

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

_____)	
G.M., Appellant)	
)	
and)	Docket No. 20-1620
)	Issued: October 20, 2021
U.S. POSTAL SERVICE, CASPER POST OFFICE, Casper, WY, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 10, 2020 appellant filed a timely appeal from a July 7, 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 OWCP properly determined that appellant received an overpayment of compensation in the amount of \$93,578.51, for the period February 21, 2004 through October 12, 2019, for which he was without fault, because he concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence to OWCP following the July 7, 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.*

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 \$300.00 from appellant's continuing compensation benefits, every 28 days.

FACTUAL HISTORY

On January 6, 2004 appellant, then a 67-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 5, 2004 he sustained bilateral knee injuries when he slipped and fell on steps covered in ice and snow while in the performance of duty. He stopped work on January 10, 2004. On February 13, 2004 OWCP accepted the claim for a right medial meniscus tear and paid appellant wage-loss compensation on the supplemental rolls, commencing February 21, 2004. On March 18, 2004 appellant underwent OWCP-authorized right knee arthroscopy with partial lateral meniscectomy. OWCP subsequently expanded its acceptance of the claim to include tear of the right lateral meniscus and derangement of the medial meniscus of the right knee.

On July 20, 2004 appellant returned to limited-duty work for four hours a day as a modified letter carrier. OWCP paid him wage-loss compensation on the daily rolls for the remaining four hours a day.

By decision dated August 16, 2005, OWCP granted appellant a schedule award for 50 percent permanent impairment of the right lower extremity. The period of the award ran for 144 weeks from August 7, 2005 through May 10, 2008. OWCP noted that, since it had paid him compensation for wage-loss compensation through August 6, 2005, his schedule award would commence on August 7, 2005.

Appellant retired from the employing establishment, effective May 30, 2014. His retirement coverage was listed as Federal Employees Retirement System (FERS) with a service computation date of June 6, 1987. On June 24, 2014 appellant elected to receive FECA benefits, effective May 31, 2014. OWCP paid him wage-loss compensation on the periodic rolls.

On August 18, 2019 OWCP provided SSA with a dual benefits calculation form for its completion. It listed the computation period as January 5, 2004 onward. On August 26, 2019 OWCP received the completed FERS/SSA dual benefits calculation form, wherein SSA calculated appellant's benefit rates with a FERS offset and without a FERS offset from January 1, 2004 through December 2018. Beginning January 1, 2004, the SSA rate with FERS was \$1,441.00 and without FERS was \$1,028.00. Beginning December 1, 2004, the SSA rate with FERS was \$1,480.00 and without FERS was \$1,056.00. Beginning September 1, 2005, the SSA rate with FERS was \$1,480.20 and without FERS was \$1,056.20. Beginning December 1, 2005, the SSA rate with FERS was \$1,540.50 and without FERS was \$1,099.50. Beginning December 1, 2006, the SSA rate with FERS was \$1,591.50 and without FERS was \$1,135.50. Beginning December 1, 2007, the SSA rate with FERS was \$1,627.40 and without FERS was \$1,161.40. Beginning December 1, 2008, the SSA rate with FERS was \$1,722.40 and without FERS was \$1,228.40. Beginning December 1, 2009, the SSA rate with FERS was \$1,722.50 and without FERS was \$1,228.50. Beginning December 1, 2011, the SSA rate with FERS was \$1,783.50 and without FERS was \$1,272.90. Beginning December 1, 2012, the SSA rate with FERS was \$1,814.90 and without FERS was \$1,294.90. Beginning January 1, 2013, the SSA rate with FERS was \$1,815.90 and without FERS \$1,294.90. Beginning December 1, 2013, the SSA rate with

FERS was \$1,842.90 and without FERS \$1,313.90. Beginning December 1, 2014, the SSA rate with FERS was \$1,873.90 and without FERS \$1,335.90. Beginning December 1, 2015, the SSA rate with FERS was \$1,874.80 and without FERS \$1,335.80. Beginning December 1, 2016, the SSA rate with FERS was \$1,880.00 and without FERS \$1,340.00. Beginning December 1, 2017, the SSA rate with FERS was \$1,918.00 and without FERS \$1,367.00. Beginning December 1, 2018, the SSA rate with FERS was \$1,971.50 and without FERS \$1,404.50.

