

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

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S.S., Appellant)	
)	
and)	Docket No. 21-0660
)	Issued: October 15, 2021
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, CHICAGO MIDWAY)	
AIRPORT, Chicago, IL, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REVERSING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On March 13, 2021 appellant filed a timely appeal from a September 16, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned Docket No. 21-0660.

On September 26, 2019 OWCP advised appellant of its preliminary overpayment determination that he had received a \$6,038.06 overpayment of compensation for the period June 1, 2014 through August 17, 2019 because he received wage-loss compensation under the Federal Employees' Compensation Act² (FECA) and age-related retirement benefits from the Social Security Administration (SSA) without an appropriate offset for the portion of the SSA

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days September 16, 2020, the date of OWCP's last decision, was March 15, 2021. Because using March 18, 2021, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is March 13, 2021, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

retirement benefits attributable to his federal service. It also found that he was without fault in the creation of the overpayment.

On October 26, 2019 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. He asserted that the information provided by SSA regarding the amount of his benefits contained discrepancies. Appellant advised that he was not seeking waiver due to financial hardship.

Following a preliminary review, by decision dated January 30, 2020, OWCP's hearing representative set aside the September 26, 2019 preliminary overpayment determination. The hearing representative noted that, on August 18, 2014, SSA had provided a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form setting forth appellant's SSA age-related retirement benefits with and without a FERS offset effective June 2014. On July 31, 2019 SSA had provided another FERS/SSA dual benefits calculation form that contained different rates for the period beginning June 2014. The hearing representative determined that OWCP had failed to resolve the discrepancies between the figures provided by SSA on the two forms prior to reaching its overpayment determination. Consequently, the hearing representative found that OWCP had not met its burden of proof to establish the declared overpayment. The hearing representative instructed OWCP, on remand, to obtain clarifying information from SSA, and to issue a *de novo* preliminary overpayment determination setting forth the period and amount of overpayment.

By decision dated September 16, 2020, OWCP found that appellant had received an overpayment of wage-loss compensation in the amount of \$6,038.06 for the period June 1, 2014 through August 17, 2019 because it had failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to his federal service. It determined that he was without fault in the creation of the overpayment but denied waiver of recovery, noting that he had not requested waiver of recovery of the overpayment. OWCP required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation benefits every 28 days.

The Board finds that the case is not in posture for decision as OWCP improperly issued the September 16, 2020 final overpayment decision.

OWCP's regulations provide that, before seeking to recover an overpayment or adjust benefits, it will advise the individual in writing that the overpayment exists and the amount of overpayment.³ The written notification must include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.⁴ The preliminary notice must also inform the individual of his or her right to challenge the fact or amount of the overpayment, the right to contest the preliminary finding of fault in the creation of the overpayment, if applicable, and the right to request a waiver of recovery of the overpayment.⁵ The recipient of the alleged

³ 20 C.F.R. § 10.431(a). *See also* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.300.5 (September 2018).

⁴ *Id.* at § 10.431(b).

⁵ *Id.* at § 10.431(d).

overpayment may present evidence in response to OWCP's preliminary notice, either in writing or at a prerecoupment hearing requested within 30 days.⁶

The preliminary notice of findings is essential in overpayment cases because OWCP regulations limit further review of a final decision concerning overpayment to the Board. A claimant is prohibited from requesting a hearing, or reconsideration, following a final overpayment decision.⁷ The claimant is, therefore, precluded from introducing new evidence to rebut findings made in a final overpayment decision.

The Board notes that OWCP routinely issues a new preliminary determination after an OWCP hearing representative reviews a preliminary overpayment decision and remands the case to OWCP for further findings.⁸ In this case, OWCP's hearing representative specifically instructed OWCP to issue a new preliminary overpayment determination after obtaining clarifying information from SSA. OWCP, however, failed to issue a new preliminary determination notifying appellant of its new findings, informing him of his right to challenge the overpayment, and providing him with the opportunity to submit new information regarding waiver of recovery of the overpayment.⁹

As OWCP has not afforded appellant the procedural rights provided under its regulations, the Board finds that it improperly issued its final overpayment decision.¹⁰ Consequently, the September 16, 2020 decision is hereby reversed. Accordingly,

⁶ *Id.* at § 10.432.

⁷ *See* 20 C.F.R. § 10.440(b).

⁸ *See K.G.*, Docket No. 17-0517 (issued September 8, 2017); *L.V.*, Docket No. 15-1856 (issued July 19, 2016).

⁹ *K.G.*, *id.*

¹⁰ *L.V.*, *supra* note 8; *K.G.*, Docket No. 08-2135 (issued April 16, 2009).

IT IS HEREBY ORDERED THAT the September 16, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 15, 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