

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

R.G., Appellant	)	
	)	
and	)	<b>Docket No. 21-0148</b>
	)	<b>Issued: June 7, 2021</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Cleveland Heights, OH, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On November 10, 2020 appellant, through counsel, filed a timely appeal from an October 21, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the October 21, 2020 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.

## **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$35,131.35 for which he was without fault, for the period January 1, 2017 through August 15, 2020, because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset; (2) whether it properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$236.58 from appellant's continuing compensation payments every 28 days.

## **FACTUAL HISTORY**

On October 24, 2011 appellant then a 60-year-old window clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his right knee when he lost his balance as he was stepping off of a rubber floor mat while in the performance of duty.<sup>4</sup> His retirement plan was listed as Federal Employees Retirement System (FERS). OWCP accepted his claim for right knee sprain and subsequently expanded it to include right knee medial meniscus tear and anterior cruciate ligament (ACL) tear of the right knee. OWCP paid him wage-loss compensation on the supplemental rolls beginning December 7, 2011 and on the periodic rolls, effective May 6, 2012.<sup>5</sup> Appellant returned to a limited-duty position on November 14, 2015. From November 16, 2015, appellant was paid on the supplemental rolls and pursuant to a wage-earning capacity determination, effective June 11, 2016.

By decision dated July 1, 2016, OWCP reduced appellant's compensation, effective November 14, 2015, based on his capacity to earn wages as a sales and service associate.

On August 30, 2016 OWCP received a FERS/SSA dual benefits calculation form wherein SSA advised that offset was not applicable because appellant was receiving disability benefits.

On March 23, 2020 OWCP sent a FERS/SSA dual benefits calculation form to SSA.<sup>6</sup>

On July 22, 2020 OWCP received a completed FERS/SSA dual benefits calculation form from SSA wherein SSA advised that, effective January 2017, appellant reached retirement age and became eligible for SSA age-related retirement benefits. SSA calculated appellant's SSA age-related retirement benefit rates with FERS offset and without a FERS offset from January 1, 2017 through December 1, 2019. Beginning January and April 2017, the SSA rate with FERS was

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<sup>4</sup> Appellant has a previous claim for a back injury that occurred on September 24, 2008, which OWCP accepted for closed dislocation of the lumbar vertebra, under OWCP File No. xxxxxx222. On February 6, 2010 he filed a claim for head and back injuries after a fall that day. That claim was accepted for post-traumatic headache, lumbar sprain, and coccyx fracture. On August 29, 2011 appellant filed a claim for bilateral hand pain that was accepted for bilateral hand osteoarthritis, under OWCP File No. xxxxxx710. These claims have been administratively combined with the current claim, with OWCP File No. xxxxxx222 designated as the master.

<sup>5</sup> On February 3, 2012 the employing establishment advised appellant that the Office of Personnel Management (OPM) approved his disability retirement application. The effective date of retirement was January 13, 2012. On a March 7, 2012 Form CA-1105 appellant elected to receive FECA benefits.

<sup>6</sup> In a letter dated March 24, 2020, the employing establishment indicated that, due to appellant's current restrictions listed on the duty status report (Form CA-17), there was no work available for him to perform.

\$1,545.90 and without FERS was \$780.60. Beginning December 2017, the SSA rate with FERS was \$1,576.80 and without FERS was \$796.20. Beginning January 2018, the SSA rate with FERS was \$1,593.90 and without FERS was \$796.20. Beginning December 2018, the SSA rate with FERS was \$1,638.50 and without FERS was \$818.40. Beginning January 2019, the SSA rate with FERS was \$1,652.90 and without FERS was \$831.40. Beginning December 2019, the SSA rate with FERS was \$1,679.30 and without FERS was \$831.40.

