

FACTUAL HISTORY

On October 19, 1996 appellant, then a 46-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that he developed left abdominal pain on that date due to lifting mail sacks while in the performance of duty. On December 20, 1996 he underwent surgery for right groin abscess. On February 21, 1997 OWCP accepted the claim for neck sprain. On August 8, 1997 it expanded the acceptance of appellant's claim to include abdominal hematoma and abscess and work-related strain. Appellant underwent additional surgery on August 11, 1997. On February 13, 1998 OWCP paid him wage-loss compensation on the periodic rolls, effective February 1, 1998.

In a letter dated May 3, 2012, OWCP notified appellant that pursuant to section 8116(d)(2) of FECA (5 U.S.C. § 8116(d)(2)) a reduction of continuing compensation benefits is required if he begins receiving SSA retirement benefits based on age and federal service. It noted that he was approaching his 62nd birthday and advised him that failure to report receipt of SSA retirements could result in an overpayment of compensation, which could be subject to recovery.

On April 25, 2019 OWCP received from SSA a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form which reported that appellant had been in receipt of SSA age-related retirement benefits since June 2012. SSA reported appellant's benefit rates with and without FERS as follows: beginning June 2012, his monthly rate with FERS was \$1,138.40 and without FERS was \$881.80; beginning December 2012, his monthly rate with FERS was \$1,157.70 and without FERS was \$896.70; beginning December 2013, his monthly SSA rate with FERS was \$1,175.10 and without FERS was \$910.20; beginning December 2014, appellant's monthly SSA rate with FERS was \$1,195.00 and without FERS was \$925.60; beginning May 2016, his monthly rate with FERS was \$1,664.50 and without FERS was \$1,227.40; beginning December 2016 his monthly rate with FERS was \$1,669.40 and without FERS was \$1,231.00; beginning December 2017 appellant's monthly rate with FERS was \$1,702.70 and without FERS was \$1,255.60; beginning December 2018, his monthly rate with FERS was \$1,750.30 and without FERS was \$1,290.70. At the bottom of the FERS/SSA dual benefits calculation form, SSA noted that appellant had two periods of retirement and two periods of disability. The first retirement period started in June 2012 while the second began in May 2016.

On June 6, 2019 OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$27,527.54 because he received FECA wage-loss compensation benefits concurrently with SSA age-related retirement benefits for the period June 1, 2012 through May 25, 2019 without an appropriate offset. It noted that SSA had confirmed that a portion of his SSA age-related retirement benefits were attributed to his years of federal service as an employee under the FERS retirement program and that portion required an offset of his FECA compensation benefits until May 26, 2019 when his monthly compensation for wage loss was adjusted. OWCP explained that it had calculated the overpayment of compensation by determining the difference between appellant's SSA amount with and without FERS for each period, and then multiplying that amount by the number of days in each period. The FERS offset calculation worksheet indicated that OWCP had utilized a 28-day FERS offset amount of \$236.86 for June 1 through November 30, 2012, \$240.92 for December 1, 2012 through November 30, 2013, \$244.52 for December 1, 2013 through November 30, 2014, \$248.68 for December 1, 2014 through November 30, 2015, \$403.48 for May 1 through November 30, 2016,

\$404.68 for December 1, 2016 to November 30, 2017, \$412.71 for December 1, 2017 through November 30, 2018, and \$424.89 for December 1, 2018 through May 25, 2019. Using these figures, OWCP calculated that the total overpayment amount was \$27,527.54. It found that appellant was without fault in the creation of the overpayment. OWCP requested that he complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, it notified appellant that, within 30 days of the date of the letter, he could request a final decision based on the written record or request a prerecoupment hearing.

In a June 10, 2019 letter, OWCP informed appellant that he had been receiving dual FERS and SSA benefits. It further informed him that his FECA benefits must be adjusted based on the FERS portion of SSA benefits that were attributable to federal service. OWCP indicated that appellant's FECA benefits would be reduced by \$424.89 to \$2,721.11 every 28 days beginning May 26, 2019.

