

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

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E.A., Appellant))	
))	
and))	Docket No. 22-0436
))	Issued: August 23, 2022
U.S. POSTAL SERVICE, BERKELEY MAIN))	
POST OFFICE, Berkeley, CA, Employer))	
_____))	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 28, 2022 appellant filed a timely appeal from an October 29, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of his oral argument request, appellant asserted that oral argument should be granted because it would allow for further discussion of the submitted evidence. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the factual evidence. As such, the arguments on appeal can be adequately addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. Therefore, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the October 29, 2021 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUE

The issue is whether OWCP properly denied appellant's request for waiver of recovery of an overpayment of compensation in the amount of \$20,030.86.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 27, 2011 appellant, then a 59-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he twisted his left arm in an attempt to catch a falling mail tray while in the performance of duty. OWCP accepted appellant's claim for sprains of the left elbow/forearm, left shoulder/upper arm (including rotator cuff). It authorized left shoulder surgery, which was performed on September 23, 2011, and paid appellant wage-loss compensation for disability from work on the supplemental rolls commencing September 10, 2011 and on the periodic rolls commencing September 25, 2011.

On January 24, 2019 OWCP received a Federal Employees Retirement System (FERS)/ Social Security Administration (SSA) dual benefits calculation form completed by an SSA official on January 11, 2019. The form provided SSA benefit rates with a FERS offset and without a FERS offset for the period June 2017 through December 2018.

OWCP completed a FERS offset calculation worksheet on February 21, 2019. It calculated the overpayment amount by determining the daily FERS offset amount and multiplying that amount by the number of days in each period from June 1, 2017 through February 2, 2019 for a total overpayment amount of \$20,030.86.

In a preliminary overpayment determination dated February 28, 2019, OWCP notified appellant that he received an overpayment of compensation in the amount of \$20,030.86 for the period June 1, 2017 through February 2, 2019, because he received SSA age-related retirement benefits based on his age and attributable to his federal service, without an offset being made, while he received FECA compensation benefits. It also made a preliminary determination that appellant was at fault in the creation of the overpayment because he accepted payments he knew, or reasonably should have known, to be incorrect. OWCP advised him that he could submit evidence challenging the fact, amount, or finding of fault, and request waiver of the overpayment. It informed appellant that he could submit additional evidence in writing or at precoupment hearing, but that a precoupment hearing must be requested within 30 days of the date of the written notice of the overpayment. OWCP requested that appellant complete and return an enclosed financial information questionnaire (Form OWCP-20) within 30 days even if he was not requesting waiver of the overpayment.

In an overpayment action request form, signed on March 18, 2019, appellant indicated that he disagreed that the claimed overpayment occurred. He submitted several SSA and Office of

⁴ Docket No. 19-1164 (issued March 16, 2021).

Personnel Management (OPM) documents dated from 2017 through 2020, but he did not submit a completed Form OWCP-20.

By decision dated April 8, 2019, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$20,030.86, for the period June 1, 2017 through February 2, 2019, because he received SSA age-related retirement benefits based on his age and attributable to his federal service, without an offset being made, while he received FECA compensation benefits. It found that appellant was at fault in the creation of the overpayment because he accepted payments he knew, or reasonably should have known, to be incorrect. OWCP determined that, therefore, waiver of recovery of the overpayment was precluded. It required repayment of the overpayment through payments of \$393.11 every 28 days.

Appellant appealed to the Board and, by decision dated March 16, 2021,⁵ the Board affirmed OWCP's determination that appellant received an overpayment of compensation in the amount of \$20,030.86, but reversed its determination that appellant was at fault in the creation of the overpayment. Given its finding that appellant was without fault in the creation of the overpayment, the Board remanded the case to OWCP to issue a new preliminary overpayment determination on the issues of waiver and, if warranted, method of recovery of the overpayment.