On September 2, 2020 OWCP prepared a FERS offset calculation worksheet wherein it noted the calculation of appellant's SSA offset overpayment from January 1, 2017 through August 15, 2020 and computed a total overpayment amount of \$35,131.35. This form indicated that, beginning January 1 through March 31, 2017, appellant received an overpayment in the amount of \$2,270.67. Beginning April 1 through November 30, 2017, he received an overpayment in the amount of \$6,156.04. Beginning December 1 through 31, 2017, appellant received an overpayment in the amount of \$797.76. Beginning January 1 through November 30, 2018, he received an overpayment in the amount of \$8,783.47. Beginning December 1 through 31, 2018, appellant received an overpayment in the amount of \$838.12. Beginning January 1 through November 30, 2019, he received an overpayment in the amount of \$9,045.53. Beginning December 1, 2019 through August 15, 2020, appellant received an overpayment in the amount of \$7,239.76

In a preliminary overpayment determination dated September 3, 2020, OWCP informed appellant that he received an overpayment of compensation in the amount of \$35,131.35 because he received SSA age-related retirement benefits from January 1, 2017 through August 15, 2020 that were partially based on credits earned while working in the Federal Government and this 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 that support income and expenses. 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 prerecoupment hearing.

On September 29, 2020 appellant submitted an overpayment action request form, indicting his disagreement with the amount of the overpayment and requested a waiver because he was found to be without fault in the creation of the overpayment. In an attached statement of even date, he noted his disagreement with the overpayment and indicated that he had been working subject to a loss of wage-earning capacity determination and wondered if the SSA overpayment formula was based on full-time income.

By decision dated October 21, 2020, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$35,131.35 for the period January 1, 2017 through August 15, 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. OWCP 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. It required recovery of the overpayment by deducting \$236.58 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.<sup>7</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>8</sup>

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.<sup>9</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 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.<sup>10</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$35,131.35 for which he was without fault, for the period January 1, 2017 through August 15, 2020 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA retirement benefits attributable to federal service for the same period.<sup>11</sup> The record supports that appellant received FECA wage-loss compensation beginning December 7, 2011 and effective June 11, 2016 pursuant to a wage-earning capacity determination. Appellant received SSA age-related retirement benefits beginning January 2017. The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to his federal service commencing January 1, 2017. Thus, the record establishes that he received an overpayment of FECA wage-loss compensation.<sup>12</sup>

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<sup>7</sup> 5 U.S.C. § 8102(a).

<sup>8</sup> *Id.* at § 8116.

<sup>9</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

<sup>10</sup> FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>11</sup> 20 C.F.R. § 10.421(d); *supra* note 6; *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *S.M.*, *supra* note 9.

<sup>12</sup> *Id.*

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 January 1, 2017 through August 15, 2020. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$35,131.35. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$35,131.35 for the period January 1, 2017 through August 15, 2020.

### **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.<sup>13</sup>

Section 10.438 of OWCP's regulations provides 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.<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 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.<sup>15</sup> However, appellant had the responsibility to provide financial information to OWCP,<sup>16</sup> but failed to do so.

In its preliminary determination, dated September 3, 2020, 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

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<sup>13</sup> 5 U.S.C. § 8129.

<sup>14</sup> 20 C.F.R. § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>15</sup> *Id.* at § 10.436.

<sup>16</sup> *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**

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.<sup>17</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$236.58 from appellant's continuing compensation payments every 28 days.

OWCP provided appellant a Form OWCP-20 with its September 3, 2020 preliminary determination. It afforded him the opportunity to provide appropriate financial information and documentation to OWCP. Appellant did not complete the Form OWCP-20 or provide the necessary financial information to support his income and expenses prior to the final October 21, 2020 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>18</sup> When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>19</sup> As appellant did not submit supporting financial documentation to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in directing recovery of the \$35,131.35 overpayment at the rate of \$236.58 every 28 days from appellant's continuing compensation payments.<sup>20</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$35,131.35 for which he was without fault, for the period

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<sup>17</sup> *Id.* at § 10.441(a); A.S., Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>18</sup> *Id.* at § 10.438(a).

<sup>19</sup> *See J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Liquidation, *Responsibility for the Collection and Settlement of Debts*, Chapter 6.300.2 (September 2020). *Id.* at § 10.436; Chapter 6.400.4a(2).

<sup>20</sup> *See J.A., id.; E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

January 1, 2017 through August 15, 2020, because he concurrently received FECA wage-loss compensation benefits 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 \$236.58 from his continuing compensation payments every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 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