In a FERS offset calculation form dated October 21, 2019, OWCP used the information provided by SSA to calculate the 28-day FERS offset for the relevant periods and calculated a total overpayment in the amount of \$93,578.51. It found the following: during the period January 1 through November 30, 2004, an overpayment had been created in the amount of \$3,866.77; for the period December 1, 2004 through August 31, 2005, an overpayment had been created in the amount of \$3,829.98; for the period September 1 through November 30, 2005, an overpayment had been created in the amount of \$1,272.00; for the period December 1, 2005 through November 30, 2006, an overpayment had been created in the amount of \$4,855.85; for the period December 1, 2006 through November 30, 2007, an overpayment had been created in the amount of \$5,487.03; for the period December 1, 2007 through November 30, 2008, an overpayment had been created in the amount of \$5,622.73; for the period December 1, 2008 through November 30, 2009, an overpayment had been created in the amount of \$5,944.29; for the period December 1, 2009 through November 30, 2011, an overpayment had been created in the amount of \$11,888.57; for the period December 1, 2011 through November 30, 2012, an overpayment had been created in the amount of \$6,165.69; for the period December 1 through 31, 2012, an overpayment had been created in the amount of \$531.43; for the period December 1 through November 30, 2013, an overpayment had been created in the amount of \$5,736.73; for the period December 1, 2013 through November 30, 2014, an overpayment had been created in the amount of \$6,365.44; for the period December 1, 2014 through November 30, 2015, an overpayment had been created in the amount of \$6,473.74; for the period December 1, 2015 through November 30, 2016, an overpayment had been created in the amount of \$6,503.54; for the period December 1, 2016 through November 30, 2017, an overpayment had been created in the amount of \$6,497.80; for the period December 1, 2017 through November 30, 2018, an overpayment had been created in the amount of \$6,630.16; and for the period December 1, 2018 through October 12, 2019, an overpayment had been created in the amount of \$5,906.77. OWCP added the overpaid amounts totaling \$93,578.51.

By letter dated October 21, 2019, OWCP informed appellant that SSA had confirmed his receipt of age-related retirement benefits attributable, in part, to his federal service. It explained that the portion of SSA age-related retirement benefits attributable to his federal service would be deducted from his 28-day periodic rolls' compensation payments beginning October 13, 2019, in the amount of \$567.00.

On October 30, 2019 OWCP issued a preliminary determination that appellant was overpaid compensation in the amount of \$93,578.51 for the period February 21, 2004 through October 12, 2019 because the SSA/FERS offset was not applied to payments for this period. 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 repayment method, and advised him that he could request a waiver of recovery of the overpayment. It requested financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP

advised appellant that it would deny waiver if he failed to furnish the requested financial information within 30 days. It provided him with an overpayment action request form and further notified him that, within 30 days of the date of the letter, he could contest the overpayment and request a telephone conference, a final decision based on the written evidence, or a prerecoumment hearing.

