



wage-loss compensation for the period August 15 through September 11, 2021; (2) and whether OWCP properly denied waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On February 22, 2021 appellant, then a 55-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 18, 2021 he tore his left knee tendon when he slipped on ice covered with snow and twisted his knee while in the performance of duty. He stopped work on that date. OWCP accepted appellant's claim for left knee medial meniscus tear and left quadriceps muscle strain. It paid him wage-loss compensation on the supplemental rolls beginning April 5, 2021 and on the periodic rolls, effective April 25, 2021.

In a letter dated May 4, 2021, OWCP advised appellant of his weekly compensation rate on the periodic rolls. It further informed him that he must report any retirement income received from any federal agency as federal employees who receive wage-loss compensation benefits under FECA are not permitted to concurrently receive benefits under certain other federal programs, including the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS).

In a letter dated August 13, 2021, OWCP advised appellant that it was informed that he was receiving or may be entitled to receive OPM retirement benefits and provided him with an election of benefits form.

On August 13, 2021 OWCP received an election of benefits form, signed by appellant on August 13, 2021 in which he indicated that, effective August 15, 2021, he elected to receive OPM retirement benefits in lieu of any benefits to which he might be entitled under FECA.

In a separate letter of date to OPM dated August 13, 2021, OWCP informed OPM that it received appellant's claim for compensation under FECA and requested that OPM complete an attached questionnaire addressing whether he submitted an application for OPM benefits, whether benefits were payable, and whether benefits had been paid.

An OWCP compensation termination fiscal worksheet dated September 10, 2021 noted that the effective date of the periodic rolls termination was August 15, 2021 due to appellant's election of August 15, 2021 as the effective date for the receipt of his OPM benefits. It also noted that an overpayment in the amount of \$2,980.29 had been created as appellant continued to receive FECA compensation benefits for 28 additional days after his effective election date for the period August 15 through September 11, 2021.

In a letter dated September 10, 2021 to OPM, OWCP indicated that appellant elected to receive OPM benefits effective August 15, 2021 in lieu of compensation benefits under FECA, and it requested that OPM commence annuity payments effective that date. It also requested that OPM reimburse OWCP in the amount of \$2,980.29 for FECA benefits paid during the period August 15, 2021 through September 11, 2021. OWCP attached appellant's August 13, 2021 election of benefits form.

In a letter dated September 22, 2021, the employing establishment informed OWCP that it had received an application for retirement benefits from appellant. It provided a notification of

personnel action, PS Form 50, which noted that appellant retired, effective June 30, 2021. OWCP also submitted a copy of an official personnel folder (e-OPF) page, which indicated that appellant had elected optional retirement on June 28, 2021.

On October 14, 2021 OWCP issued a preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$2,980.29 for the period August 15 through September 11, 2021. It explained that the overpayment was the result of his receipt of FECA compensation benefits through September 11, 2021 after having elected to receive OPM benefits, effective August 15, 2021. OWCP determined that appellant was without fault in the creation of the overpayment. It provided a calculation of the overpayment and requested that he complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, OWCP provided an overpayment action request form and notified appellant that within 30 days of the date of the letter, he could request a final decision based on the written evidence or a prerecouplement hearing. It further advised appellant that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. No information was received.

In a letter dated October 19, 2021, OPM informed OWCP that it began payments to appellant, effective August 15, 2021. It noted that appellant's net monthly annuity was \$912.57. OPM also advised OWCP that it could not begin collection of the overpayment incurred for the period August 15 through September 11, 2021 until OWCP sent certification that due process had been given to appellant.

By decision dated November 22, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$2,980.29 for the period from August 15 through September 11, 2021 because he received FECA compensation benefits through September 11, 2021 after having elected receipt of OPM benefits, effective August 15, 2021. It also found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because he had not completed and returned OWCP's Form OWCP-20.

### **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.<sup>3</sup> 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.<sup>4</sup>

Section 10.421(a) of OWCP's implementing regulations provides that a beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.<sup>5</sup>

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8116.

<sup>5</sup> 20 C.F.R. § 10.421(a).

