

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$27,889.50 for the period February 1, 2014 through July 21, 2018, for which he was 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 OWCP properly required recovery of the overpayment by deducting \$400.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On April 17, 2000 appellant, then a 51-year-old fire inspector, filed a traumatic injury claim (Form CA-1) alleging that on April 17, 2000 he injured his low back when he stood up from a leaning position while in the performance of duty. He stopped work on that date. OWCP accepted appellant's claim for low back radiculitis and paid wage-loss compensation on the supplemental rolls, effective June 2, 2000. It placed him on the periodic rolls, effective August 13, 2000.

In a letter dated January 3, 2011, OWCP advised appellant that his Federal Employees Retirement System (FERS) benefits would be reduced by the amount of SSA age-related retirement benefits that he received that were attributable to his federal service. It advised him that failure to report receipt of such retirement benefits to OWCP may result in an overpayment of compensation.

Appellant submitted CA-1032 forms completed on February 20, 2014, May 26, 2015, and February 27, 2016, in which he responded "No," indicating that he had not received SSA retirement benefits as part of an annuity for federal service.

In a Form CA-1032 completed on February 20, 2017, appellant indicated that he received \$1,188.00 in retirement benefits monthly from SSA as part of an annuity for federal service.

On May 19, 2017 an SSA representative provided OWCP a FERS/SSA dual benefit calculation worksheet. SSA provided corresponding monthly SSA benefit rates beginning February 2014 with and without appellant's FERS contributions. With FERS, appellant was entitled to a monthly payment of \$1,271.50 effective February 2014; \$1,293.10 effective December 2014; \$1,293.10 effective December 2015; and \$1,296.90 effective December 2016. Without FERS, he was entitled to a monthly payment of \$760.80 effective February 2014; \$773.70 effective December 2014; \$773.70 effective December 2015; and \$775.90 effective December 2016.

In a Form CA-1032 completed on February 15, 2018, appellant responded "No" indicating that he had not received retirement benefits from SSA as part of an annuity for federal service.

In a letter dated April 4, 2018, B.C., an injury compensation management adviser for the employing establishment, indicated that on May 9, 2017 SSA had provided OWCP with a FERS/SSA dual benefit calculation worksheet for the period 2014 through 2016. She explained

that since OWCP had failed to offset appellant's wage-loss compensation prior to December 2017, OWCP would need to request offset amounts for 2017.

On May 24, 2018 an SSA representative provided OWCP with an updated FERS/SSA dual benefit calculation worksheet that included the monthly SSA benefits rates effective December 2017. With FERS, appellant was entitled to a monthly payment of \$1,322.80, effective December 2017. Without FERS, he was entitled to a monthly payment of \$801.80, effective December 2017.

OWCP completed a FERS offset calculation worksheet on October 6, 2018. It calculated the overpayment amount by determining the monthly FERS offset amount and then converted that amount to the 28-day FERS offset amount for each period. After determining the daily offset amount, OWCP multiplied this amount by the number of days in each period. It determined that for the period February 1 through November 30, 2014, appellant received an overpayment of \$5,101.39. For the period December 1, 2014 through November 30, 2015, OWCP calculated an overpayment of \$6,249.92. For the period December 1, 2015 through November 30, 2016, it calculated an overpayment of \$6,267.05. For the period December 1, 2016 through November 30, 2017, OWCP calculated an overpayment of \$6,269.18. For the period December 1, 2017 through July 21, 2018, it calculated an overpayment of \$4,001.97. The total overpayment amount was of \$27,889.50.

On August 14, 2018 OWCP advised appellant that it was adjusting his wage-loss compensation, effective July 22, 2018, 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.

Beginning July 22, 2018, OWCP paid appellant at the adjusted amount of \$803.68 to include the offset of his SSA age-related retirement benefits attributable to his federal service.

In a preliminary overpayment determination dated August 20, 2018, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$27,889.50 because it had failed to reduce his wage-loss compensation benefits for the period February 1, 2014 through July 21, 2018 by the portion of his SSA benefits that were attributable to federal service. It further advised him of its preliminary determination that he was at fault in the creation of the overpayment because he accepted payments that he knew or reasonably should have known were incorrect. OWCP provided appellant an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). Additionally, it notified him 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 August 27, 2018 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review on the issues of fault and possible waiver of overpayment. He alleged that he was not at fault in the creation of the overpayment because he never intentionally submitted any false documents or information.

