \$882.00 from SSA, FECA benefits of \$884.22, and mineral royalties of \$38.94, resulting in total monthly income of \$1,805.16. He reported expenses totaling \$1,638.50. Appellant indicated monthly expenses of \$553.51 for rent/mortgage, \$200.00 for food, \$25.00 for clothing, \$270.59 for utilities, and \$300.00 for other expenses. Appellant also noted other debts paid by monthly installments including various credit card payments totaling \$180.00 and, a roof mortgage of \$57.44, auto insurance of \$20.16, insulation financing of \$31.80 for total monthly installment expense of \$289.40. Appellant further noted cash on hand of \$17.00, a checking

account balance of \$92.29, and savings account balance of \$1,707.36. He attached financial information including a 2019 federal tax return, bank statements, utility bills, and credit card bills.²

By decision dated August 5, 2020, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$8,150.72 for the period March 1, 2016 through March 28, 2020, 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 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 failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$51.25 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.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 states that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA age-related retirement 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,150.72 for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period March 1, 2016 through March 28, 2020, without an appropriate offset.

The record supports that appellant received FECA wage-loss compensation for total disability on the supplemental rolls beginning April 1 through August 27, 2011, the periodic rolls

² On September 16, 2020 OWCP expanded the acceptance of appellant's claim to include permanent aggravation of left knee osteoarthritis.

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

effective August 28, 2011, and effective June 2, 2013 pursuant to a loss of wage-earning capacity determination dated May 7, 2013, and that he received SSA age-related retirement benefits beginning March 1, 2016. The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to his federal service commencing March 1, 2016. Thus, the record establishes that he received an overpayment of FECA wage-loss compensation.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 appellant's specific SSA age-related retirement benefits that were attributable to federal service. SSA provided its rate with FERS and without FERS for specific periods March 1, 2016 through March 28, 2020. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that he received an overpayment in the amount of \$8,150.72. The Board, thus, finds that appellant received prohibited dual benefits for the period March 1, 2016 through March 28, 2020 totaling \$8,150.72.

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."⁸

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.⁹ 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 \$50.00.¹⁰ 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.¹¹ An individual's liquid assets

⁷ *Id.*

⁸ 5 U.S.C. § 8129(b).

⁹ 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 2020). 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).

¹⁰ *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).

¹¹ *Id.* at Chapter 6.400.4(a)(2) (September 2020).

include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.¹²

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.¹³

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.¹⁴

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.¹⁵

Evidence in the case record shows that appellant has income totaling \$1,805.16. Form OWCP-20 listed expenses of \$553.51 for rent/mortgage, \$200.00 for food, \$25.00 for clothing, \$270.59 for utilities, and \$300.00 for other expenses. Appellant also noted other debts paid by monthly installments including \$180.00 in various credit card payments, roof mortgage of \$57.44, auto insurance of \$20.16, insulation financing of \$31.80 for total monthly installment expense of \$289.40 and total expenses of \$1,638.50.

Based upon the information provided on the Form OWCP-20, and evidence received, appellant's household income totaled \$1,805.16 while his expenses totaled \$1,638.50. As his monthly income exceeds his monthly expenses by \$166.66, appellant does not need substantially all of his monthly income to meet current and ordinary living expenses.

The Board further finds that appellant has not established that recovery of the overpayment would be against equity and good conscience because it has not been shown, for the reasons noted above, that he would experience severe financial hardship in attempting to repay the debt, or that a valuable right had been relinquished, or that a position had been changed for the worse in reliance

¹² *Id.* at Chapter 6.400.4(b)(3).

¹³ 20 C.F.R. § 10.437(a)(b).

¹⁴ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁵ 5 U.S.C. § 8129.

on the payment, which created the overpayment.¹⁶ Therefore, OWCP properly denied waiver of recovery of the overpayment.

Because it has not been established that, recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP has not abused its discretion by denying waiver of recovery of the overpayment.

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.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly required recovery of the overpayment by deducting \$51.25 every 28 days from appellant's continuing compensation payments.

In determining whether appellant could repay the overpayment through \$51.25 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.¹⁸ The Board finds that OWCP gave due regard to the financial information provided and found that his monthly income exceeded monthly expenses by \$166.66. The Board, therefore, finds that OWCP properly required recovery of the overpayment by deducting \$51.25 every 28 days from appellant's compensation payments.

On appeal appellant asserts that he needs substantially all of his monthly income to meet ordinary and necessary living expenses. As explained, however, 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.

¹⁶ *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

¹⁷ 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).

¹⁸ *See L.F.*, Docket No. 15-0489 (issued May 11, 2015) (the Board affirmed an OWCP hearing representative's denial of waiver of recovery of an overpayment because appellant and his spouse had over \$17,000.00 in their savings account, and as such his assets exceeded the specified resource base).

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,150.72 for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period March 1, 2016 through March 28, 2020, 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 \$51.25 every 28 days from his continuing compensation payments.

ORDER

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

Issued: June 30, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board