In a preliminary overpayment determination dated April 30, 2021, OWCP advised appellant that he received an overpayment of compensation in the amount of \$20,030.86 for the period June 1, 2017 through February 2, 2019 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without appropriate offset. It also preliminarily determined that he was without fault in the creation of the overpayment. OWCP provided appellant with an overpayment action request form and 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. It also advised appellant that he could submit evidence challenging the fact, amount, or finding of fault, and request waiver of the overpayment. OWCP requested that appellant complete and return a Form OWCP-20 within 30 days. It also requested that he submit supporting financial documentation, 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 of recovery of the overpayment if he failed to furnish the requested financial information within 30 days.

Appellant submitted an overpayment action request form, signed on May 22, 2021, in which he requested waiver of recovery of the overpayment. He submitted an unsigned and undated Form OWCP-20, which did not contain any figures for monthly income, monthly expenses, and assets, and which contained notations indicating that the provision of such figures was "N/A [not applicable]." Appellant also submitted May 22 and September 27, 2021 letters in which he requested waiver of recovery of the overpayment, and several SSA and OPM documents dated from 2017 through 2020.

By decision dated October 29, 2021, OWCP determined that appellant received an overpayment of compensation in the amount of \$20,030.86, for the period June 1, 2017 through February 2, 2019, because he concurrently received SSA age-related retirement benefits and FECA

⁵ *Id.*

wage-loss compensation without appropriate offset.⁶ It found that appellant was without fault in the creation of the overpayment, but that the overpayment was not subject to waiver of recovery. OWCP required recovery of the overpayment through payments in the amount of \$393.11, every month.⁷

LEGAL PRECEDENT

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.⁸ 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. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.⁹

ANALYSIS

The Board finds that OWCP properly denied appellant's request for waiver of recovery of an overpayment of compensation in the amount of \$20,030.86.

A decision of the Board is final upon the expiration of 30 days following the date of its order and, in the absence of new review by the Director, the subject matter is *res judicata* and not subject to further consideration by the Board.¹⁰ The Board has previously determined, in its March 16, 2021 decision, that appellant received a \$20,030.86 overpayment for which he was without fault in its creation.¹¹ The only issue presently before the Board is whether OWCP properly denied appellant's request for waiver of recovery of the \$20,030.86 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

⁶ The case record also contains a draft version of the October 29, 2021 decision, which was dated October 28, 2021.

⁷ With respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *A.B.*, Docket No. 18-0915 (issued October 24, 2018); *Miguel A. Muniz*, 54 ECAB 217 (2002). Effective January 2, 2021, appellant elected receipt of OPM benefits in lieu of FECA compensation. As appellant was not in receipt of continuing compensation at the time of OWCP's October 29, 2021 overpayment determination, the Board does not have jurisdiction over the method of recovery of the overpayment in this case. See *Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

⁸ 5 U.S.C. § 8129.

⁹ 20 C.F.R. § 10.438.

¹⁰ *A.H.*, Docket No. 19-1336 (issued April 16, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998). There is no indication that a petition for reconsideration was filed within 30 days of the issuance of the Board's October 29, 2021 decision and the decision became final after 30 days had elapsed. See 20 C.F.R. § 501.6(d).

¹¹ The Board notes that, in its October 29, 2021 decision, OWCP did not rely on any new evidence in making its determination that appellant received a \$20,030.86 overpayment and that he was without fault in the creation of the overpayment.

would defeat the purpose of FECA or be against equity and good conscience.¹² Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.¹³

In its preliminary overpayment determination dated April 30, 2021, OWCP explained the importance of providing the completed overpayment recovery questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support his reported 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, however, did not submit sufficient supporting financial documentation 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. He did not complete the Form OWCP-20 outlining his income, assets, and expenses. The evidence of record is, therefore, insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁴ Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the \$20,030.86 overpayment.¹⁵

CONCLUSION

The Board finds that OWCP properly denied appellant's request for waiver of recovery of an overpayment of compensation in the amount of \$20,030.86.

¹² 20 C.F.R. § 10.436.

¹³ *Supra* note 9.

¹⁴ *Supra* note 8.

¹⁵ *See T.E.*, Docket No. 19-0348 (issued December 11, 2019).

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board