On January 20, 2019 OWCP received a statement from appellant. Appellant explained that an online statement showed a bill dated December 21, 2018 that was paid \$208.96. He also explained that he purchased approximately two cords of firewood for \$250.00. Appellant submitted bills from a utility company dated October 24 and November 26, 2018 in the amount of \$89.27 and \$121.15, respectively; mortgage bills dated November 1, 2018 and January 1, 2019 in the amount of \$699.70; telephone bills dated November 9 and December 9, 2018 and January 9, 2019 in the amount of \$61.90, \$86.14, and \$86.13 respectively; and six-month auto policy bills for \$449.49 and \$456.36. He submitted a credit union statement dated December 31, 2018, which revealed that he had \$18,325.55 in a money market account and \$10,073.26 in a shared account.

OWCP also received a statement with the title "Expenses." Appellant noted that he bought a two-story, 100-year-old cabin about 3 years ago with plans to do most of the needed work on the house himself. He noted that estimates on solar installation ranged from \$22,000.00 to \$28,000.00. Appellant contended that having his benefits cut would make some improvements untenable. He reported that he had just over \$60,000.00 in the bank. Appellant alleged that it would be ruinous to require him to pay for OWCP's error.

A prerecoupment hearing was held on January 23, 2019. Appellant explained that he did not even know how much money he got from SSA. He alleged that he submitted all the documentation that was requested of him, that he refused money from the government because he did not want the government to pay for certain items, and described the work and awards that he had received as a fire inspector. The hearing representative advised appellant to complete the Form OWCP-20 and provide supporting documentation so that OWCP could determine whether he qualified for waiver of recovery of the overpayment based on his financial information.

On January 31, 2019 OWCP received appellant's completed Form OWCP-20. Appellant advised that his income consisted of \$1,188.00 in supplemental benefits and \$1,365.48 in Department of Veterans Affairs disability benefits for a total monthly income of \$2,553.48. He listed expenses as \$699.70 for a mortgage, \$450.00 for food, "average-less" for clothing, \$533.00 for utilities, \$456.36 for automobile insurance, \$137.00 for electric, \$40.00 for gas, \$86.14 for telephone, \$143.60 for auto expenses, \$70.00 for fuel, \$100.00 for miscellaneous health, \$100.00 in supplements, \$250.00 for seasonal firewood, and \$200.00 for house repairs. Appellant reported funds of \$2,482.00 in his checking account, \$8,500.56 in his savings account, and \$18,300.00 in a money market account. He also indicated that he was informed that he had four certificate of deposits (CDs) estimated at \$10,000.00 each. Appellant estimated the value of his house to be \$122,000.00.

In an undated letter, appellant noted that he would never knowingly defraud his own government. He described several situations where he refused prescriptions for a whirlpool/spa, endless pool, and walk-in shower because he thought it was asking too much of the government. Appellant noted that he was a veteran and fire protection specialist for the government and described the hazardous environment to which he had been exposed. He alleged that it was unfathomable to him to be held responsible for the government's mistake. Appellant indicated that while he had money saved in the bank, he went without many things for many years in order to accrue that money.

By decision dated April 9, 2019, an OWCP hearing representative affirmed the August 20, 2018 preliminary overpayment determination with modification. She found that appellant had received an overpayment of compensation in the amount of \$27,889.50 for the period February 1, 2014 through July 21, 2018 because he received SSA benefits in addition to his wage-loss compensation benefits under FECA without a proper offset. However, the hearing representative found that appellant was without fault in the creation of the overpayment. She denied waiver of recovery of the overpayment, however, because appellant's monthly income exceeded his monthly expenses by more than \$50.00 and his assets exceeded the resource base of \$6,200.00. The hearing representative required recovery of the overpayment by deducting \$400.00 every 28 days 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 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.⁵ FECA Bulletin No. 97-09 provides 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$27,889.50 for the period February 1, 2014 through July 21, 2018, for which he was not at fault, because he concurrently received FECA benefits and SSA age-related retirement benefits without an appropriate offset.

SSA paid appellant age-related retirement benefits retirement February 1, 2014. OWCP paid wage-loss compensation benefits until July 21, 2018 without offsetting the portion of the SSA age-related retirement benefits due to his federal service. As discussed, a claimant cannot receive both compensation for wage loss and the portion of SSA age-related retirement benefits that are attributable to his federal service for the same period.⁷ Because appellant received SSA benefits

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).