The beneficiary must elect the benefit that he or she wishes to receive.<sup>6</sup> OWCP's procedures also explain that the employee must make an election between FECA benefits and OPM benefits. The employee has the right to elect the monetary benefit, which is the more advantageous. This policy also applies to reemployed annuitants.<sup>7</sup>

### ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,980.29 for which he was without fault, because he concurrently received FECA wage-loss compensation and OPM retirement benefits for the period August 15 through September 11, 2021.

On August 13, 2021 appellant elected OPM retirement benefits, effective August 15, 2021. The evidence of record indicates that appellant began receiving FECA wage-loss compensation benefits on the periodic rolls commencing April 15, 2021, continuing through September 11, 2021. In a letter dated October 19, 2021, OPM confirmed that it paid appellant monthly benefits beginning August 15, 2021 and noted his monthly annuity amount.

A FECA beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.<sup>8</sup> The clear language of section 8116(a) of FECA, section 10.421(a) of OWCP's implementing regulations, and OWCP's procedures prohibit the concurrent receipt of FECA wage-loss compensation benefits and a federal annuity.<sup>9</sup> The evidence of record establishes that, although OPM provided retirement benefits, effective August 15, 2021, appellant continued to receive FECA wage-loss compensation benefits while concurrently receiving OPM retirement benefits.<sup>10</sup> OWCP calculations show that appellant received \$2,980.29 in FECA wage-loss compensation benefits for the period August 15 through September 11, 2021 when it was terminated. Therefore, as appellant had elected OPM retirement benefits for the period of the overpayment, August 15 through September 11, 2021, an overpayment of compensation in that amount was created.<sup>11</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4a (February 1995 & January 1997); *R.S.*, Docket No. 11-0428 (issued September 27, 2011); *Harold Weisman*, Docket No. 93-1335 (issued March 30, 1994).

<sup>8</sup> *Supra* note 5; *B.C.*, Docket No. 20-1415 (issued April 14, 2021).

<sup>9</sup> *Supra* notes 5-7; *M.G.*, Docket No. 20-0867 (issued October 13, 2021).

<sup>10</sup> *See J.S.*, Docket No. 17-1395 (issued October 27, 2017) (the Board affirmed the final decision of overpayment in the amount of \$513.29 for the period August 1 through 5, 2016, finding that correspondence from OPM had indicated that the claimant began receiving retirement payments, effective August 1, 2016, but continued to receive FECA wage-loss compensation benefits through August 5, 2016).

<sup>11</sup> *E.F.*, Docket No. 18-1320 (issued March 13, 2019); *C.H.*, Docket No. 18-0772 (issued November 14, 2018).

## 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.<sup>12</sup> Section 10.438 of OWCP's regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. Failure to submit the requested information within 30 days of the request shall result in denial of waiver of recovery of the overpayment.<sup>13</sup> The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA, or would be against equity and good conscience, are set forth in sections 10.434 to 10.437 of OWCP's regulations.<sup>14</sup>

The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.<sup>15</sup>

## 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.<sup>16</sup>

In its preliminary determination dated October 14, 2021, OWCP clearly explained the importance of providing the completed Form OWCP-20 recovery questionnaire and supporting financial documentation. It advised appellant that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant, however, did not submit a completed Form OWCP-20 recovery questionnaire or otherwise submit 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.<sup>17</sup>

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438, which was necessary to determine his eligibility of waiver, OWCP properly denied waiver of recovery of the overpayment of compensation in the amount of \$2,980.29.<sup>18</sup>

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<sup>12</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436 and 10.437.

<sup>13</sup> 20 C.F.R. § 10.438.

<sup>14</sup> *Id.* at §§ 10.434-10.437.

<sup>15</sup> *See Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>16</sup> 20 C.F.R. § 10.436.

<sup>17</sup> *See S.M.*, Docket No. 17-1802 (issued August 20, 2018).

<sup>18</sup> *See J.A.*, Docket No. 19-1946 (issued July 13, 2020); *see also T.E.*, Docket No. 19-0348 (issued December 11, 2019).

**CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,980.29 for which he was without fault, because he concurrently received FECA wage-loss compensation and OPM retirement benefits for the period August 15 through September 11, 2021. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board