

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

G.R., Appellant)	
)	
and)	Docket No. 21-0062
)	Issued: May 12, 2021
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS BENEFITS ADMINISTRATION)	
REGIONAL OFFICE, Los Angeles, CA,)	
Employer)	
)	

Appearances:
Amy Hawkes Esq., for the appellant¹
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 October 15, 2020 appellant, through counsel, filed a timely appeal from a September 15, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).

¹ 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.

Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$6,541.64 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 for the period January 16 through September 29, 2017; and (2) whether it properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On February 10, 2017 appellant, then a 66-year-old vocational rehabilitation counselor, filed an occupational disease claim form (Form CA-2) alleging that he sustained bilateral carpal tunnel syndrome and a trigger finger injury to his left index finger due to repetitive hand motions required by his federal employment duties. He noted that he first became aware of his condition and that it was causally related to his employment on January 16, 2017. On the reverse side of the claim form appellant's supervisor indicated that appellant's retirement coverage was Federal Employees' Retirement System (FERS). OWCP accepted the claim for right carpal tunnel syndrome and left index trigger finger. Appellant received wage-loss compensation on the supplemental rolls from January 16 until September 29, 2017.

On May 31, 2019 SSA completed FERS/SSA dual benefit calculation transmittal setting forth appellant's SSA benefit rates with FERS and without FERS commencing January 2017. With FERS appellant was entitled to the following monthly SSA rates: \$2,232.20, effective January 2017; \$2,276.80, effective December 2017; \$2,308.20, effective January 2018; \$2,372.80, effective December 2018; and \$2,397.90, effective January 2019. Without FERS appellant's monthly SSA benefit rates would have been: \$1,460.10, effective January 2017; \$1,489.30, effective December 2017; \$1,489.30, effective January 2018; \$1,531.00, effective December 2018; and \$1,531.00, effective January 2019.

OWCP completed a FERS offset calculation form on July 7, 2020. It determined the 28-day FERS offset amount for the period January 16 through September 29, 2017 and computed a total overpayment of \$6,541.64.

In a preliminary notice dated July 15, 2020, OWCP advised appellant of its determination that he received a \$6,541.64 overpayment of compensation for the period January 16 through September 29, 2017 because his wage-loss compensation benefits had not been reduced by his

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that OWCP received additional evidence following the September 15, 2020 decision. 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.*

SSA age-related retirement benefits attributable to federal service. It also made a preliminary determination that he was not at fault in the creation of the overpayment. OWCP advised appellant that he could submit evidence challenging the fact or amount of the overpayment or request waiver of recovery of the overpayment. It requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine whether waiver should be granted. OWCP informed appellant that he should provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. 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 precoupment hearing. OWCP advised appellant that it would deny waiver of recovery of the overpayment if he failed to furnish the requested financial information within 30 days.

On August 6, 2020 appellant completed the Form OWCP-20. He requested a waiver because he was found to be without fault in the creation of the overpayment. Appellant advised that his monthly income included \$2,436.00 in SSA benefits and \$2,400.00 in other income, for a total monthly income of \$4,836.00. He further advised that his monthly expenses included \$5,171.00 in housing, \$400.00 in food, \$50.00 in clothing, \$400.00 in utilities, \$280.00 in homeowners association dues, \$1,502.00 on several miscellaneous loans; \$141.22 on medical/pharmacy costs, and \$385.42 on an automobile loan for a total of \$8,329.00 in monthly expenses. Appellant stated that he had no assets. He submitted a two-week paystub dated July 4, 2020 with a net pay of \$1,419.40. Appellant also submitted a mortgage statement with a monthly payment of \$4,725.00; a notice of delinquent property taxes in amount of \$5,377.53; monthly homeowner's assessment in the amount of \$280.00; an automobile loan from with a monthly payment in the amount of \$823.78; a loan statement with a monthly payment in the amount of \$679.80 and a past due payment in the amount of \$2,855.16; a medical/pharmacy bill from Wilshire Consumer in the amount of \$141.22; and an automobile loan from Westlake Financial with a payment in the amount of \$385.42.

By final decision dated September 15, 2020, OWCP found that appellant received an overpayment of compensation in the amount of \$6,541.64 for the period January 16 through September 29, 2017 for which he was not at fault. It denied waiver of recovery of the overpayment and required recovery in full within 30 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁴

A FECA beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.⁵ To avoid payment of a dual benefit, FECA wage-loss compensation benefits shall be reduced by the amount of SSA benefits attributable to the

⁴ *Id.* at § 8102.

⁵ *See id.* at § 8116(a), (d); 20 C.F.R. § 10.421(a).

employee's federal service.⁶ However, an offset is not required when the employee's beneficiary is covered under the Civil Service Retirement System (CSRS) and/or his SSA age-related benefits are attributable to private sector employment.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$6,541.64 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period January 19 through September 29, 2017.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributed to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA benefits that were attributable to federal service. The SSA provided appellant's SSA benefit rates with FERS and without FERS for specific periods commencing January 2017 through January 2019. OWCP provided its calculations for each relevant period based on the SSA worksheet and in its July 15, 2020 preliminary overpayment determination.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period January 19 through September 29, 2017 and finds that an overpayment in the amount of \$6,541.64 was created.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in the creation of 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.⁸ 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.⁹

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

⁶ *Id.* at § 8116(d)(2); *id.* at § 10.421(d).

⁷ A.C., Docket No. 19-0174 (issued July 9, 2019).

⁸ 5 U.S.C. § 8129(a)-(b).

⁹ C.B., Docket No. 20-0031 (issued July 27, 2020); L.S., 59 ECAB 350 (2008).

from data provided by the Bureau of Labor Statistics.¹⁰ An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits.¹¹ 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, vehicle(s) above the two allowed per immediate family, retirement account balances (such as TSP or 401(k)), jewelry, and artwork.¹² 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 \$50.00.¹³

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.¹⁴ 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.¹⁵

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.¹⁶ Appellant, however, had the responsibility to provide financial information to OWCP,¹⁷ and he did not fully comply.

In its preliminary determination dated July 15, 2020, OWCP clearly explained the importance of providing a completed overpayment information questionnaire (Form OWCP-20)

¹⁰ 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).

¹¹ Federal (FECA) Procedure Manual, *id.* at Chapter 6.400.4(b)(3) (September 2018).

¹² *Id.*

¹³ Federal (FECA) Procedure Manual, *supra* note 10 at Chapter 6.400.4(a)(3) (September 2018).

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

¹⁵ Federal (FECA) Procedure Manual, *supra* note 10 at Chapter 6.400.4(c)(3) (September 2018).

¹⁶ *Supra* note 10.

¹⁷ 20 C.F.R. § 10.438.

and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant completed the Form OWCP-20, however, his income did not equal the received paystubs. In addition, he did not list any assets, including the amount in his TSP retirement account. Thus, appellant did not submit all of the financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

Consequently, as appellant did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, OWCP properly denied waiver of recover of the overpayment.¹⁸

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$6,541.64 for the period January 16 through September 29, 2017 because appellant concurrently received FECA benefits and age-related retirement benefits from SSA without appropriate offset for which he was without fault. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2020 decision of the Office of Workers Compensation Programs is affirmed.

Issued: May 12, 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

¹⁸ *Id.*