⁷ *Id.*; *see also L.G.*, Docket No. 19-1274 (issued July 10, 2020).

based on his federal service concurrently with wage-loss compensation benefits from OWCP without an appropriate offset, OWCP properly determined that appellant received an overpayment of compensation.

To determine the amount of the overpayment, OWCP must calculate the portion of the SSA benefits that were attributable to federal service. It received documentation from SSA providing appellant's SSA rate with FERS and without FERS for the period February 1, 2014 through July 21, 2018. OWCP provided its calculations for each period based on an SSA worksheet in an overpayment worksheet explaining the overpayment calculation which has a minor addition error of 10 cents.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period February 1, 2014 through July 21, 2018 and finds that an overpayment of compensation in the amount of \$27,889.50 was created.⁸

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.⁹ 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.¹⁰

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.¹¹ An individual's liquid assets include, but are not limited to case, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits.¹² Nonliquid assets include, but are not limited, to the fair market value of an owner's equity in property such as a camper, boat, second home, and furnishings and supplies.¹³ An

⁸ See *R.B.*, Docket No. 19-0571 (issued June 12, 2020); *L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

⁹ 5 U.S.C. § 8129(a)-(b).

¹⁰ *C.B.*, Docket No. 20-0031 (issued July 27, 2020); *L.S.*, 59 ECAB 350 (2008).

¹¹ 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).

¹² Federal (FECA) Procedure Manual, *id.* at Chapter 6.400.4(b)(3) (September 2018).

¹³ *Id.*

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

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 hearing representative considered appellant's financial assets to determine if recovery of the overpayment would defeat the purpose of FECA. Appellant provided his currently monthly income and expenses in a Form OWCP-20 on January 31, 2019, as well as a summary of his assets. The hearing representative properly determined that appellant listed available assets of \$69,282.72, which included \$2,482.16 in his checking account, \$8,500.56 in a credit union account, \$18,300.00 in a money market account, and approximately \$40,000 in CDs. The evidence of record therefore established that appellant's assets exceeded the base asset amount of \$6,200.00 for an individual.¹⁸ It was therefore unnecessary for OWCP to consider whether his monthly income exceeded his monthly ordinary and necessary expenses by more than \$50.00.

Additionally, the evidence does not demonstrate that repayment of the overpayment would be against equity and good conscience. Appellant submitted no evidence that he relied upon the incorrect payments to his detriment. Furthermore, he has not known that he would experience severe financial hardship in attempting to repay the debt as his current monthly income exceeds

¹⁴ Federal (FECA) Procedure Manual, *supra* note 11, at Chapter 6.400.4(a)(3) (September 2018).

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 11 at Chapter 6.400.4c(3) (September 2018).

¹⁷ *Supra* note 12.

¹⁸ *See I.U.*, Docket No. 20-0129 (issued July 31, 2020).

his monthly expenses and he is still in receipt of ongoing compensation benefits. Accordingly, OWCP properly denied waiver of the overpayment.¹⁹

On appeal appellant alleges that payment would impact his income and quality of life seriously as he is now 70 years old and had no way of implementing any addition to his income. As noted, a finding that a claimant was without fault does not automatically result in waiver of the overpayment.²⁰ OWCP must determine whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. As explained above, OWCP properly denied waiver of recovery as 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 regulations²¹ 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 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.²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$400.00 from appellant's continuing compensation payments every 28 days.

The record supports that, in requiring repayment of the overpayment by deducting \$400.00 from appellant's compensation payments every 28 days, OWCP took into consideration the financial information he submitted as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize resulting hardship. Therefore, OWCP properly required recovery of the overpayment by deducting \$400.00 every 28 days.²³

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$27,889.50 for the period February 1, 2014 through July 21, 2018, for which he was without fault, because he concurrently received FECA benefits and SSA age-related retirement benefits without

¹⁹ See *id.*; see also *J.R.*, Docket No. 17-0181 (issued August 12, 2020).

²⁰ *Supra* note 13.

²¹ 20 C.F.R. § 10.441(a).

²² *Id.*; see *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²³ See *L.G.*, Docket No. 19-1274 (issued July 10, 2020).

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 \$400.00 from his continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 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