On July 5, 2019 appellant requested that OWCP issue a decision based on the written evidence regarding possible waiver of recovery of the overpayment. He provided a completed Form OWCP-20 overpayment recovery questionnaire, listing his total monthly income as \$6,667.90 including SSA age-related retirement benefits and FECA wage-loss compensation benefits. Appellant listed his monthly expenses as: mortgage \$1,180.00; food \$1,200.00; clothing \$450.00; utilities \$940.00; miscellaneous \$750.00; and debts paid in monthly installments totaling \$1,240.00; for a total of \$5,760.00 in monthly expenses. Appellant listed his available funds as \$1,820.39.

By decision dated August 7, 2019, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$27,527.54 for the period June 1, 2012 through May 25, 2019 because it failed to offset his compensation payments by the portion of his SSA age-related retirement benefits attributable to his federal service. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as there was no evidence that recovery would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$300.00 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.² 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.³

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116.

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.⁴ 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.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

The record reflects that appellant received FECA wage-loss compensation on the periodic rolls effective February 1, 1998, and that he received SSA age-related retirement benefits that were attributable to federal service initially on June 1, 2012 without an appropriate offset. A claimant cannot receive both FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁶ As OWCP failed to offset appellant's FECA wage-loss compensation, he received an overpayment of wage-loss compensation.⁷ Therefore, fact of overpayment is established.⁸

The Board further finds, however, that the case is not in posture for decision regarding the period and amount of overpayment.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA regarding age-related SSA retirement benefits that were attributable to federal service. SSA provided its benefit rates with FERS, and without FERS for specific periods commencing June and December 2012, December 2013, December 2014, May and December 2016, December 2017, and December 2018. In the remarks section, SSA noted that appellant had two periods of retirement and two periods of disability; the first retirement period began on June 2012 and the second retirement period began on May 2016. The specific beginning and end dates of the two periods of disability, however, were not provided by SSA.

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

⁵ FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁶ 5 U.S.C. § 8116(d)(2); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

⁷ *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁸ *See K.H.*, Docket No. 18-0171 (issued August 2, 2018).

OWCP provided its calculations for each relevant period on a FERS offset calculation worksheet and in its June 6, 2019 preliminary overpayment determination.

OWCP explained that it had calculated the overpayment of compensation by determining the difference between appellant's SSA benefit rates with and without FERS for each period, and then multiplying that amount by the number of days in each period. The FERS offset calculation worksheet indicated that it had utilized a 28-day FERS offset amount of \$236.86 for June 1 through November 30, 2012, \$240.92 for December 1, 2012 through November 30, 2013, \$244.52 for December 1, 2013 through November 30, 2014, \$248.68 for December 1, 2014 through November 30, 2015, \$403.48 for May 1 through November 30, 2016, \$404.68 for December 1, 2016 to November 30, 2017, \$412.71 for December 1, 2017 through November 30, 2018, and \$424.89 for December 1, 2018 through May 25, 2019. Using these figures, OWCP calculated that the total overpayment amount was \$27,527.54.

The Board finds that SSA did not provide specific information regarding the beginning and end dates for the two periods of SSA disability benefits referenced on the bottom of the FERS/SSA dual benefits calculation form. SSA only provided the effective dates for SSA age-related retirement benefits. Thus, it is unclear, based upon the current record, whether OWCP properly excluded the two periods of SSA disability benefits, which are not subject to offset,⁹ when calculating the period and amount of the overpayment.

Accordingly, the Board finds that the case must be remanded to OWCP. On remand, OWCP shall request additional information from SSA regarding the exact periods of SSA disability benefits in order to determine the proper period and amount of the overpayment of compensation. OWCP shall then issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, 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.¹⁰

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation because he concurrently received FECA wage-loss compensation and SSA age-

⁹ *Supra* notes 4 and 5.

¹⁰ In light of the Board's disposition regarding Issue 1, Issues 2 and 3 are rendered moot.

related retirement benefits without an appropriate offset. The Board further finds that the case is not in posture for decision with respect to the period and amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the August 7, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: September 14, 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