In response, appellant provided an overpayment action request form requesting a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review. He contended that he had relied on incorrect information about his FECA and SSA benefits, and that recovery of the overpayment would cause undue hardship. Appellant also submitted a completed Form OWCP-20 noting monthly household income in the amount of \$5,389.00, including \$2,432.00 in SSA benefits, \$567.00 in FECA wage-loss compensation, \$323.00 from his wife's baking business, and \$2,067.00 from dividends, interest, a Thrift Savings Plan, and his wife's individual retirement account. He listed monthly expenses of \$263.00 in property tax, \$2,560.00 for clothing and miscellaneous household and personal expenses, \$245.00 in -house and property maintenance, \$785.00 for utilities, and \$1,378.00 in miscellaneous expenses, totaling \$5,231.00. Appellant also listed a total of \$286,764.00 in assets, including \$88.50 in cash on hand, \$20,005.93 in a checking account, \$4,614.78 in a savings account, and \$262,055.00 in stocks and bonds. He submitted federal tax returns, bank and investment account statements, and utility bills documenting household assets and some of the listed expenses.³

During the hearing, held telephonically on February 26, 2020, appellant asserted that repaying the overpayment would cause severe financial hardship. He explained that a portion of his miscellaneous expenses were for medical insurance, car insurance, and gasoline. Following the hearing, appellant submitted a March 8, 2020 statement explaining that his residence was over 40 years old and required a new roof, interior and exterior painting, new appliances, and new carpeting. He also asserted that his vehicles were 8 and 16 years old and had expensive maintenance problems.

By decision dated July 7, 2020, OWCP's hearing representative finalized the October 30, 2019 preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$93,578.51 because OWCP had failed to offset his compensation payments by the portion of his SSA benefits that were attributable to federal service and that appellant did not have actual knowledge of the calculation error. He further found that appellant 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 would be against equity and good conscience. The hearing representative found that OWCP would recover the overpayment by deducting \$300.00 every 28 days from appellant's continuing compensation payments.⁴

³ Appellant submitted bills and a debit account transaction statement, which listed monthly expenses of \$159.00 for electricity, \$86.20 for municipal water, \$345.66 for telephone, internet, and television, \$46.00 for municipal infrastructure improvements, and approximately \$53.00 for grocery and convenience food purchases. He also authorized debits totaling \$596.75 for medical insurance.

⁴ By this decision, the hearing representative set aside an April 1, 2020 final overpayment decision due to a technical error regarding the interest rate.

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.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 SSA age-related retirement benefits that are attributable to federal service of the employee.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that fact of overpayment has been established.

Appellant received FECA wage-loss compensation from February 21, 2004 through October 12, 2019 while he continued to receive age-related retirement benefits from SSA without appropriate offset. As noted, a claimant cannot concurrently received FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service.⁹ The fact of overpayment is, therefore, established.

The Board further finds, however, that OWCP improperly calculated appellant's overpayment for the period August 7, 2005 through May 10, 2008. OWCP included the schedule award period in its FERS offset calculation form. OWCP's regulations provide that retirement benefits paid by the Office of Personnel Management or SSA can be paid concurrently with schedule award compensation under FECA without a deduction from FECA benefits.¹⁰ Consequently, the SSA age-related retirement benefits appellant received during the period August 7, 2005 through May 10, 2008 were not dual benefits and should not have been included in the overpayment calculation.

On remand OWCP shall determine the amount of the overpayment of compensation based on the correct dates during which the overpayment occurred. It shall then issue a new preliminary

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8116.

⁷ 20 C.F.R. § 10.421(d); *S.S.*, Docket No. 19-1945 (issued March 25, 2021); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

⁸ FECA Bulletin No. 97-09 (issued February 3, 1997).

⁹ 5 U.S.C. § 8116(d)(2); *D.B.*, Docket No. 20-0964 (issued May 10, 2021); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

¹⁰ *D.B.*, *id.*; *see J.H.*, Docket No. 19-1887 (issued June 16, 2020); *K.C.*, Docket No. 19-1838 (issued May 1, 2020).

overpayment determination with a Form OWCP-20, an overpayment recovery questionnaire, and instructions for appellant to provide supporting financial information. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹¹

CONCLUSION

The Board finds that fact of overpayment has been established. The Board further finds that this case is not in posture for decision regarding the amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 20, 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

¹¹ In light of the Board's disposition of Issue 1, Issues 2, and 3 are rendered moot.